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AN ACT to amend and reenact section twenty-seven, article twenty-four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing the priority of distribution of claims against the estates of hospital service corporations, medical service corporations, dental service corporations and health service corporations in liquidation.

Be it enacted by the Legislature of West Virginia:

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

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

§33-24-27. Order of distribution.

1 This section, as amended by this act, which amendment shall be effective from passage, shall retrospectively apply to and govern all claims filed in any proceeding to liquidate a corporation which is pending on the effective date of this section and to all claims filed in any proceeding to liquidate a corporation that is commenced on or after the effective date of this revised section, notwithstanding any other provision of this article.

This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. Such immediate action is required to ensure the orderly and prompt payment of claims filed in pending proceedings to
corporations under this article and such proceedings that
are commenced on or after the effective date of this act.
Therefore, this act shall go into immediate effect upon
passage and have retrospective effect on pending
liquidation proceedings under this article.

The priority of distribution of claims from the
corporation estate shall be in accordance with the order in
which each class of claims is herein set forth. Every claim
in each class shall be paid in full or adequate funds
retained for such payment before the members of the next
class receive any payment. No subclasses shall be
established within any class. No claim by a policyholder
or other creditor shall be permitted to circumvent the
priority classes through the use of equitable remedies.
The order of distribution shall be:

(a) Class I. The costs and expenses of administration,
including, but not limited to, the following:

(1) The actual and necessary costs of preserving or
recovering the assets of the corporation;

(2) Compensation for all services rendered in the
liquidation;

(3) Any necessary filing fees;

(4) The fees and mileage payable to witnesses;

(5) Reasonable attorney’s fees; and

(6) All expenses incurred by the department of
insurance arising out of the enforcement of chapter
thirty-three and its regulations.

(b) Class II. All claims for refund of unearned
premiums under nonassessable policies and all claims of
policyholders including such claims of the federal or any
state or local government as policyholders for losses
incurred and third party claims of an insolvent insurer.

(c) Class III. Claims of the federal government other
than as an insured policyholder.

(d) Class IV. Debts due to employees for compensa-
tion under the provision of section thirty-four of this
article and all reasonable claims of the West Virginia
insurance guaranty associations and associations or entities performing a similar function in other states.

(e) Class V. Claims of general creditors including claims of ceding and assuming companies in their capacity as such.

(f) Class VI. Claims of any state or local government. Claims, including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subdivision (h) of this section.

(g) Class VII. Claims filed late or any other claims other than claims under subdivision (h) of this section.

(h) Class VIII. Surplus or contribution notes, or similar obligations and premium refunds on assessable policies. Payments to members of domestic mutual corporations shall be limited in accordance with law.

CHAPTER 151

(Com. Sub. for H. B. 4511—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]
definitions; application for certificate of authority; conditions precedent to issuance or maintenance of a certificate of authority; renewal of certificate of authority; issuance of certificate of authority; fidelity bond; provider contracts; evidence of coverage; annual report; information to enrollees; open enrollment period; prohibited practices; regulation of marketing; examinations; quality assurance; suspension or revocation of certificate of authority; fees; statutory construction; relationship to other laws; directing the commissioner and the tax department to study the imposition of municipal business and occupation taxes; authorizing the commissioner to promulgate legislative rules regarding reimbursement for nonemergency transportation by nonparticipating providers and dispatching systems; and authorizing the study of rural health maintenance organizations.

Be it enacted by the Legislature of West Virginia:

That sections two, three, three-a, four, seven, seven-a, eight, nine, ten, eleven, fourteen, fifteen, seventeen, eighteen, twenty-two and twenty-four, 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 seventeen-a, thirty-four and thirty-five, 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; renewal of certificate of authority; effect of bankruptcy proceedings.
§33-25A-7. Fiduciary responsibilities of officers; fidelity bond; approval of contracts by commissioner.
§33-25A-7a. Provider contracts.
§33-25A-8. Evidence of coverage; charges for health care services; review of enrollee records; cancellation of contract by enrollee.
§33-25A-10. Information to enrollees.

1. (1) "Basic health care services" means physician, hospital, out-of-area, podiatric, chiropractic, 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 determine the need for vision and hearing corrections, which services need not necessarily include all procedures or services offered by a service provider.

2. (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. (3) "Commissioner" means the commissioner of insurance.

4. (4) "Consumer" means any person who is not a provider of care or an employee, officer, director or stockholder of any provider of care.

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

6. (6) "Employee" means a person in some official em-
ployment or position working for a salary or wage continuously for no less than one calendar quarter and who is in such a relation to another person that the latter may control 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, chiropractic services, podiatric 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 ar-
range; or (iii) through some combination of para-
graphs (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 iden-
tifiable focal points of legal and administrative responsi-
ability; 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 physi-
cian 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 organi-
ization 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 main-
tenance 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 orga-
nization and individual physicians or groups of physi-
cians, where the physicians are not employees or partners
of the health maintenance organization and are not mem-
ers of or affiliated with a medical group.
(14) "Insolvent" or "insolvency" means a financial situation in which, based upon the financial information that 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 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: Provided, That a certified nurse-midwife may be chosen or designated in lieu of as a subscriber's primary care physician during the subscriber's pregnancy and for a period extending through the end of the month in which the sixty-day period following termination of pregnancy ends: Provided, however, That nothing in this subsection shall expand the scope of practice for certified nurse-
midwives as defined in article fifteen, chapter thirty of this
code.

(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 ap­
proved by the commissioner within which the health main­
tenance 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 main­
tain pursuant to the requirements of this article.

(22) "Surplus" means the amount by which a corpora­
tion'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 corpo­
ration'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 sub­
ordinated to all claims of subscribers and general creditors
of the organization.

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

(25) "Quality assurance" means an ongoing program
designed to objectively and systematically monitor and
evaluate the quality and appropriateness of the enrollee's
care, pursue opportunities to improve the enrollee's care
and to resolve identified problems at the prevailing profes­
sional standard of care.
(26) "Utilization management" means a system for the evaluation of the necessity, appropriateness and efficiency of the use of health care services, procedures and facilities.


(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 as a health maintenance organization. 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 as a health maintenance organization. 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 a health maintenance organization or entity which has a certificate, may not be required to file for a certificate: Provided, however, That the commissioner may require the exempted entities to file complete financial data for a determination as to their
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 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 capital;

(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 appli-
cant in and for this state upon whom all lawful process in
any legal action or proceeding against the health mainte-
nance 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 pre-
scribed by the commissioner and an independent investi-
gation report on all of the individuals referred to in subdi-
vision (c) of this subsection 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 certifica-
tion by the qualified actuary and an opinion by the certi-
fied 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 ap-
propriate: Provided, That the certification shall include an
adequate description of the rating methodology showing
that the methodology follows consistent and equitable
113 actuarial principles; the health maintenance organization is
114 actuarially sound: Provided, however, That the certification shall consider the rates, benefits, and expenses of, and
115 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;

115 (n) A description of the health maintenance organization's quality assurance program; and

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

126 (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; renewal of certificate of authority; effect of bankruptcy proceedings.

1 (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:

5 (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;

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

13 (c) Within thirty days of any change in the member-
ship of the governing body of the organization or in the
officers or persons holding five percent or more of the
common stock of the organization, or as otherwise re-
quired by the commissioner:

(i) An amended list of the names, addresses and official positions of each member of the governing body, and
a full disclosure of any financial interest by a 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; and

(ii) A complete biographical statement on forms pre-
scribed by the commissioner and an independent investiga-
tion report on each person for whom a biographical
statement and independent investigation report have not
previously been submitted; and

(d) Effective the first day of May, one thousand nine
hundred ninety-eight, for health maintenance organiza-
tions that have been in existence at least three years, a
copy of the current quality assurance report submitted to
the health maintenance organization by a nationally rec-
ognized accreditation and review organization approved
by the commissioner, or in the case of the issuance of an
initial certificate of authority to a health maintenance
organization, a determination by the commissioner as to
the feasibility of the health maintenance organization's
proposed quality assurance program: Provided, That if a
health maintenance organization files proof found in the
commissioners discretion to be sufficient to demonstrate
that the health maintenance organization has timely ap-
plied for and reasonably pursued a review of its quality
assurance program, but a quality report has not been is-
sued by the accreditation and review organization, the
health maintenance organization shall be deemed to have
complied with this subdivision.

(2) After the effective date of this section, as a condi-
tion 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) After the effective date of this subsection, all certif-
icates of authority issued to health maintenance organiza-
tions shall expire at midnight on the thirty-first day of
May of each year. The commissioner shall renew annually
the certificates of authority of all health maintenance orga-
nizations that continue to meet all requirements of this
section and subsection (2), section four of this article,
make application therefor upon a form prescribed by the
commissioner and pay the renewal fee prescribed: Provided,
That a health maintenance organization shall not qual-
ify for renewal of its certificate of authority if the organi-
zation has no subscribers in this state within twelve months
after issuance of the certificate of authority: Provided,
however, That an organization not qualifying for renewal
may apply for a new certificate of authority under section
three of this article.

(4) 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 health maintenance organi-
ization held by the commissioner.

(5) If the bankruptcy proceeding is initiated by a
party other than the health maintenance organization, the
operation of subsection (4) of this section shall be stayed
for a period of sixty days following the date of com-
mencement 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 organi-
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(1) A health maintenance organization shall:

(a) Arrangements for an ongoing evaluation of the quality of health care provided by the organization and utilization review which meet those standards as the commissioner shall by rule require; and

(b) 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 the following:

(A) If a for-profit stock corporation, at least one million dollars of fully paid-in capital stock; or

(B) If a nonprofit corporation, at least one million dollars of statutory surplus funds; and

(C) Both for-profit and nonprofit health maintenance organization, additional surplus funds of at least one million dollars;

(iii) Any arrangements that 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 reinsurance acceptable to the commissioner from an accredited reinsurer or making other arrangements acceptable to the commissioner:
(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; and

(i) Effective the first day of May, one thousand nine hundred ninety-eight, the health maintenance organization has a quality assurance program which has been reviewed by the commissioner or by a nationally recognized accreditation and review organization approved by the commissioner; meets at least those standards set forth in section seventeen-a of this article; and is deemed satisfactory by the commissioner. If the commissioner determines that the quality assurance program of a health maintenance
organization is deficient in any significant area, the com-
missioner, in addition to other remedies provided in this
chapter, may establish a corrective action plan that the
health maintenance organization must follow as a condi-
tion to the issuance of a certificate of authority: Provided,
That in those instances where a health maintenance orga-
nization has timely applied for and reasonably pursued a
review of its quality assurance program, but the review has
not been completed, the health maintenance organization
shall submit proof to the commissioner of its application
for that review.

(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 organi-
zation" or the initials "HMO" in its name, contracts, logo or
literature: Provided, That persons who are operating un-
der a contract with, operating in association with, enrolling
enrollees for, or otherwise authorized by a health mainte-
nance organization licensed under this article to act on its
behalf may use the terms "health maintenance organiza-
tion", or "HMO" for the limited purpose of denoting or
explaining their association or relationship with the autho-
rized health maintenance organization. No health mainte-
nance organization which has a minority of board mem-
bers 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; fidelity bond;
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 organi-
zation is responsible for the funds in a fiduciary rela-
tionship to the enrollees.

(b) A health maintenance organization shall maintain
a blanket fidelity bond covering all directors, officers,
managers and employees of the organization who receive,
collect, disburse or invest funds in connection with the activities of the organization, issued by an insurer licensed in this state or, if the fidelity bond required by this subsection is not available from an insurer licensed in this state, a fidelity bond procured by an excess line broker licensed in this state, in an amount at least equal to the minimum amount of fidelity insurance as provided in the national association of insurance commissioners handbook, as amended, or as determined under a rule promulgated by the commissioner.

(c) 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 a health maintenance organization is liable to any provider of health care services for any services covered by the health maintenance organization if at any time during the provision of the services, the provider, or its agents, are aware the subscriber is a health maintenance organization enrollee.

(3) If at any time during the provision of the services, a provider, or its agents, are aware that the subscriber is a health maintenance organization enrollee, that provider of services or any representative of the provider may not
17 collect or attempt to collect from a health maintenance
18 organization subscriber any money for services covered
19 by a health maintenance organization and no provider or
20 representative of the provider may maintain any action at
21 law against a subscriber of a health maintenance organi-
22 zation to collect money owed to the provider by a health
23 maintenance organization.
24 (4) Every contract between a health maintenance orga-
25 nization and a provider of health care services shall be in
26 writing and shall contain a provision that the subscriber is
27 not liable to the provider for any services covered by the
28 subscriber's contract with the health maintenance organi-
29 zation.
30 (5) The provisions of this section shall not be con-
31 strued to apply to the amount of any deductible or
32 copayment which is not covered by the contract of the
33 health maintenance organization.
34 (6) When a subscriber receives covered emergency
35 health care services from a noncontracting provider, the
36 health maintenance organization shall be responsible for
37 payment of the provider's normal charges for those health
38 care services, exclusive of any applicable deductibles or
39 copayments.
40 (7) For all provider contracts executed on or after the
41 fifteenth day of April, one thousand nine hundred
42 ninety-five, and within one hundred eighty days of that
43 date for contracts in existence on that date:
44 (a) The contracts must provide that the provider shall
45 provide sixty days advance written notice to the health
46 maintenance organization and the commissioner before
47 canceling the contract with the health maintenance organi-
48 zation for any reason; and
49 (b) The contract must also provide that nonpayment
50 for goods or services rendered by the provider to the
51 health maintenance organization is not a valid reason for
52 avoiding the sixty day advance notice of cancellation.
53 (8) Upon receipt by the health maintenance organiza-
54 tion of a sixty day cancellation notice, the health mainte-
insurance 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; review of enrollee records; 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;

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

(vi) The following exact statement in bold print: "Each subscriber or enrollee, by acceptance of the benefits described in this evidence of coverage, shall be deemed to
have consented to the examination of his or her medical
records for purposes of utilization review, quality assurance and peer review by the health maintenance organization or its designee."

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

(e) 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 require-
ments 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 certifi-
cation by a qualified independent actuary shall accompa-
ny 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 method-
ology 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 com-
missioner 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; (c) made a good faith effort to secure arrange-
ments whereby basic services can be obtained by subscrib-
ers from local providers to the extent that the providers
offer the services; and (d) made a good faith effort to
support community health assessments and efforts directed at community health needs.

(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 health maintenance organization 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 thirty 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.


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; (iii) expenditures for capital improvements, or additions thereto, including, but not limited to, construction, renovation or purchase of facilities and capital equipment; and (iv) the organization's fidelity bond;

(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 pursuant to 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 a nationally recognized accreditation and review organization or as the commissioner may by rule require;

(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 disclo-
sure 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) Any 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-10. Information to enrollees.

Every health maintenance organization or its represent-
tative shall annually, before the first day of April, provide
to its enrollees a summary of: Its most recent annual fi-
nancial statement, including a balance sheet and statement
of receipts and disbursements; a description of the health
maintenance organization, its basic health care services, its
facilities and personnel, any material changes therein since
the last report, the current evidence of coverage, and a
clear and understandable description of the health mainte-
nance organization's method for resolving enrollee com-
plaints: Provided, That with respect to enrollees who have
been enrolled through contracts between a health mainte-
nance organization and an employer, the health mainte-
nance organization shall be deemed to have satisfied the
requirement of this section by providing the requisite
summary to each enrolled employee: Provided, however,
That with respect to medicaid recipients enrolled under a
group contract between a health maintenance organization
and the governmental agency responsible for administra-
ting the medicaid program, the health maintenance organi-
zation shall be deemed to have satisfied the requirement of
this section by providing the requisite summary to each
local office of the governmental agency responsible for
administering the medicaid program for inspection by
enrollees of the health maintenance organization.


(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 any 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.


(1) No health maintenance organization, or representative 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. No advertising may be used until it has been approved by the commissioner. Advertis-
For purposes of this article:

(a) A statement or item of information shall be considered 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 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
46 group; or (f) other reasons established in rules promul- 
47 gated by the commissioner. No health maintenance organi-
48 zation shall use any technique of rating or grouping to can-
49 cel or fail to renew the coverage of an enrollee. An
50 enrollee shall be given thirty days' notice of any cancella-
51 tion or nonrenewal and the notice shall include the reasons
52 for the cancellation or nonrenewal: Provided, That each
53 enrollee moving out of an eligible group shall be granted
54 the opportunity to enroll in the health maintenance orga-
55 nization on an individual basis. A health maintenance
56 organization may not disenroll an enrollee for nonpay-
57 ment of copayments unless the enrollee has failed to make
58 payment in at least three instances over any twelve-month
59 period: Provided, however, That the enrollee may not be
disenrolled if the disenrollment would constitute abandon-
60 ment of a patient. Any enrollee wrongfully disenrolled
61 shall be reenrolled.
62 (3) (a) No health maintenance organization may use
63 in its name, contracts, logo or literature any of the words
64 "insurance", "casualty", "surety", "mutual" or any other
65 words which are descriptive of the insurance, casualty or
66 surety business or deceptively similar to the name or de-
67 scription of any insurance or surety corporation doing
68 business in this state: Provided, That when a health main-
69 tenance organization has contracted with an insurance
70 company for any coverage permitted by this article, it may
71 so state; and
72 (b) Only those persons that have been issued a certifi-
73 cate of authority under this article may use the words
74 "health maintenance organization" or the initials "HMO" in
75 its name, contracts, logo or literature to imply, directly or
76 indirectly, that it is a health maintenance organization or
77 hold itself out to be a health maintenance organization.
78 (4) The providers of a health maintenance organiza-
79 tion who provide health care services and the health main-
80 tenance organization shall not have recourse against
81 enrollees for amounts above those specified in the evi-
82 dence of coverage as the periodic prepayment or
83 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 distinctions, including distinctions relating to age and sex, shall not be considered discrimination in enrollment policies.

(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"; (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) With respect to individual and group contracts covering fewer than twenty-five subscribers, after a subscriber signs a health maintenance organization enrollment application and before the health maintenance organization may process the application changing or initiating the subscriber coverage, each health maintenance organization must verify in writing, in a form prescribed by the commissioner, the intent and desire of the individual subscriber to join the health maintenance organization. The verification shall be conducted by someone outside the health maintenance organization marketing department and shall show that:

(a) The subscriber intends and desires to join the health maintenance organization;

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

(c) The subscriber understands the applicable restrictions of health maintenance organizations especially that he or she must use the health maintenance organization providers and secure approval from the health mainte-
nance organization to use health care providers outside the plan; and

(d) If the subscriber is a member of a health maintenance organization, the subscriber understands that he or she is transferring to another health maintenance organization.

(3) The health maintenance organization shall not pay a commission, fee, money or any other form of scheduled compensation to any health insurance agent until the subscriber's application has been processed and the health maintenance organization has confirmed the subscriber's enrollment by written notice in the form prescribed by the commissioner. The confirmation notice shall be accompanied by the evidence of coverage required by section eight of this article and shall confirm:

(a) The subscriber's transfer from his or her existing coverage (i.e. from medicare, medicaid, another health maintenance organization, etc.) to the new health maintenance organization; and

(b) The date enrollment begins and when benefits will be available.

(4) The enrollment process shall be considered complete seven days after the health maintenance organization mails the confirmation notice and evidence of coverage to the subscriber. Each health maintenance organization is directly responsible for enrollment abuses.

(5) 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.

§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, any entity 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, or any entity contracted with by the department of health and human resources, 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 principals 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.

(6) The expenses of an examination assessing quality of health care under subsection (2) of this section and section seventeen-a of this article shall be reimbursed
§33-25A-17a. Quality assurance.

(a) Each health maintenance organization shall have in writing a quality assurance program that describes the program's objectives, organization and problem solving activities.

(b) The scope of the quality assurance program shall include, at a minimum:

(1) Organizational arrangements and responsibilities for quality management and improvement processes;

(2) A documented utilization management program;

(3) Written policies and procedures for credentialing and recredentialing physicians and other licensed providers who fall under the scope of authority of the health maintenance organization;

(4) A written policy that addresses enrollee's rights and responsibilities;

(5) The adoption of practice guidelines for the use of preventive health services; and

(6) Any other criteria deemed necessary by the commissioner.

(c) As a condition of doing business in this state, each health maintenance organization which has been in existence for at least three years shall apply for and submit to an accreditation examination to be performed by a nationally recognized accreditation and review organization approved by the commissioner. The accreditation and review organization must be experienced in health maintenance organization activities and in the appraisal of medical practice and quality assurance in a health maintenance organization setting: Provided, That in those instances where a health maintenance organization has timely applied for and reasonably pursued an accreditation examination, but the examination has not been completed, the health maintenance organization may, upon compliance with all other provisions of this article, engage in business...
in this state upon submission of proof to the commissioner of its application for review.

(d) Within thirty days of receipt of the written report of the accreditation and review organization by the health maintenance organization, the health maintenance organization shall submit a copy of this report to the commissioner.

(e) This section shall become effective on the first day of May, one thousand nine hundred ninety-eight.


(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 (l), 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;

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

(l) The health maintenance organization has not complied with the requirements of section seventeen-a of this article.

(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 whatever. 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.


Every health maintenance organization subject to this article shall pay to the commissioner the following fees:

1. For filing an application for a certificate of authority or amendment thereto, two hundred dollars; for each renewal of a certificate of authority, the annual fee as provided in section thirteen, article three of this chapter; for each form filing and for each rate filing, the fee as provided in section thirty-four, article six of this chapter; and for filing each annual report, twenty-five dollars. Fees charged under this section shall be for the purposes set forth in section thirteen, article three of this chapter.


(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. The provisions of this article shall not apply to an entity properly licensed by a reciprocal state to provide health care services to employer groups, where residents of West Virginia are members of an employer group, and the employer group contract is entered

*Clerk’s Note: This section was also amended by S. B. 312 (Chapter 148), which passed prior to this act.
into in the reciprocal state. For purposes of this subsection, a "reciprocal state" means a state which physically borders West Virginia and which has subscriber or enrollee hold harmless requirements substantially similar to those set out in section seven-a of this article.

(b) Factly 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 provisions of chapter thirty of this code, relating to the practice of medicine.

(d) The provisions of section fifteen, article four (general provisions); section seventeen, article six (noncomplying forms); 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 commission-
er'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 (disclo-
sure 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 organi-
(zations.

(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
fifteen-a of this chapter.

(f) A health maintenance organization granted a cer-
tificate of authority under this article shall be exempt from
paying municipal business and occupation taxes on gross
income it receives from its enrollees, or from their em-
ployers or others on their behalf, for health care items or
services provided directly or indirectly by the health main-
tenance organization. This exemption applies to all tax-
able years through the thirty-first day of December, one
thousand nine hundred ninety-six. The commissioner and
the tax department shall conduct a study of the appropri-
ateness of imposition of the municipal business and occupa-
tion tax or other tax on health maintenance organiza-
tions, and shall report to the regular session of the Legisla-
ture, one thousand nine hundred ninety-seven, on their
findings, conclusions and recommendations, together with
drafts of any legislation necessary to effectuate their rec-
ommendations.

§33-25A-34. Ambulance services.
The Legislature finds that ambulance services in this state are performed by various volunteer emergency service squads, county operations and small businesses, which may lack the sophistication and expertise required to negotiate a contract with a health maintenance organization for the provision of ambulance services, and that the best interests of the citizens of the state require the continued development and preservation of an emergency medical system to serve all the citizens of the state, including those citizens who do not receive health care services through a health maintenance organization. Therefore, the commissioner shall promulgate legislative rules, pursuant to the provisions of article twenty-nine-a of this code, to regulate contracting for emergency medical services. The rules shall be promulgated as expeditiously as possible in order to be considered by the Legislature in the regular session in the year one thousand nine hundred ninety-seven. The rules shall consider the following: Reimbursement for nonemergency transportation by nonparticipating providers and the appropriate use of 911 or community dispatching, as well as other items the commissioner may deem necessary.


The Legislature finds that the provisions of this article, and in particular, the financial requirements that are conditions precedent to the establishment of a health maintenance organization, may be unnecessarily restrictive as applied to small managed care organizations to operate in rural areas of the state, and that the public interest may be served by the development of less restrictive standards permitting the creation of rural health maintenance organizations. Therefore, the commissioner shall develop and present to the joint committee on government and finance, not later than the fifteenth day of January, one thousand nine hundred ninety-seven, a proposal for legislation to be considered during the regular session of the Legislature in the year one thousand nine hundred ninety-seven, providing standards for the development and operation of rural health maintenance organizations.
AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-six-b, relating to the establishment of a health maintenance organization guaranty association to protect residents of this state against the failure of a domestic health maintenance organization to fulfill its contractual obligations due to insolvency, and to be funded by domestic health maintenance organizations; short title; purpose; scope; construction; definitions; creation of association; board of directors; powers and duties of association; assessments; plan of operation; powers and duties of the commissioner; records; annual report of the association; tax exemptions; immunity; and prohibited advertisements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26B. WEST VIRGINIA HEALTH MAINTENANCE ORGANIZATION GUARANTY ASSOCIATION.

§33-26B-1. Short title.
§33-26B-2. Purpose.
§33-26B-4. Construction.
§33-26B-5. Definitions.
§33-26B-6. Creation of association.
§33-26B-7. Board of directors.
§33-26B-10. Plan of operation.
§33-26B-12. Records.
§33-26B-16. Prohibited advertisements.

§33-26B-1. Short title.
1 This article shall be known and may be cited as the
2 "West Virginia Health Maintenance Organization Guaranty
3 Association Act."

§33-26B-2. Purpose.
1 The purpose of this article is to protect, subject to
2 certain limitations, covered individuals against the failure
3 or inability of a health maintenance organization to per-
4 form its contractual obligations due to its insolvency.

1 This article shall provide prospective coverage for any
2 individual resident of this state who is entitled to receive
3 health care services under a policy, certificate or contract,
4 other than one purchased under this state's medicaid pro-
5 gram, which has been issued by a health maintenance
6 organization possessing a valid certificate of authority
7 issued by the commissioner pursuant to article
8 twenty-five-a of this chapter.

§33-26B-4. Construction.
1 This article shall be liberally construed to effect its
2 purpose as set forth in section two of this article, which
3 shall constitute an aid and guide to its interpretation.

§33-26B-5. Definitions.
1 (a) As used in this article:
2 (1) "Association" means the West Virginia health
3 maintenance organization guaranty association created by
4 section six of this article.
5 (2) "Board of directors" means the board of directors
6 of the association, formed pursuant to section seven of this
7 article.
(3) "Commissioner" means the commissioner of insurance or his designee.

(4) "Contractual obligation(s)" means any and all obligations to covered individuals under a covered health care policy.

(5) "Covered health care policy" means any policy, certificate or contract issued by a health maintenance organization for health care services.

(6) "Covered individual" means a subscriber, enrollee or member of an insolvent health maintenance organization who is a resident of this state, but shall not include an individual enrolled in such health maintenance organization under this state's medicaid program.

(7) "Date of insolvency" means the date upon which an order of liquidation is entered by a court of competent jurisdiction, even if such order has not become final by the exhaustion of appellate reviews, or if the health maintenance organization is incorporated in another state, the date upon which the commissioner enters an order revoking the health maintenance organization's certificate of authority as described in subdivision (9) of this subsection.

(8) "Health maintenance organization" means a health maintenance organization possessing a valid certificate of authority issued by the commissioner pursuant to article twenty-five-a of this chapter, but shall not include any health maintenance organization with one hundred percent of its enrollees participating in the health maintenance organization under this state's medicaid program or any health maintenance organization which is not required, as a condition of being allowed to transact business as a health maintenance organization in this state, to maintain at least two million dollars of either surplus or of surplus and fully paid in capital stock.

(9) "Insolvent health maintenance organization" or "insolvent" means a health maintenance organization against which an order of liquidation has been entered by a court of competent jurisdiction, even if such order has not become final by the exhaustion of appellate reviews,
or a health maintenance organization which is incorporat-
ed in another state and which has had its certificate of
authority revoked by an order of the commissioner con-
taining a finding by the commissioner that the health
maintenance organization either is no longer financially
responsible and may reasonably be expected to be unable
to meet its obligations to its enrollees, or is in a hazardous
financial condition.

(10) "Person" means any individual, corporation, part-
nership, association, or voluntary organization, or any
other legal entity.

(b) Words and phrases which are not defined in this
section, but are defined in article twenty-five-a of this
chapter, shall have the meanings established in that article
unless the context in which a word or phrase appears
clearly requires otherwise.

§33-26B-6. Creation of association.

There is created a nonprofit legal entity to be known
as the West Virginia health maintenance organization
guaranty association. All health maintenance organiza-
tions shall be and must remain members of the association
as a condition of the continuation of their certificates of
authority to transact business in this state as health mainte-
nance organizations. The association shall perform its
functions under the plan of operation to be established
and approved pursuant to the provisions of section ten of
this article and shall exercise its powers through a board of
directors to be established and approved pursuant to the
provisions of section seven of this article. The association
shall come under the immediate supervision of the com-
missioner.

§33-26B-7. Board of directors.

(a) The board of directors of the association shall
consist of not less than five nor more than nine individuals
serving terms as established in the plan of operation. The
members of the board of directors shall be selected by a
vote of the health maintenance organizations, subject to
the approval of the commissioner, with each health main-
tenance organization being entitled to one vote. Vacan-
cies on the board of directors shall be filled for the remaining period of the term in the same manner as initial appointments.

(b) To allow for the selection the original board of directors and the organization of the association, the commissioner shall give notice to all health maintenance organizations of the time and place of an organizational meeting. If the health maintenance organizations have not selected a suitable board of directors within sixty days following the organizational meeting, the commissioner may appoint the initial members of the board of directors.

(c) In approving or appointing members to the board of directors, the commissioner shall consider, among other things, whether all health maintenance organizations are fairly represented.

(d) Members of the board of directors may be reimbursed from the assets of the association for reasonable expenses incurred by them as members of the board of directors, but shall not otherwise be compensated by the association for their services.


(a) Upon being notified by the commissioner that a health maintenance organization is insolvent, the association, with the approval of the commissioner, shall appoint one or more health maintenance organizations to enroll covered individuals.

(1) Except as otherwise provided in this article, a health maintenance organization operating in a given service area shall be appointed to enroll covered individuals within that service area. If more than one health maintenance organization is operating in a given service area, the association shall allocate the covered individuals within that service area among those health maintenance organizations. The ratio of covered individuals allocated to each health maintenance organization shall approximate the ratio of that health maintenance organization's subscribers in the service area to the total number of health maintenance organization subscribers in the service area. In computing the latter ratio, the association shall use the most
recent membership data filed with the commissioner by
the health maintenance organizations and shall exclude
from the computation all covered individuals.

(2) If no health maintenance organization is operating
within a given service area, the association shall appoint to
enroll covered individuals within that service area the
health maintenance organization(s) that it deems best
suited to provide health care services to those individuals.
In determining which health maintenance organization(s)
are best suited, the association shall consider the health
care delivery systems and financial resources of all candi-
date health maintenance organizations.

(3) A health maintenance organization appointed by
the association shall enroll covered individuals under its
own contract containing terms which are, in the opinion of
the association, comparable to those which were extended
to the covered individuals by the insolvent health mainte-
nance organization. The rate for said contract shall be
determined by the health maintenance organization's rate
methodology for the contract. In selecting a contract of
the appointed health maintenance organization to be used
to provide services to covered individuals, the association
shall consider the services, benefits, and exclusions under
the contract.

(4) A health maintenance organization appointed by
the association shall not exclude from coverage a preexist-
ing condition which was not excluded under the covered
individual's policy with the insolvent health maintenance
organization.

(5) Except as specifically provided elsewhere in this
section, a health maintenance organization appointed by
the association may not terminate the coverage of a cov-
ered individual for any reason other than:

(A) Nonpayment of premiums;
(B) Attainment of medicare or medicaid eligibility;
(C) Nonresidency in the service area;
(D) Fraud;
(E) Termination of eligibility.

(6) If the association appoints a health maintenance organization to enroll covered individuals residing in a service area in which the health maintenance organization is not currently functioning, the association, at the request of the health maintenance organization and with the approval of the commissioner, shall transfer to the health maintenance organization some or all of the contracts existing between the insolvent health maintenance organization and providers or other participating entities. Such transfers shall be prospective only, and the health maintenance organization receiving the contract shall not be subject to liability, of any type whatsoever, which is based upon the contract and arose before its transfer.

(7) The liability of a health maintenance organization appointed to enroll covered individuals under this subsection shall be based only upon the policy issued by the health maintenance organization, as limited by this article. In no event shall the health maintenance organization be subject to liability, of any kind whatsoever, that is based upon the covered policy issued by the insolvent health maintenance organization or upon a statement, act or omission of the insolvent health maintenance organization. The liability of the health maintenance organization shall be strictly limited by the terms of its contract with the covered individual and shall not include any liability for any amount or obligation in excess of the applicable limits of coverage for contractually covered matters, and as limited by the terms of this article.

(8) Notwithstanding any other provision of this chapter, a covered individual shall not be entitled to convert or renew a contract which has been issued by a health maintenance organization pursuant to this subsection unless the health maintenance organization, in its discretion, agrees to the conversion or renewal.

(b) Notwithstanding any other provision of this article, coverage provided to a covered individual under this section shall terminate when the value of the benefits provided to the covered individual exceeds one hundred thousand dollars. If the value of the benefits is less than this
amount, coverage nonetheless shall terminate one year
from the insolvent health maintenance organization’s date
of insolvency or upon the expiration of the policy issued
by the insolvent health maintenance organization, which-
ever is earlier, but in no event prior to one hundred and
eighty days from the insolvent health maintenance organi-
ization’s date of insolvency. When the value of the benefits
provided do not exceed one hundred thousand dollars, no
covered individual may be terminated under the provi-
sions of this subsection if, at the time such coverage could
otherwise be terminated:

(1) The individual is undergoing treatment for an
acute injury which occurred while the individual was cov-
ered, in which case coverage shall last until such treatment
is completed, but shall be limited to such treatment; or

(2) The individual is undergoing treatment for an
acute illness which was diagnosed while the individual was
covered, in which case coverage shall continue until such
treatment is completed, but shall be limited to such treat-
ment; or

(3) The individual is undergoing a course of inpatient
treatment which began while the individual was covered, in
which case coverage shall continue until such treatment is
completed, but shall be limited to such treatment.

(c) If the association fails to appoint a health mainte-
nance organization to enroll a covered individual within a
reasonable period of time, the commissioner, in his or her
discretion, may appoint a health maintenance organization
on behalf of the association.

(d) At the request of a covered individual, the associa-
tion shall defend any suit brought against that covered
individual contrary to the provisions of section seven-a,
article twenty-five-a of this chapter. If the association
prevails in such a suit, it shall be entitled to recover its
costs and attorney's fees from the plaintiff.

(e) The association shall render assistance and advice
to the commissioner, upon his or her request, in any delib-
eration, proceeding, inquiry or presentation which con-
cerns an insolvent health maintenance organization.
(f) The association shall have standing to appear before any court which has jurisdiction over an insolvent health maintenance organization. Such standing shall extend to all matters germane to the powers and duties of the association including, but not limited to, the liquidation of the health maintenance organization, and the determination or transfer of the contractual obligations, assets or liabilities of the health maintenance organization.

(g) In addition to exercising such other powers as may be granted or implied elsewhere in this article, the association may:

1. Enter into contracts or perform such other actions as are necessary and appropriate to carry out its duties under this article;

2. Take any legal actions as are necessary and appropriate including, but not limited to, actions for the recovery of any unpaid assessments made under section nine of this article;

3. Borrow money as necessary to effectuate the purposes of this article and issue evidence of such indebtedness, which if not in default, shall be treated as legal investments for domestic insurers or health maintenance organizations and may be carried by a domestic insurer or health maintenance organization as an admitted asset;

4. Employ or retain such persons to handle the financial transactions of the association and to perform such other functions as become necessary or appropriate; and

5. Negotiate and contract with any liquidator, conservator, or ancillary receiver of an insolvent health maintenance organization.


(a) For the purpose of providing the funds necessary for the association to carry out its duties under this article, the initial assessment of health maintenance organizations shall be as follows:

(1) Each health maintenance organization possessing a valid certificate of authority issued by the commissioner
on or before the effective date of this article shall pay an initial assessment of five thousand dollars.

(2) Prior to and as a condition of first receiving a certificate of authority from the commissioner after the effective date of this article, a health maintenance organization shall pay an initial assessment of five thousand dollars.

(b) To obtain funds to pay administrative expenses, including, but not limited to legal costs, the association may make additional assessments. The association shall make only such assessments as are necessary to pay expenses or debts which have been incurred by the association, or are reasonably foreseeable. Assessments shall be based on the annual earned premium revenue for nonmedicare and nonmedicaid contracts allocated to West Virginia in the preceding calendar year unless the association, in its discretion, substitutes such other amount that more accurately reflects a health maintenance organization's current activity within this state. The rate used to compute the assessment shall be the same for all health maintenance organizations.

(c) Assessments shall be made by issuing written notice of the assessment to the health maintenance organizations, and shall be due thirty days after the issuance of such written notice. Assessments which are not paid when due shall accrue interest at a reasonable rate to be set by the association, subject to the approval of the commissioner.

(d) With the approval of the commissioner, the association may abate or defer, in whole or in part, the assessment of a health maintenance organization if, in the opinion of the association, immediate payment of the assessment would materially impair the health maintenance organization's ability to fulfill its contractual obligations. The amount by which an assessment is abated or deferred may be assessed against the other health maintenance organizations in addition to all other assessments called for by this section.

(e) The association may, by an equitable method established in its plan of operation, refund to health mainte-
nance organizations all or part of an assessment which the
association determines is unnecessary to carry out its du-
ties. Refunds shall be proportional to the amounts actual-
ly paid by the health maintenance organizations to satisfy
the assessment.

(f) It shall be proper for any health maintenance orga-
nization, in determining its premium rates, to consider the
amount reasonably necessary to meet its assessment obli-
gations under this article.

(g) The association shall issue to each health mainte-
nance organization paying an assessment under this article
a certificate of contribution for the amount paid. All out-
standing certificates shall be of equal dignity and priority
without reference to amounts or dates of issue. For pur-
poses of determining the financial condition of the health
maintenance organization, a certificate of contribution
shall be treated as an asset of such form, amount and dura-
tion as the commissioner may prescribe.

§33-26B-10. Plan of operation.

(a) The association shall submit to the commissioner a
proposed plan of operation and all subsequent amend-
ments thereto to assure the equitable, efficient administra-
tion of the association. The proposed plan of operation
and any amendments thereto shall become effective upon
approval by the commissioner.

(b) If the association fails to submit a suitable pro-
posed plan of operation within one hundred and eighty
days following the effective date of this article, or if at any
time thereafter, the association fails to submit suitable
amendments to the plan of operation within a reasonable
time, the commissioner, after notice and hearing, shall
promulgate by order such plan provisions as he deems
necessary or appropriate. Plan provisions promulgated by
the commissioner shall continue in force until modified
by the commissioner or superseded by a plan or amend-
ments thereto which has been submitted by the association
and approved by the commissioner.

(c) All health maintenance organizations shall comply
with the plan of operation.

(d) In addition to such requirements as are set forth
elsewhere in this article, the plan of operation shall:

(1) Establish procedures for handling the assets of the association;

(2) Establish the amount and method of reimbursing members of the board of directors for reasonable expenses;

(3) Provide for regular meetings of the board of directors and establish methods by which meetings of the board of directors may be conducted, including, but not limited to, telephone conferences;

(4) Establish procedures for keeping records of all financial transactions of the association, its agents, and the board of directors;

(5) Establish criteria for board members, and procedures for selecting board members and submitting such selections to the commissioner;

(6) Establish procedures for making assessments under this article;

(7) Contain additional provisions necessary for the exercise of the association's powers and the fulfillment of the association's duties.

(e) The plan of operation may provide that any or all powers of the association, except those set forth in subsection (f), section eight of this article, and in subdivision (2), subsection (g), section eight of this article, and in section nine of this article, may be delegated to an administrator, which may be a corporation, association, or other organization, and which performs or will perform functions similar to those of the association, or its equivalent. Such a delegation shall take effect only with the approval of the commissioner, who may revoke such delegation at any time. The administrator shall be reimbursed for any payments it makes on behalf of the association and shall be paid for the services it renders to the association. The delegation of powers to an administrator shall not absolve the association of any duty imposed upon it by this article.

(f) If the plan of operation provides for the delegation of powers to an administrator, the association shall select an administrator, with the approval of the commissioner.
The selection of an administrator shall be exempt from the competitive bidding process which may apply to certain state agencies. The association shall evaluate potential administrators based upon reasonable criteria, which shall include, but not be limited to:

1. The administrator's proven ability to manage large group health insurance plans or health maintenance organizations;
2. The efficiency of the administrator's procedures;
3. An estimate of the administrator's charges for services rendered to the association.


(a) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority of a health maintenance organization for:

1. Failure to pay an assessment when due; or
2. Failure to comply with the plan of operation; or
3. Failure either timely to comply with or timely to appeal its appointment under section eight of this article.

(b) Any action of the board of directors may be appealed to the commissioner by any health maintenance organization within thirty days of the action. The resulting action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction.

(c) The commissioner may require the association to notify the enrollees of an insolvent health maintenance organization, and any other interested parties, of the determination of insolvency and of their rights under this article. Such notification shall be by mail at their last known addresses, or by publication in a newspaper of general circulation, if sufficient information for notification by mail is not available.

(d) Powers of the commissioner established in this section are in addition to those granted or implied elsewhere in this chapter, and this section shall not be construed to diminish or eliminate those other powers.

§33-26B-12. Records.
The association shall keep records of all meetings of
the board of directors and of all transactions by which the
association or its representatives carry out its duties. All
records shall be made available to the commissioner upon
his or her request.


The association shall be subject to examination and
regulation by the commissioner. The board of directors
shall submit to the commissioner, not later than the first
day of May of each year and in a form approved by the
commissioner, a financial report for the preceding calen-
dar year and a report of its activities during the preceding
calendar year.


The association shall be exempt from payment of all
fees and all taxes levied by this state or any of its subdivi-
sions except ad valorem taxes.


There shall be no liability on the part of and no cause
of action of any nature shall arise against the association,
members of the board of directors, the commissioner, or
the representatives, agents or employees of the aforemen-
tioned persons for statements made or actions taken or not
taken in the good faith exercise of their powers under this
article, or for the statements, acts or omissions of a health
maintenance organization appointed pursuant to section
eight of this article or an insolvent health maintenance
organization.

§33-26B-16. Prohibited advertisements.

No person shall make, publish, disseminate, circulate
or place before the public, or cause, directly or indirectly,
to be made, published, disseminated, circulated, or placed
before the public, in any newspaper, magazine, or other
publication, or in the form of a notice, circular, pamphlet,
letter, or poster, or over any radio station or television
station, or in any other way, an advertisement, announce-
ment, or statement which uses the existence of the associa-
tion or of this article for the purpose of soliciting sub-
scriptions to a health maintenance organization: Provided,
That this section shall not apply to the association.
AN ACT to amend and reenact section five-b, article twenty-eight, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to medicare supplement insurance.

Be it enacted by the Legislature of West Virginia:

That section five-b, article twenty-eight, 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 28. INDIVIDUAL ACCIDENT AND SICKNESS INSURANCE MINIMUM STANDARDS.

§33-28-5b. Medicare supplement insurance.

(a) Definitions.—

(1) "Applicant" means, in the case of an individual medicare supplement policy or subscriber contract, the person who seeks to contract for insurance benefits.

(2) "Medicare supplement policy" means an individual policy of accident and sickness insurance or a subscriber contract (of hospital and medical service corporations or health maintenance organizations), other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. Section 1395 et seq.), or an issued policy under a demonstration project specified in 42 U.S.C. §1395ss(g)(1), which is advertised, marketed or designed primarily as a supplement to reimbursements under medicare for the hospital, medical or surgical expenses of persons eligible for medicare. Such term does not include:

(A) A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established
by one or more employers or labor organizations, or a combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations; or

(B) A policy or contract of any professional, trade or occupational association for its members or former or retired members, or combination thereof, if such association is composed of individuals all of whom are actively engaged in the same profession, trade or occupation; has been maintained in good faith for purposes other than obtaining insurance; and has been in existence for at least two years prior to the date of its initial offering of such policy or plan to its members; or

(C) Individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when such group or individual policy or contract includes provisions which are inconsistent with the requirements of this section.

(3) "Medicare" means the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(b) Standards for policy provisions. —

(1) The commissioner shall issue reasonable rules to establish specific standards for policy provisions of medicare supplement policies. Such standards shall be in addition to and in accordance with the applicable laws of this state and may cover, but shall not be limited to:

(A) Terms of renewability;

(B) Initial and subsequent conditions of eligibility;

(C) Nonduplication of coverage;

(D) Probationary period;

(E) Benefit limitations, exceptions and reductions;

(F) Elimination period;
(G) Requirements for replacement;
(H) Recurrent conditions; and
(I) Definitions of terms.

(2) The commissioner may issue reasonable rules that specify prohibited policy provisions not otherwise specifically authorized by statute which, in the opinion of the commissioner, are unjust, unfair or unfairly discriminatory to any person insured or proposed for coverage under a medicare supplement policy.

(3) Notwithstanding any other provisions of the law, a medicare supplement policy may not deny a claim for losses incurred more than six months from the effective date of coverage for a preexisting condition. The policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(c) Minimum standards for benefits. — The commissioner shall issue reasonable rules to establish minimum standards for benefits under medicare supplement policies.

(d) Loss ratio standards. — Medicare supplement policies shall be expected to return to policyholders benefits which are reasonable in relation to the premium charge. The commissioner shall issue reasonable rules to establish minimum standards for loss ratios for medicare supplement policies on the basis of incurred claims experience and earned premiums for the entire period for which rates are computed to provide coverage and in accordance with accepted actuarial principles and practices. For purposes of rules issued pursuant to this subsection, medicare supplement policies issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual policies.

(e) Disclosure standards. —
(1) In order to provide for full and fair disclosure in the sale of accident and sickness policies, to persons eligible for medicare, the commissioner may require by rule that no policy of accident and sickness insurance may be issued for delivery in this state and no certificate may be delivered pursuant to such a policy unless an outline of coverage is delivered to the applicant at the time application is made.

(2) The commissioner shall prescribe the format and content of the outline of coverage required by subdivision (1) of this subsection. For purposes of this subdivision, "format" means style, arrangements and overall appearance, including such items as size, color and prominence of type and the arrangement of text and captions. Such outline of coverage shall include:

(A) A description of the principal benefits and coverage provided in the policy;

(B) A statement of the exceptions, reductions and limitations contained in the policy;

(C) A statement of the renewal provisions including any reservation by the insurer of the right to change premiums and disclosure of the existence of any automatic renewal premium increases based on the policyholder's age;

(D) A statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.

(3) The commissioner may prescribe by rule a standard form and the contents of an informational brochure for persons eligible for medicare, which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of medicare. Except in the case of direct response insurance policies, the commissioner may require by rule that the information brochure be provided to any prospective insureds eligible for medicare concurrently with delivery of the outline of coverage. With respect to direct response insur-
ance policies, the commissioner may require by rule that the prescribed brochure be provided upon request to any prospective insureds eligible for medicare, but in no event later than the time of policy delivery.

(4) The commissioner may further promulgate reasonable rules to govern the full and fair disclosure of the information in connection with the replacement of accident and sickness policies, subscriber contracts or certificates by persons eligible for medicare.

(f) Notice of free examination. — Medicare supplement policies or certificates, other than those issued pursuant to direct response solicitation, shall have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty days from its delivery and have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Any refund made pursuant to this section shall be paid directly to the applicant by the issuer in a timely manner. Medicare supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for medicare shall have a notice prominently printed on the first page or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination, the applicant is not satisfied for any reason. Any refund made pursuant to this section shall be paid directly to the applicant by the issuer in a timely manner.

(g) Administrative procedures. — Rules promulgated pursuant to this section shall be subject to the provisions of chapter twenty-nine-a (the West Virginia Administrative Procedures Act) of this code.

(h) Severability. — If any provision of this section or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the section and the application of such provision to other persons or circumstances shall not be affected thereby.
AN ACT to amend and reenact section eleven, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article three, chapter twelve of said code; and to further amend article six of said chapter by adding thereto a new section, designated section nine-h, all relating to furnishing certain reports to the board of investments requiring the secretary of the department of administration to provide the board of investments with monthly revenue projections and projections of the daily revenue flows for the general revenue fund; requiring the auditor to present daily reports to the board of investments on warrants issued; and requiring that securities shall be held by the board of investments, its custodian bank or a neutral third party when the board enters into repurchase agreements.

Be it enacted by the Legislature of West Virginia:

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

Chapter

5A. Department of Administration.


CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 2. FINANCE DIVISION.
§5A-2-11. Estimates of revenue; reports on revenue collections; withholding department funds on noncompliance.

(a) Prior to the beginning of each fiscal year the secretary shall estimate the revenue to be collected month by month by each classification of tax for that fiscal year as it relates to the official estimate of revenue for each tax for that fiscal year and the secretary shall certify this estimate to the governor and the legislative auditor and the board of investments by the first day of July for that fiscal year.

The secretary shall ascertain the collection of the revenue of the state and shall determine for each month of the fiscal year the proportion which the amount actually collected during a month bears to the collection estimated by him or her for that month. The secretary shall certify to the governor, the legislative auditor and the board of investments, as soon as possible after the close of each month, and not later than the fifteenth day of each month, and at such other times as the governor, the legislative auditor or the board of investments may request, the condition of the state revenues and of the several funds of the state and the proportion which the amount actually collected during the preceding month bears to the collection estimated by him or her for that month. The secretary shall include in this certification the same information previously certified for prior months in each fiscal year.

For the purposes of this section, the secretary shall have the authority to require all necessary estimates and reports from any spending unit of the state government.

If the secretary fails to certify to the governor, the legislative auditor and the board of investments the information required by this subsection within the time specified herein, the legislative auditor shall notify the auditor and treasurer of the failure, and thereafter no funds appropriated to the department of administration may be expended until the secretary has certified the information required by this subsection.

(b) Prior to the first day of July of each fiscal year, the secretary shall estimate daily revenue flows for the general revenue fund for the next fiscal year as it relates to the
official estimate of revenue. Subsequent to the end of each fiscal year, the secretary shall compare the projected daily revenue flows with the actual daily revenue flows from the previous year. The secretary may for any month or months, at his or her discretion, revise the annual projections of the daily revenue flows. The secretary shall certify to the governor, the legislative auditor and the board of investments, as soon as possible after the close of each month, and not later than the fifteenth day of each month, and at such other times as the governor, the legislative auditor or the board of investments may request, the condition of the general revenue fund and the comparison of the projected daily revenue flows with the actual daily revenue flows. If the secretary fails to certify to the governor, the legislative auditor and the board of investments the information required by this subsection within the time specified herein, the legislative auditor shall notify the auditor and treasurer of the failure, and thereafter no funds appropriated to the department of administration may be expended until the secretary has certified the information required by this subsection.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

Article
3. Appropriations, Expenditures and Deductions.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-1. Manner of payment from treasury; form of checks.

Every person claiming to receive money from the treasury of the state shall apply to the auditor for a warrant for same. The auditor shall thereupon examine the claim, and the vouchers, certificates and evidence, if any, offered in support thereof, and for so much thereof as he or she finds to be justly due from the state, if payment thereof is authorized by law, and if there is an appropriation not exhausted or expired out of which it is properly payable, the auditor shall issue his or her warrant on the treasurer, specifying to whom and on what account the money mentioned therein is to be paid, and to what appropriation it is
to be charged. The auditor shall present to the board of
investments daily reports on the number of warrants is-
sued, the amounts of the warrants and the dates on the
warrants for the purpose of effectuating the investment
policy of the board of investments. On the presentation of
the warrant to the treasurer, the treasurer shall ascertain
whether the warrant has been drawn in pursuance of an
appropriation made by law, and if he or she finds it to be
so, he or she shall in that case, but not otherwise, endorse
his or her check upon the warrant, directed to some depos-
itory, which check shall be payable to the order of the
person who is to receive the money therein specified; or
the treasurer may issue a bank wire in payment of the
warrant. If the check is not presented for payment within
six months after it is drawn, it shall then be the duty of the
treasurer to credit it to the depository on which it was
drawn, to credit the state fund with the amount, and imme-
diately notify the auditor to make corresponding entries
on the auditor's books. No state depository may pay a
check unless it is presented within six months after it is
drawn and every check shall bear upon its face the words,
"Void, unless presented for payment within six months."
All claims required by law to be allowed by any court, and
payable out of the state treasury, shall have the seal of the
court allowing or authorizing the payment of the claim
affixed by the clerk of the court to his or her certificate of
its allowance; and no such claim may be audited and paid
by the auditor unless the seal of the court is thereto at-
tached as foresaid. No tax or fee may be charged by the
clerk for affixing his or her seal to the certificate, referred
to in this section. The treasurer and the board of invest-
ments shall jointly promulgate rules in accordance with
the provisions of chapter twenty-nine-a of this code gov-
erning the procedure for such payments from the trea-
sury.

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVEST-
MENTS.

§12-6-9h. Securities handling.
In financial transactions whereby securities are purchased by the board under an agreement providing for the resale of such securities to the original seller at a stated price, the board shall take physical possession of the securities, directly, by its custodian bank or through a neutral third party: Provided. That an agreement with a neutral third party may not waive liability for the handling of the securities: Provided, however, That when the board is unable to take possession, directly, by its custodian bank or through a mutual third party, the board may leave securities in a segregated account with the original seller, provided the amount of the securities with any one seller may not exceed one hundred fifty million dollars.

CHAPTER 155

(H. B. 2748—By Delegates Michael, J. Martin and Mezzatesta)

[Passed March 8, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing premiums collected by the state board of risk and insurance management to be invested with the West Virginia state board of investments, which will allow the funds to accumulate the necessary interest to meet its payment obligation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. STATE INSURANCE.

§29-12-5. Powers and duties of board.

(a) The board shall have general supervision and control over the insurance of all state property, activities and responsibilities, including the acquisition and cancellation
thereof; determination of amount and kind of coverage, including, but not limited to, deductible forms of insurance coverage, inspections or examinations relating thereto, reinsurance, and any and all matters, factors and considerations entering into negotiations for advantageous rates on and coverage of all such state property, activities and responsibilities. Any policy of insurance purchased or contracted for by the board shall provide that the insurer shall be barred and estopped from relying upon the constitutional immunity of the state of West Virginia against claims or suits: Provided, That nothing herein shall bar the insurer of political subdivisions from relying upon any statutory immunity granted such political subdivisions against claims or suits. The board may enter into any contracts necessary to the execution of the powers granted to it by this article. It shall endeavor to secure the maximum of protection against loss, damage or liability to state property and on account of state activities and responsibilities by proper and adequate insurance coverage through the introduction and employment of sound and accepted methods of protection and principles of insurance. It is empowered and directed to make a complete survey of all presently owned and subsequently acquired state property subject to insurance coverage by any form of insurance, which survey shall include and reflect inspections, appraisals, exposures, fire hazards, construction, and any other objectives or factors affecting or which might affect the insurance protection and coverage required. It shall keep itself currently informed on new and continuing state activities and responsibilities within the insurance coverage herein contemplated. The board shall work closely in cooperation with the state fire marshal's office in applying the rules of that office insofar as the appropriations and other factors peculiar to state property will permit. The board is given power and authority to make rules governing its functions and operations and the procurement of state insurance, but shall not make or promulgate any rules in contravention of or inconsistent with the laws or rules governing the office of insurance commissioner of West Virginia.
The board is hereby authorized and empowered to negotiate and effect settlement of any and all insurance claims arising on or incident to losses of and damages to state properties, activities and responsibilities hereunder and shall have authority to execute and deliver proper releases of all such claims when settled. The board may adopt rules and procedures for handling, negotiating and settlement of all such claims. All such settlements and releases shall be effected with the knowledge and consent of the attorney general.

(b) If requested by a political subdivision or by a charitable or public service organization, the board is authorized to provide property and liability insurance to the political subdivisions or such organizations to insure their property, activities and responsibilities. Such board is authorized to enter into any necessary contract of insurance to further the intent of this subsection.

The property insurance provided by the board, pursuant to this subsection, may also include insurance on property leased to or loaned to the political subdivision or such organization which is required to be insured under a written agreement.

The cost of this insurance, as determined by the board, shall be paid by the political subdivision or the organization and may include administrative expenses. All funds received by the board, (including, but not limited to, state agency premiums, mine subsidence premiums, and political subdivision premiums) shall be deposited with the West Virginia state board of investments with the interest income a proper credit to such property insurance trust fund or liability insurance trust fund, as applicable.

Political subdivision as used in this subsection shall have the same meaning as in section three, article twelve-a of this chapter.

Charitable or public service organization as used in this subsection means a bona fide, not for profit, tax-exempt, benevolent, educational, philanthropic, humane, patriotic, civic, religious, eleemosynary, incorporated or unincorporated association or organization or a
rescue unit or other similar volunteer community service organization or association, but does not include any nonprofit association or organization, whether incorporated or not, which is organized primarily for the purposes of influencing legislation or supporting or promoting the campaign of any candidate for public office.

CHAPTER 156
(H. B. 4718—By Delegate Hunt)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two hundred three, article two, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reporting by broker dealers, agents and investment advisors.

Be it enacted by the Legislature of West Virginia:

That section two hundred three, article two, 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 2. REGISTRATION OF BROKER-DEALERS, AGENTS AND INVESTMENT ADVISERS.

§32-2-203. Post-registration provisions.

(a) Every registered broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books and other records as the commissioner by rule prescribes. All records so required shall be preserved for three years unless the commissioner by rule prescribes otherwise for particular types of records.
(b) Every registered broker-dealer and investment adviser shall file such financial reports as the commissioner by rule prescribes.

(c) If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment unless notification of the correction has been given under subsection (b), section two hundred one of this article.

(d) In addition to any other report required by the commissioner, each registered broker-dealer with a physical office location within this state shall file an annual report, as of the thirty-first day of December, and due on or before the fifteenth day of February, including certain aggregate product sales information. The report shall include the following, by office location (regardless of whether such location constitutes a branch): (i) The aggregate dollar amount of certificates of deposits or other federally insured deposit products sold to customers which are held by or accounted for by the broker-dealer on behalf of its customers; and (ii) the aggregate dollar amount of money market accounts or other accounts accessible by draft, order or check which are held by or accounted for by the broker-dealer on behalf of its customers. The commissioner may prescribe the form of such report and may promulgate rules to implement the requirements of this section.

(e) All the records referred to in subsection (a) of this section are subject at any time or from time to time to such reasonable periodic, special or other examinations by representatives of the commissioner, within or without this state, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, insofar as he deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the securities and exchange commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934.
CHAPTER 157

(Com. Sub. for S. B. 19—By Senators Buckalew, Kimble, Minear, Ross, Sharpe and Wiedebusch)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one and two, article three, chapter fifty of said code; to amend and reenact section seventeen, article one, chapter fifty-one of said code; to amend article three of said chapter by adding thereto four new sections, designated sections fourteen, fifteen, sixteen and seventeen; to amend and reenact section eleven, article one, chapter fifty-nine of said code; and to amend article five, chapter sixty-two of said code by adding thereto a new section, designated section ten, all relating generally to increasing judicial fees which are dedicated to specific purposes; removing the ten dollar assessment for felony convictions; instituting a mandatory assessment of fifty dollars for each felony conviction which shall be paid to the crime victims compensation fund; increasing filing fees in magistrate court for civil and criminal actions to be deposited in the court security fund; designating the administrative director of the supreme court of appeals to serve as chairperson of the court security board; creating the court security fund; requiring appropriation of the fund; creating the court security board; setting forth the terms of members and their duties; providing for security plans and approval of those plans; providing for awards from the fund; providing for the training of personnel; requiring the board to promulgate legislative rules; and increasing fees in circuit court actions to be deposited in the court security fund.

Be it enacted by the Legislature of West Virginia:

That section four, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one and two, article three, chapter fifty of said code be amended and reenacted; that section seventeen, article one, chapter fifty-one of said
code be amended and reenacted; that article three of said chapter be amended by adding thereto four new sections, designated sections fourteen, fifteen, sixteen and seventeen; that section eleven, article one, chapter fifty-nine of said code be amended and reenacted; and that article five, chapter sixty-two of said code be amended by adding thereto a new section, designated section ten, all to read as follows:

Chapter
14. Claims Due and Against the State.
50. Magistrate Courts.
51. Courts and Their Officers.
59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

CHAPTER 14. CLAIMS DUE AND AGAINST THE STATE.

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.


(a) Every person within the state who is convicted of or pleads guilty to a misdemeanor offense, other than a traffic offense that is not a moving violation, in any magistrate court or circuit court, shall pay the sum of ten dollars as costs in the case, in addition to any other court costs that the court is required by law to impose upon the convicted person. Every person within the state who is convicted of or pleads guilty to a misdemeanor offense, other than a traffic offense that is not a moving violation, in any municipal court, shall pay the sum of eight dollars as costs in the case, in addition to any other court costs that the court is required by law to impose upon the convicted person. In addition to any other costs previously specified, every person within the state who is convicted of or pleads guilty to a violation of section two, article five, chapter seventeen-c of this code, shall pay a fee in the amount of twenty percent of any fine imposed under said section. This shall be in addition to any other court costs required by this section or which may be required by law.

(b) The clerk of the circuit court, magistrate court or municipal court wherein the additional costs are imposed
(a) Moneys in the crime victims compensation fund shall be available for the payment of the costs of administration of this article in accordance with the budget of the court approved therefor: Provided, That the services of the office of the attorney general, as may be required or authorized by any of the provisions of this article, shall be rendered without charge to the fund.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-1. Costs in civil actions.
§50-3-2. Costs in criminal proceedings.

§50-3-1. Costs in civil actions.

The following costs shall be charged in magistrate courts in civil actions and shall be collected in advance:

(a) For filing and trying any civil action and for all services connected therewith, but excluding services regarding enforcement of judgment, the following amounts dependent upon the amount of damages sought in the complaint:
Where the action is for five hundred dollars or less .............................................. $25.00

Where the action is for more than five hundred dollars but not more than one thousand dollars .............................................. $30.00

Where the action is for more than one thousand dollars but not more than two thousand dollars .............................................. $35.00

Where the action is for more than two thousand dollars .............................................. $45.00

Where the action seeks relief other than money damages .............................................. $25.00

On and after the first day of July, one thousand nine hundred ninety-six, five dollars from each of the filing fees listed above will be deposited in the court security fund created by the provisions of section fourteen, article three, chapter fifty-one of this code.

(b) For each service regarding enforcement of a judgment including execution, suggestion, garnishment and suggestee execution .............................................. $ 5.00

(c) For each bond filed in a case .............................................. $ 1.00

(d) For taking deposition of witness for each hour or portion thereof .............................................. $ 1.00

(e) For taking and certifying acknowledgment of a deed or other writing or taking oath upon an affidavit .............................................. $ .50

(f) For mailing any matter required or provided by law to be mailed by certified or registered mail with return receipt .............................................. $ 1.00

Costs incurred in a civil action shall be reflected in any judgment rendered thereon. The provisions of section one, article two, chapter fifty-nine of this code, relating to the payment of costs by poor persons, shall be applicable to all costs in civil actions.
§50-3-2. Costs in criminal proceedings.

1 In each criminal case tried in a magistrate court in
2 which the defendant is convicted, there shall be imposed,
3 in addition to such other costs, fines, forfeitures or penal-
4 ties as may be allowed by law, costs in the amount of
5 fifty-five dollars. No such costs shall be collected in ad-
6 vance. On and after the first of July, one thousand nine
7 hundred ninety-six, five dollars from each of the criminal
8 proceedings fees collected pursuant to this section shall be
9 deposited in the court security fund created in section
10 fourteen, article three, chapter fifty-one of this code.

A magistrate shall assess costs in the amount of two
12 dollars and fifty cents for issuing a sheep warrant, appoint-
13 ment and swearing appraisers and docketing the same.

In each criminal case which must be tried by the cir-
15 cuit court but in which a magistrate renders some service,
16 costs in the amount of ten dollars shall be imposed by the
17 magistrate court and shall be certified to the clerk of the
18 circuit court in accordance with the provisions of section
19 six, article five, chapter sixty-two of this code.

CHAPTER 51. COURTS AND THEIR OFFICERS.

Article
1. Supreme Court of Appeals.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-17. Administrative office of supreme court of appeals
-- duties of director.

The director shall, when authorized by the supreme
1 court of appeals, be the administrative officer of said court
2 and shall have charge, under the supervision and direction
3 of the supreme court of appeals, of:

(a) All administrative matters relating to the offices of
5 the clerks of the circuit and intermediary courts and of the
6 offices of justice of the peace, and all other clerical and
7 administrative personnel of said courts; but nothing con-
8 tained in this act shall be construed as affecting the au-
authority of the courts to appoint their administrative or clerical personnel;

(b) Examining the state of the dockets of the various courts and securing information as to their needs for assistance, if any, and the preparation of statistical data and reports of the business transacted by the courts, including, as an integral part of the compensation of justices and judges, the development of a system of reporting by justices and judges as to the actual amount of time, including travel time, spent by each justice or judge in the conduct of his official duties in court;

(c) The preparation of a proper budget to secure the appropriation of moneys for the maintenance, support and operation of the courts;

(d) The purchase, exchange, transfer and distribution of equipment and supplies, as may be needful or desirable;

(e) Such other matters as may be assigned to him by the supreme court of appeals. The clerks of the circuit courts, intermediate courts and courts of the justices of the peace shall comply with any and all requests made by the director or his assistants for information and statistical data bearing on the state of the dockets of such courts, or such other information as may reflect the business transacted by them;

(f) Annual report of activities and estimates of expenditures. -- The director, when required to do so by the supreme court of appeals, shall submit annually to the court a report of the activities of the administrative office and of the state of business of the courts, together with the statistical data compiled by him, with his recommendations.

(g) Serve as the chair of the court security board created under the provisions of section fifteen, article three of this chapter.

ARTICLE 3. COURTS IN GENERAL.

§51-3-14. Court security fund.
§51-3-15. Court security board, terms.
§51-3-16. Security plans; approval by court security board; awards; training.
§51-3-17. Promulgation of legislative rules.

§51-3-14. Court security fund.

The offices and the clerks of the magistrate courts and the circuit courts shall, on or before the tenth day of each month, transmit all fees and costs received for the court security fund in accordance with the provisions of sections one and two, article three, chapter fifty of this code and section eleven, article one, chapter fifty-nine of this code for deposit in the state treasury to the credit of a special revenue fund to be known as the "Court Security Fund", which is hereby created under the department of military affairs and public safety. The court security fund may receive any gifts, grants, contributions or other money from any source which is specifically designated for deposit in the fund. All moneys collected and received and paid into the state treasury and credited to the court security fund shall be expended by the board exclusively to implement the improvement measures agreed upon in accordance with the security plans submitted pursuant to section sixteen of this article and in accordance with an appropriation by the Legislature: Provided, That for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. Amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes upon appropriation by the Legislature.

§51-3-15. Court security board, terms.

(a) There is hereby created a court security board who shall make decisions on how the money in the court security fund is to be spent to enhance the security of courts. The board shall consist of seven members and the administrative director of the supreme court of appeals who shall serve ex officio and be the chair. The board shall be appointed as follows: One circuit court judge appointed by
the judicial association; one magistrate appointed by the
magistrate's association; one family law master appointed
by the family law master's association; one member of the
bar appointed by the president of the West Virginia state
bar; one representative of counties appointed by the West
Virginia association of counties; one representative of
sheriffs appointed by the West Virginia sheriffs associa-
tion; and one representative of the state police appointed
by the secretary of the department of military affairs and
public safety.

(b) The members of the board shall each serve terms
that commence on the first day of July, one thousand nine
hundred ninety-six. Of the initial appointments to the
board, two shall serve for two-year terms, two shall serve
for three-year terms and two shall serve for four-year
terms. Thereafter, each appointment shall be for a
four-year term commencing upon the expiration of his or
her previous term or of his or her predecessor's term. No
member may be appointed for more than three consecu-
tive terms. Vacancies shall be appointed in a like manner
for the balance of an unexpired term.

(c) The board shall compile and keep a list of able and
available law-enforcement officers who have obtained
certification in compliance with the provisions of section
five, article twenty-nine, chapter thirty of this code and
who have maintained all necessary qualifications and fire-
arms certifications to enable them to serve as bailiffs in
court facilities. The board shall make the list available to
all county sheriffs for their use in recruiting and hiring
temporary, part-time or occasional bailiffs to exercise all
the powers and duties of bailiffs in the court facilities in
their counties.

§51-3-16. Security plans; approval by court security board;
awards; training.

(a) The sheriff of each county in conjunction with the
circuit judges, magistrates and family law master may
develop a security plan to enhance the security of all the
court facilities in use in the county and submit said plan to
the court security board.
(b) Each security plan shall include, but not be limited to:

(1) An assessment of the existing security measures in place and any problems or shortcomings with the existing procedures;

(2) A description of how the county responds to court security emergencies and whether the response is adequate;

(3) A prioritized listing of equipment or personnel, or both, needed to improve the security of the court facilities in the county, including cost estimates for such equipment and personnel;

(4) A description of the physical locations of court facilities around the county and a discussion of whether changes or consolidation of space could improve court security in the county; and

(5) An assessment of the training needs for bailiffs currently employed in the county or for additional bailiffs and the options for securing the necessary training.

(c) Each plan prepared under this section is subject to approval by the court security board. Any plan rejected by the court security board shall be returned to the county with a statement of the insufficiencies in such plan. The county shall revise the plan to eliminate the insufficiencies and resubmit it to the court security board.

(d) Upon receipt of the plans the court security board shall meet at least twice a year to review the plans and to award money from the court security fund to the circuit clerk, county commission or county sheriff to be used solely and exclusively to purchase equipment, hire personnel or make other identified expenditures in accordance with the plan. The board shall develop an application form and establish criteria to assist them in making the decisions on which applications will receive money and how much money will be awarded. Once an award has been made, the recipient will have a fixed amount of time in which to execute the expenditures described in their plan. The board will set forth in writing the amount of the award, the time frame for accomplishing the plan objectives and the requirement that any unexpended money be
returned to the board for deposit in the court security
fund. The award or decision not to award these funds shall
not relieve any person or office of their duty or obligation
to provide security services to courts in this state.

(e) The board is authorized to award money from the
court security fund to be used by the counties for costs
and expenses of training for bailiffs. The board may
establish minimum standards for training and it may des-
ignate specific agencies or institutions approved for ad-
ministering such training.

§51-3-17. Promulgation of legislative rules.

The board shall promulgate legislative rules pursuant
to the provisions of chapter twenty-nine-a of this code
effectuating the purposes and intent of sections fourteen,
fifteen and sixteen of this article. Such rules shall include,
but shall not be limited to, operating procedures for the
board and accounting for expenditures by the board.

CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

*§59-1-11. Fees to be charged by clerk of circuit court.

The clerk of a circuit court shall charge and collect for
services rendered as such clerk the following fees, and
such fees shall be paid in advance by the parties for whom
such services are to be rendered:

For instituting any civil action under the rules of civil
procedure, any statutory summary proceeding, any ex-
traordinary remedy, the docketing of civil appeals, or any
other action, cause, suit or proceeding, seventy-five dol-
lars: Provided, That the fee for instituting an action for
divorce shall be twenty-five dollars plus the fee required
by section six, article two-c, chapter forty-eight of this
code.

In addition to the foregoing fees, the following fees
shall likewise be charged and collected:

For any transcript, copy or paper made by the clerk

*Clerk’s Note: This section was also amended by S. B. 359 (Chapter
110), which passed subsequent to this act.
for use in any other court or otherwise to go out of the
office, for each page, twenty-five cents;

For action on suggestion, five dollars;

For issuing an execution, two dollars;

For issuing or renewing a suggestee execution, includ-
ing copies, postage, registered or certified mail fees and
the fee provided by section four, article five-a, chapter
thirty-eight of this code, three dollars;

For vacation or modification of a suggestee execution,
one dollar;

For docketing and issuing an execution on a transcript
of judgment from magistrate's court, three dollars;

For arranging the papers in a certified question, writ of
error, appeal or removal to any other court, five dollars;

For postage and express and for sending or receiving
decrees, orders or records, by mail or express, three times
the amount of the postage or express charges;

For each witness summons over and above five, on the
part of either plaintiff or defendant, to be paid by the
party requesting the same, twenty-five cents;

For additional services (plaintiff or appellant) where
any case remains on the docket longer than three years,
for each additional year or part year, five dollars.

The clerk shall tax the following fees for services in
any criminal case against any defendant convicted in such
court:

In the case of any misdemeanor, fifty-five dollars;

In the case of any felony, sixty-five dollars;

No such clerk shall be required to handle or accept for
disbursement any fees, costs or accounts, of any other
officer or party not payable into the county treasury, ex-
cept it be on order of the court or in compliance with the
provisions of law governing such fees, costs or accounts.

On and after the first day of July, one thousand nine
hundred ninety-six, five dollars from each of the civil and
criminal fees collected pursuant to this section shall be
deposited in the court security fund created in section
fourteen, article three, chapter fifty-one of this code.
CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 5. COSTS IN CRIMINAL CASES.

§62-5-10. Mandatory cost assessed upon conviction of a felony.

(a) Every circuit court shall assess, in every felony criminal matter, as a cost to the defendant, an assessment in the sum of fifty dollars for each felony count of conviction. The assessment referred to herein shall be paid upon adjudication of guilt unless the court determines that the defendant is unable to pay in such a manner in which case payment of the assessment shall be paid prior to final disposition. If the circuit court determines that a defendant is financially unable to pay the assessment prior to final disposition, payment of the assessment shall be a mandatory condition of probation or parole.

(b) The clerk of the circuit court wherein the assessment is imposed under the provisions of subsection (a) of this section shall, on or before the last day of each month, transmit all costs received pursuant to this section to the state treasurer for deposit in the state treasury to the credit of the "Crime Victims Compensation Fund".

CHAPTER 158

(S. B. 586—By Senators Wooton, Anderson, Bowman, Buckalew, Deem, Dittmar, Grubb, Miller, Ross, Scott, Wagner, White and Wiedebusch)

[Passed March 7, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article nine, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to manufactured housing construction and safety standards; providing technical corrections in section numbers; and civil and criminal penalties for violations thereof.

Be it enacted by the Legislature of West Virginia:

That section twelve, article nine, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 9. MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS.

§21-9-12. Civil penalties; criminal penalties.

(a) Any person who violates any of the following provisions relating to manufactured homes or any rule promulgated by the board pursuant to the provisions of this article is liable to the state for a penalty, as determined by the court, not to exceed one thousand dollars for each violation. Each violation constitutes a separate violation with respect to each manufactured home, except that the maximum penalty may not exceed one million dollars for any related series of violations occurring within one year from the date of the first violation. No person may:

(1) Manufacture for sale, lease, sell, offer for sale or lease, or introduce or deliver, or import into this state any manufactured home which is manufactured on or after the effective date of any applicable standard established by a rule promulgated by the board pursuant to the provisions of this article, or any applicable federal standard, which does not comply with that standard.

(2) Fail or refuse to permit access to or copying of records, or fail to make reports or provide information or fail or refuse to permit entry or inspection as required by the provisions of this article.

(3) Fail to furnish notification of any defect as required by the provisions of 42 U.S.C. §5414.

(4) Fail to issue a certification required by the provisions of 42 U.S.C. §5415 or issue a certification to the effect that a manufactured home conforms to all applicable federal standards, when the person knows or in the exercise of due care would have reason to know that the certification is false or misleading in a material respect.

(5) Fail to establish and maintain records, make reports, and provide information as the board may reasonably require to enable the board to determine whether there is compliance with the federal standards; or fail to permit, upon request of a person duly authorized by the board, the inspection of appropriate books, papers, records and documents relative to determining whether a manu-
facturer, dealer, distributor or contractor has acted or is acting in compliance with the provisions of this article or applicable federal standards.

(6) Issue a certification pursuant to the provisions of 42 U.S.C. §5403(a), when the person knows or in the exercise of due care would have reason to know that the certification is false or misleading in a material respect.

(b) Subdivision (1), subsection (a) of this section does not apply to: (i) The sale or the offer for sale of any manufactured home after the first purchase of it in good faith for purposes other than resale; (ii) any person who establishes that he did not have reason to know in the exercise of due care that such manufactured home is not in conformity with applicable federal standards; or (iii) any person who, prior to the first purchase, holds a certificate by the manufacturer or importer of the manufactured home to the effect that such manufactured home conforms to all applicable federal standards, unless that person knows that the manufactured home does not conform to those standards.

(c) Any manufacturer, dealer, distributor or contractor who engages in business in this state without a current license as required by the provisions of this article or without furnishing a bond or other form of assurance as required by the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than fifty dollars for each day the violation continues.

(d) Any person or officer, director, partner or agent of a corporation, partnership or other entity who willfully or knowingly violates any of the provisions listed in subsection (a) of this section, in any manner which threatens the health or safety of any purchaser, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in the county or regional jail for a period of not more than one year, or both fined and imprisoned: Provided, That nothing in this article may apply to any bank or financial institution engaged in the disposal of foreclosed or repossessed manufactured home(s).
AN ACT to amend article eight, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight-c, relating to law-enforcement disposition of unclaimed personal property consisting of children's toys and certain sporting goods.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT.

§36-8-8c. Disposition of unclaimed stolen toys and certain sporting goods.

Notwithstand any provision of this code to the contrary, whenever a state, county or local law-enforcement agency has in its possession unclaimed stolen property consisting of children's toys or certain sporting goods, that agency may donate the property to any nonprofit organization or agency which provides services to children if the chief law-enforcement officer of the agency determines that the property has no evidentiary value, and also determines that there is no reasonable likelihood that the property can be returned to its rightful owner. The sporting goods which may be donated include, but are not limited to, such items as bicycles, tricycles, fishing equipment and equipment related to the games of football, baseball, basketball, hockey, track and field and soccer. It shall not include such items as hunting rifles or other hunting equipment, knives and motorboats. The chief law-enforcement officer of the agency which possesses the unclaimed stolen property shall use his or her discretion in determining whether certain property would be appropriate to give to children.
AN ACT to amend article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen; to amend and reenact sections one hundred five and two hundred one, article one, chapter forty-six of said code; to further amend said chapter by adding thereto a new article, designated article two-a; to amend and reenact section one hundred thirteen, article nine of said chapter; to amend and reenact sections one hundred two, one hundred four, one hundred six and one hundred seven, article one, chapter forty-six-a of said code; to amend article two, chapter forty-six-a of said code by adding thereto a new section, designated section one hundred three-a; to amend and reenact sections one hundred four, one hundred six, one hundred thirteen, one hundred fourteen, one hundred sixteen, one hundred seventeen, one hundred eighteen, one hundred twenty-one, one hundred twenty-two, one hundred thirty, one hundred thirty-one and one hundred thirty-six, article two, chapter forty-six-a of said code; to amend and reenact section one hundred two, article six of said chapter; and to amend and reenact sections one hundred two and one hundred nine, article seven of said chapter, all relating to personal property leases which are not sales or security interests; territorial application of the uniform commercial code; parties' power to choose applicable law; definitions; adopting a new article in the uniform commercial code relating to leases; general provisions; short title; scope; definitions; leases subject to other laws; territorial application of article to goods covered by certificate of title; limitation on power of parties to consumer lease to choose applicable law and judicial forum; waiver or renunciation of claim or right after default; unconscionability; option to accelerate at will; formation and construction of lease contract; statute of frauds; final written expression; parol or extrinsic evidence; seals inoperative; formation in general; firm offers; offer and
acceptance in formation of lease contract; course of performance or practical construction; modification, rescission and waiver; lessee under finance contract as beneficiary of supply contract; express warranties; warranties against interference and infringement; lessee's obligation against infringement; implied warranty of merchantability; implied warranty of fitness for particular purpose; exclusion or modification of warranties; cumulation and conflict of warranties express or implied; third-party beneficiaries of express and implied warranties; identification; insurance and proceeds; risk of loss; effect of default on risk of loss; casualty to identified goods; effect of lease contract; enforceability of lease contract; title to and possession of goods; alienability of parties' interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights; subsequent lease of goods by lessor; sale or sublease of goods by lessee; priority of certain liens arising by operation of law; priority of liens arising by attachment or levy on, security interests in and other claims to goods; special rights of creditors; parties' rights when goods become fixtures; parties' rights when goods become accessions; priority subject to subordination; performance of lease contract: repudiated, substituted and excused; insecurity; adequate assurance of performance; anticipatory repudiation; retraction of anticipatory repudiation; substituted performance; excused performance; procedure on excused performance; irrevocable promises; finance leases; default; default procedure; notice after default; modification or impairment of rights and remedies; liquidation of damages; cancellation and termination and effect of cancellation, termination, rescission or fraud on rights and remedies; statute of limitations; proof of market rent; time and place; default by lessor; lessee's remedies; lessee's rights on improper delivery; rightful rejection; installment lease contracts; rejection and default; merchant lessee's duty as to rightfully rejected goods; lessee's duties as to rightfully rejected goods; cure by lessor of improper tender or delivery; replacement; waiver of lessee's objections; acceptance of goods; effect of acceptance of goods; notice of default; burden of establishing default after acceptance; notice of claim or litigation to person answerable over; revocation of acceptance of goods; cover; substitute goods; lessee's damages for nondelivery, repudiation, default and
breach of warranty in regard to accepted goods; lessee's incidental and consequential damages; lessee's right to specific performance or replevin; lessee's right to goods on lessor's insolvency; default by lessee; lessor's remedies; lessor's right to identify goods to lease contract; lessor's right to possession of goods; lessor's stoppage of delivery in transit or otherwise; lessor's rights to dispose of goods; lessor's damages for nonacceptance, failure to pay, repudiation or other default; lessor's action for rent; lessor's incidental damages; standing to sue third parties for injury to goods; lessor's rights to residual interest; secured transactions; sales of accounts and chattel paper; security interests arising under the article on sales or under the article on leases; West Virginia Consumer Credit and Protection Act; definitions; application of chapter; sales, leases or loans subject to chapter by agreement of parties; waiver of rights and benefits under chapter; consumer credit protection; lessor subject to claims and defenses arising from leases; notice to cosigners; notice of consumer's right to cure default; cure; acceleration; notice of assignment; receipts; statements of account; evidence of payment; assignment of earnings; authorization to confess judgment prohibited; no garnishment before judgment; unconscionability; inducement by unconscionable conduct; definitions; limitation on garnishment; no discharge or repri sal because of garnishment; personal property exemptions; general consumer protection; definitions; power of attorney general; reliance on rules of attorney general or commissioner of banking; duty to report; and injunctions against unconscionable agreements and fraudulent or unconscionable conduct.

Be it enacted by the Legislature of West Virginia:

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

Chapter

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

46. Uniform Commercial Code.

46A. West Virginia Consumer Credit and Protection Act.

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

ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO BE SHOWN ON CERTIFICATE OF TITLE; NOTICE TO CREDITORS AND PURCHASERS.

§17A-4A-16. Vehicle leases which are not sales or security interests.

1 In the case of motor vehicles or trailers, notwithstanding any other provision of law, a transaction does not create a conditional sale or security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer.

CHAPTER 46. UNIFORM COMMERCIAL CODE.

Article


2A. Leases.

ARTICLE 1. GENERAL PROVISIONS.

§46-1-105. Territorial application of the act; parties' power to choose applicable law.

§46-1-201. General definitions.

*§46-1-105. Territorial application of the act; 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.

2. (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) so specified:

- Sections 2A-105 and 2A-106, applicability of the article on leases.
- Section 2-402, rights of creditors against sold goods.
- Section 4-102, applicability of the article on bank deposits and collections.
- Section 8-106, applicability of the article on investment securities.
- Section 9-103, perfection provisions of the article on secured transactions.

PART 2. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION.

§46-1-201. General definitions.

1. Subject to additional definitions contained in the subsequent articles of this chapter which are applicable to specific articles or parts thereof, and unless the context otherwise requires, in this chapter:

*Clerk’s Note: This section was also amended by H. B. 4669 (Chapter 254), which passed subsequent to this act.
(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter (sections 1-205 and 2-208). Whether an agreement has legal consequences is determined by the provisions of this chapter, if applicable; otherwise by the law of contracts (section 1-103). (Compare "Contract").

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing a fact" means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas)
at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous" means a term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this chapter and any other applicable rules of law. (Compare "Agreement.")

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are
either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this chapter to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" with respect to a negotiable instrument means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder" with respect to a document of title means the person in possession if the goods are deliverable to the bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assign-ment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his or her debts in the ordinary course of business or cannot pay his or her debts as they become due or is insolvent within the meaning of the Federal Bankruptcy Law.

(24) "Money" means a medium of exchange autho-rized or adopted by a domestic or foreign government and includes a monetary unit of account established by an
intergovernmental organization or by agreement between two or more nations.

(25) A person has"notice" of a fact when:

(a) He has actual knowledge of it; or
(b) He has received a notice or notification of it; or
(c) From all the facts and circumstances known to him or her at the time in question he or she has reason to know that it exists. A person"knows" or has"knowledge" of a fact when he or she has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this chapter.

(26) A person"notifies" or"gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

(a) It comes to his or her attention; or
(b) It is duly delivered at the place of business through which the contract was made or at any other place held out by him or her as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his or her regular duties or unless he or she has reason to know of the transaction and
that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party," as distinct from "third party," means a person who has engaged in a transaction or made an agreement within this chapter.

(30) "Person" includes an individual or an organization (see section 1-102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 2-401) is limited in effect to a reservation of a "security interest." The term also includes any interest of a buyer of accounts or chattel paper,
which is subject to article nine. The special property interest of a buyer of goods on identification of those goods to a contract for sale under section 2-401 is not a "security interest," but a buyer may also acquire a "security interest" by complying with article nine. Unless a consignment is intended as security, reservation of title thereunder is not a "security interest", but a consignment in any event is subject to the provisions on consignment sales (section 2-326).

(a) Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:

(i) The original term of the lease is equal to or greater than the remaining economic life of the goods;

(ii) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(iii) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(iv) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(b) A transaction does not create a security interest merely because it provides that:

(i) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(ii) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording or registra-
tion fees, or service or maintenance costs with respect to
the goods;

(iii) The lessee has an option to renew the lease or to
become the owner of the goods;

(iv) The lessee has an option to renew the lease for a
fixed rent that is equal to or greater than the reasonably
predictable fair market rent for the use of the goods for
the term of the renewal at the time the option is to be per-
formed; or

(v) The lessee has an option to become the owner of
the goods for a fixed price that is equal to or greater than
the reasonably predictable fair market value of the goods
at the time the option is to be performed.

(c) For purposes of this subsection (37):

(i) Additional consideration is not nominal if: (i)
When the option to renew the lease is granted to the lessee
the rent is stated to be the fair market rent for the use of
the goods for the term of the renewal determined at the
time the option is to be performed; or (ii) when the option
to become the owner of the goods is granted to the lessee
the price is stated to be the fair market value of the goods
determined at the time the option is to be performed.
Additional consideration is nominal if it is less than the
lessee's reasonably predictable cost of performing under
the lease agreement if the option is not exercised;

(ii) "Reasonably predictable" and "remaining econom-
ic life of the goods" are to be determined with reference to
the facts and circumstances at the time the transaction is
entered into; and

(iii) "Present value" means the amount as of a date
certain of one or more sums payable in the future, dis-
counted to the date certain. The discount is determined
by the interest rate specified by the parties if the rate is not
manifestly unreasonable at the time the transaction is en-
tered into; otherwise, the discount is determined by a com-
mercially reasonable rate that takes into account the facts
and circumstances of each case at the time the transaction
was entered into.
(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized signature" means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value." Except as otherwise provided with respect to negotiable instruments and bank collections (sections 3-303, 4-208 and 4-209), a person gives "value" for rights if he acquires them:

(a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection; or

(b) As security for or in total or partial satisfaction of a preexisting claim; or

(c) By accepting delivery pursuant to a preexisting contract for purchase; or

(d) Generally, in return for any consideration sufficient to support a simple contract.
"Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

"Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

ARTICLE 2A. LEASES.

PART 1. GENERAL PROVISIONS.

§46-2A-103. Definitions and index of definitions.
§46-2A-104. Leases subject to other law.
§46-2A-105. Territorial application of article to goods covered by certificate of title.
§46-2A-106. Limitation on power of parties to consumer lease to choose applicable law and judicial forum.
§46-2A-107. Waiver or renunciation of claim or right after default.
§46-2A-109. Option to accelerate at will.
§46-2A-203. Seals inoperative.
§46-2A-204. Formation in general.
§46-2A-205. Firm offers.
§46-2A-207. Course of performance or practical construction.
§46-2A-208. Modification, rescission and waiver.
§46-2A-209. Lessee under finance lease as beneficiary of supply contract.
§46-2A-211. Warranties against interference and against infringement; lessee's obligation against infringement.
§46-2A-212. Implied warranty of merchantability.
§46-2A-213. Implied warranty of fitness for particular purpose.
§46-2A-215. Cumulation and conflict of warranties express or implied.
§46-2A-216. Third-party beneficiaries of express and implied warranties.
§46-2A-221. Casualty to identified goods.
§46-2A-301. Enforceability of lease contract.
§46-2A-302. Title to and possession of goods.
§46-2A-303. Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights.

§46-2A-304. Subsequent lease of goods by lessor.

§46-2A-305. Sale or sublease of goods by lessee.


§46-2A-307. Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.

§46-2A-308. Special rights of creditors.

§46-2A-309. Lessor's and lessee's rights when goods become fixtures.

§46-2A-310. Lessor's and lessee's rights when goods become accessions.

§46-2A-311. Priority subject to subordination.


§46-2A-503. Modification or impairment of rights and remedies.

§46-2A-504. Liquidation of damages.

§46-2A-505. Cancellation and termination and effect of cancellation, termination, rescission, or fraud on rights and remedies.


§46-2A-507. Proof of market rent; time and place.


§46-2A-509. Lessee's rights on improper delivery; rightful rejection.

§46-2A-510. Installment lease contracts; rejection and default.

§46-2A-511. Merchant lessee's duties as to rightfully rejected goods.

§46-2A-512. Lessee's duties as to rightfully rejected goods.

§46-2A-513. Cure by lessor of improper tender or delivery; replacement.


§46-2A-516. Effect of acceptance of goods; notice of default; burden of establishing default after acceptance; notice of claim or litigation to person answerable over.


§46-2A-518. Cover; substitute goods.

§46-2A-519. Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods.

§46-2A-520. Lessee's incidental and consequential damages.

§46-2A-521. Lessee's right to specific performance or replevin.

§46-2A-522. Lessee's right to goods on lessor's insolvency.

§46-2A-524. Lessor's right to identify goods to lease contract.
§46-2A-525. Lessor's right to possession of goods.
§46-2A-526. Lessor's stoppage of delivery in transit or otherwise.
§46-2A-527. Lessor's rights to dispose of goods.
§46-2A-528. Lessor's damages for nonacceptance, failure to pay, repudia-
tion, or other default.
§46-2A-529. Lessor's action for the rent.
§46-2A-530. Lessor's incidental damages.
§46-2A-531. Standing to sue third parties for injury to goods.
§46-2A-532. Lessor's rights to residual interest.

This article shall be known and may be cited as the Uniform Commercial Code—Leases.

This article applies to any transaction, regardless of form, that creates a lease.

§46-2A-103. Definitions and index of definitions.
(1) In this article unless the context otherwise requires:
(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfac-
tion of a money debt.
(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.
(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a
gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" shall have the same meaning as that ascribed to it in section one hundred two, article one, chapter forty-six-a of this code.

(f) "Fault" means wrongful act, omission, breach or default.

(g) "Finance lease" means a lease with respect to which:

(i) The lessor does not select, manufacture or supply the goods;

(ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) One of the following occurs:

(A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the les-
see in writing: (a) Of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person; (b) that the lessee is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (section 2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.
(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.
(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this article and the sections in which they appear are:

"Accessions." Section 2A-310(1).


"Encumbrance." Section 2A-309(1)(e).

"Fixtures." Section 2A-309(1)(a).

"Fixture filing." Section 2A-309(1)(b).

"Purchase money lease." Section 2A-309(1)(c).

(3) The following definitions in other articles apply to this article:

"Account." Section 9-106.

"Between merchants." Section 2-104(3).
"Buyer." Section 2-103(1)(a).

"Chattel paper." Section 9-105(1)(b).

"Consumer goods." Section 9-109(1).

"Document." Section 9-105(1)(f).

"Entrusting." Section 2-403(3).

"General intangibles." Section 9-106.

"Good faith." Section 2-103(1)(b).

"Instrument." Section 9-105(1)(i).

"Merchant." Section 2-104(1).

"Mortgage." Section 9-105(1)(j).

"Pursuant to commitment." Section 9-105(1)(k).

"Receipt." Section 2-103(1)(c).

"Sale." Section 2-106(1).

"Sale on approval." Section 2-326.

"Sale or return." Section 2-326.

"Seller." Section 2-103(1)(d).

(4) In addition, article one contains general definitions and principles of construction and interpretation applicable throughout this article.

§46-2A-104. Leases subject to other law.

(1) A lease, although subject to this article, is also subject to any applicable:

(a) Certificate of title statute of this state: Section 17A-3-2;

(b) Certificate of title statute of another jurisdiction (section 2A-105); or

(c) Consumer protection statute of this state, or final consumer protection decision of a court of this state existing on the effective date of this article.
(2) In case of conflict between this article, other than sections 2A-105, 2A-304(3), and 2A-305(3), and a statute or decision referred to in subsection (1), the statute or decision controls.

(3) Failure to comply with an applicable law has only the effect specified therein.

§46-2A-105. Territorial application of article to goods covered by certificate of title.

Subject to the provisions of sections 2A-304(3) and 2A-305(3), with respect to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of:

(a) Surrender of the certificate; or (b) four months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

§46-2A-106. Limitation on power of parties to consumer lease to choose applicable law and judicial forum.

(1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time the lease agreement becomes enforceable or within thirty days thereafter or in which the goods are to be used, the choice is not enforceable.

(2) If the judicial forum chosen by the parties to a consumer lease is a forum that would not otherwise have jurisdiction over the lessee, the choice is not enforceable.

§46-2A-107. Waiver or renunciation of claim or right after default.

Any claim or right arising out of an alleged default or breach of warranty may be discharged, in whole or in part, without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

(1) If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) With respect to a consumer lease, if the court as a matter of law finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief.

(3) Before making a finding of unconscionability under subsection (1) or (2), the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease contract or clause thereof, or of the conduct.

(4) In an action in which the lessee claims unconscionability with respect to a consumer lease:

(a) If the court finds unconscionability under subsection (1) or (2), the court shall award reasonable attorney's fees to the lessee.

(b) If the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action he or she knew to be groundless, the court shall award reasonable attorney's fees to the party against whom the claim is made.

(c) In determining attorney's fees, the amount of the recovery on behalf of the claimant under subsections (1) and (2) is not controlling.

§46-2A-109. Option to accelerate at will.

(1) A term providing that one party or his or her successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he or she deems himself or herself insecure" or in words of similar import must be construed to mean that he
or she has power to do so only if he or she in good faith believes that the prospect of payment or performance is impaired.

(2) With respect to a consumer lease, the burden of establishing good faith under subsection (1) is on the party who exercised the power; otherwise the burden of establishing lack of good faith is on the party against whom the power has been exercised.

PART 2. FORMATION AND CONSTRUCTION OF LEASE CONTRACT.


(1) A lease contract is not enforceable by way of action or defense unless:

(a) The total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than one thousand dollars; or

(b) There is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(2) Any description of leased goods or of the lease term is sufficient and satisfies subsection (1)(b), whether or not it is specific, if it reasonably identifies what is described.

(3) A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (1)(b) beyond the lease term and the quantity of goods shown in the writing.

(4) A lease contract that does not satisfy the requirements of subsection (1), but which is valid in other respects, is enforceable:

(a) If the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is re-
ceived and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) If the party against whom enforcement is sought admits in that party's pleading, testimony or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) With respect to goods that have been received and accepted by the lessee.

(5) The lease term under a lease contract referred to in subsection (4) is:

(a) If there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(b) If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

(c) A reasonable lease term.


Terms with respect to which the confirmatory memora-
randa of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) By course of dealing or usage of trade or by course of performance; and

(b) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

§46-2A-203. Seals inoperative.
The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

§46-2A-204. Formation in general.

(1) A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of a lease contract.

(2) An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.

(3) Although one or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy.

§46-2A-205. Firm offers.

An offer by a merchant to lease goods to or from another person in a signed writing that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed three months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.


(1) Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

(2) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

§46-2A-207. Course of performance or practical construction.

(1) If a lease contract involves repeated occasions for performance by either party with knowledge of the nature
of the performance and opportunity for objection to it by
the other, any course of performance accepted or acqui-
esced in without objection is relevant to determine the
meaning of the lease agreement.

(2) The express terms of a lease agreement and any
course of performance, as well as any course of dealing
and usage of trade, must be construed whenever reason-
able as consistent with each other; but if that construction
is unreasonable, express terms control course of perfor-
ance, course of performance controls both course of
dealing and usage of trade and course of dealing controls
usage of trade.

(3) Subject to the provisions of section 2A-208 on
modification and waiver, course of performance is relevant
to show a waiver or modification of any term inconsistent
with the course of performance.

§46-2A-208. Modification, rescission and waiver.

(1) An agreement modifying a lease contract needs no
consideration to be binding.

(2) A signed lease agreement that excludes modifica-
tion or rescission except by a signed writing may not be
otherwise modified or rescinded, but, except as between
merchants, such a requirement on a form supplied by a
merchant must be separately signed by the other party.

(3) Although an attempt at modification or rescission
does not satisfy the requirements of subsection (2), it may
operate as a waiver.

(4) A party who has made a waiver affecting an execu-
tory portion of a lease contract may retract the waiver by
reasonable notification received by the other party that
strict performance will be required of any term waived,
unless the retraction would be unjust in view of a material
change of position in reliance on the waiver.

§46-2A-209. Lessee under finance lease as beneficiary of sup-
ply contract.

(1) The benefit of a supplier's promises to the lessor
under the supply contract and of all warranties, whether
express or implied, including those of any third party
provided in connection with or as part of the supply con-
tract, extends to the lessee to the extent of the lessee's
leasehold interest under a finance lease related to the sup-
ply contract, but is subject to the terms of the warranty and
of the supply contract and all defenses or claims arising
therefrom.

(2) The extension of the benefit of a supplier's prom­
ises and of warranties to the lessee (section 2A-209(1))
does not: (i) Modify the rights and obligations of the
parties to the supply contract, whether arising therefrom or
otherwise; or (ii) impose any duty or liability under the
supply contract on the lessee.

(3) Any modification or rescission of the supply con­
tract by the supplier and the lessor is effective between the
supplier and the lessee unless, before the modification or
rescission, the supplier has received notice that the lessee
has entered into a finance lease related to the supply con-
tract. If the modification or rescission is effective between
the supplier and the lessee, the lessor is deemed to have
assumed, in addition to the obligations of the lessor to the
lessee under the lease contract, promises of the supplier to
the lessee and warranties that were so modified or rescind-
ed as they existed and were available to the lessee before
modification or rescission.

(4) In addition to the extension of the benefit of the
supplier's promises and of warranties to the lessee under
subsection (1), the lessee retains all rights that the lessee
may have against the supplier which arise from an agree­
ment between the lessee and the supplier or under other
law.


(1) Express warranties by the lessor are created as
follows:

(a) Any affirmation of fact or promise made by the
lessor to the lessee which relates to the goods and becomes
part of the basis of the bargain creates an express warranty
that the goods will conform to the affirmation or promise.

(b) Any description of the goods which is made part
of the basis of the bargain creates an express warranty that
the goods will conform to the description.
(c) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warrant" or "guarantee," or that the lessor have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor's opinion or commendation of the goods does not create a warranty.

§46-2A-211. Warranties against interference and against infringement; lessee's obligation against infringement.

(1) There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee's enjoyment of its leasehold interest.

(2) Except in a finance lease, there is in a lease contract by a lessor who is a merchant regularly dealing in goods of the kind, a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.

(3) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications.

§46-2A-212. Implied warranty of merchantability.

(1) Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.

(2) Goods to be merchantable must be at least such as:

(a) Pass without objection in the trade under the description in the lease agreement;
(b) In the case of fungible goods, are of fair average quality within the description;

(c) Are fit for the ordinary purposes for which goods of that type are used;

(d) Run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;

(e) Are adequately contained, packaged and labeled as the lease agreement may require; and

(f) Conform to any promises or affirmations of fact made on the container or label.

(3) Other implied warranties may arise from course of dealing or usage of trade.

§46-2A-213. Implied warranty of fitness for particular purpose.

Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose.


(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other; but, subject to the provisions of section 2A-202 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention "merchantability," be by a writing, and be conspicuous. Subject to subsection (3), to exclude or modify any implied warranty of fitness the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is
in writing, is conspicuous and states, for example, "There is no warranty that the goods will be fit for a particular purpose."

(3) Notwithstanding subsection (2), but subject to subsection (4),

(a) Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," or "with all faults," or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;

(b) If the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and

(c) An implied warranty may also be excluded or modified by course of dealing, course of performance or usage of trade.

(4) To exclude or modify a warranty against interference or against infringement (section 2A-211) or any part of it, the language must be specific, be by a writing and be conspicuous, unless the circumstances, including course of performance, course of dealing or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.

§46-2A-215. Cumulation and conflict of warranties express or implied.

Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.
(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

§46-2A-216. Third-party beneficiaries of express and implied warranties.

A warranty to or for the benefit of a lessee under this article, whether express or implied, extends to any natural person who is in the family or household of the lessee or who is a guest in the lessee's home if it is reasonable to expect that such person may use, consume, or be affected by the goods and who is injured in person by breach of the warranty. This section does not displace principles of law and equity that extend a warranty to or for the benefit of a lessee to other persons. The operation of this section may not be excluded, modified or limited, but an exclusion, modification or limitation of the warranty, including any with respect to rights and remedies, effective against the lessee is also effective against any beneficiary designated under this section.


Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

(a) When the lease contract is made if the lease contract is for a lease of goods that are existing and identified;

(b) When the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified; or

(c) When the young are conceived, if the lease contract is for a lease of unborn young of animals.


(1) A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the
goods identified are nonconforming and the lessee has an
option to reject them.

(2) If a lessee has an insurable interest only by reason
of the lessor's identification of the goods, the lessor, until
default or insolvency or notification to the lessee that
identification is final, may substitute other goods for those
identified.

(3) Notwithstanding a lessee's insurable interest under
subsections (1) and (2), the lessor retains an insurable
interest until an option to buy has been exercised by the
lessee and risk of loss has passed to the lessee.

(4) Nothing in this section impairs any insurable inter-
est recognized under any other statute or rule of law.

(5) The parties by agreement may determine that one
or more parties have an obligation to obtain and pay for
insurance covering the goods and by agreement may
determine the beneficiary of the proceeds of the insur-
ance.


(1) Except in the case of a finance lease, risk of loss is
retained by the lessor and does not pass to the lessee. In
the case of a finance lease, risk of loss passes to the lessee.

(2) Subject to the provisions of this article on the ef-
et of default on risk of loss (section 2A-220), if risk of
loss is to pass to the lessee and the time of passage is not
stated, the following rules apply:

(a) If the lease contract requires or authorizes the
goods to be shipped by carrier:

(i) And it does not require delivery at a particular
destination, the risk of loss passes to the lessee when the
goods are duly delivered to the carrier; but

(ii) If it does require delivery at a particular destina-
tion and the goods are there duly tendered while in the
possession of the carrier, the risk of loss passes to the les-
see when the goods are there duly so tendered as to enable
the lessee to take delivery.

(1) Where risk of loss is to pass to the lessee and the time of passage is not stated:

(a) If a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor, or, in the case of a finance lease, the supplier, until cure or acceptance.

(b) If the lessee rightfully revokes acceptance, he or she, to the extent of any deficiency in his or her effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(2) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor, or, in the case of a finance lease, the supplier, to the extent of any deficiency in his or her effective insurance coverage may treat the risk of loss as resting on the lessee for a commercially reasonable time.

§46-2A-221. Casualty to identified goods.

If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the lessee, the lessor or the supplier before delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or section 2A-219, then:

(a) If the loss is total, the lease contract is avoided; and
(b) If the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at his or her option either treat the lease contract as avoided or, except in a finance lease that is not a consumer lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

PART 3. EFFECT OF LEASE CONTRACT.

§46-2A-301. Enforceability of lease contract.

Except as otherwise provided in this article, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods and against creditors of the parties.

§46-2A-302. Title to and possession of goods.

Except as otherwise provided in this article, each provision of this article applies whether the lessor or a third party has title to the goods, and whether the lessor, the lessee or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

§46-2A-303. Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights.

1 (1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to article nine, secured transactions, by reason of section 9-102(1)(b).

2 (2) Except as provided in subsections (3) and (4), a provision in a lease agreement which: (i) Prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods; or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (5), but a transfer that is
(3) A provision in a lease agreement which: (i) Prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods; or (ii) makes such a transfer an event of default, is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or an actual delegation of a material performance of either party to the lease contract in violation of the provision. Neither the granting nor the enforcement of a security interest in: (i) The lessor's interest under the lease contract; or (ii) the lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the lessee within the purview of subsection (5) unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.

(4) A provision in a lease agreement which: (i) Prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation; or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection (5).

(5) Subject to subsections (3) and (4):

(a) If a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in section 2A-501(2);
(b) If paragraph (a) is not applicable and if a transfer is made that: (i) Is prohibited under a lease agreement; or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract: (i) The transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer; and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(6) A transfer of "the lease" or of "all my rights under the lease," or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(7) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(8) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

§46-2A-304. Subsequent lease of goods by lessor.

(1) Subject to section 2A-303, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in subsection (2) and section 2A-527(4), takes subject to the exist-
A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:

(a) The lessor's transferor was deceived as to the identity of the lessor;

(b) The delivery was in exchange for a check which is later dishonored;

(c) It was agreed that the transaction was to be a "cash sale"; or

(d) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that lessor obtains, to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights to the goods, and takes free of the existing lease contract.

(3) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

§46-2A-305. Sale or sublease of goods by lessee.

(1) Subject to the provisions of section 2A-303, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer, and except as provided in subsection (2) and section 2A-511(4), takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith
1. Sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of lease the lessee has that power even though:

(a) The lessor was deceived as to the identity of the lessee;

(b) The delivery was in exchange for a check which is later dishonored; or

(c) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods, and takes free of the existing lease contract.

(3) A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.


If a person in the ordinary course of his or her business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this article unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

§46-2A-307. Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.
(1) Except as otherwise provided in section 2A-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subsections (3) and (4) and in sections 2A-306 and 2A-308, a creditor of a lessor takes subject to the lease contract unless:

(a) The creditor holds a lien that attached to the goods before the lease contract became enforceable;

(b) The creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or

(c) The creditor holds a security interest in the goods which was perfected (section 9-303) before the lease contract became enforceable.

(3) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected (section 9-303) and the lessee knows of its existence.

(4) A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than forty-five days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five-day period.

§46-2A-308. Special rights of creditors.

(1) A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.

(2) Nothing in this article impairs the rights of creditors of a lessor if the lease contract: (a) Becomes enforce-
able, not in current course of trade but in satisfaction of or
as security for a preexisting claim for money, security, or
the like; and (b) is made under circumstances which under
any statute or rule of law apart from this article would
constitute the transaction a fraudulent transfer or voidable
preference.

(3) A creditor of a seller may treat a sale or an identi-
fication of goods to a contract for sale as void if as against
the creditor retention of possession by the seller is fraudu-
 lent under any statute or rule of law, but retention of pos-
session of the goods pursuant to a lease contract entered
into by the seller as lessee and the buyer as lessor in con-
nection with the sale or identification of the goods is not
fraudulent if the buyer bought for value and in good
faith.

§46-2A-309. Lessor's and lessee's rights when goods become
fixtures.

(1) In this section:

(a) Goods are "fixtures" when they become so related
to particular real estate that an interest in them arises under
real estate law;

(b) A "fixture filing" is the filing, in the office where a
mortgage on the real estate would be filed or recorded of
a financing statement covering goods that are or are to
become fixtures and conforming to the requirements of
section 9-402(5);

(c) A lease is a "purchase money lease" unless the
lessee has possession or use of the goods or the right to
possession or use of the goods before the lease agreement
is enforceable;

(d) A mortgage is a "construction mortgage" to the
extent it secures an obligation incurred for the construc-
tion of an improvement on land including the acquisition
cost of the land, if the recorded writing so indicates; and

(e) "Encumbrance" includes real estate mortgages and
other liens on real estate and all other rights in real estate
that are not ownership interests.
(2) Under this article a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this article of ordinary building materials incorporated into an improvement on land.

(3) This article does not prevent creation of a lease of fixtures pursuant to real estate law.

(4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(a) The lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within ten days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

(b) The interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(5) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) The fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease and before the goods become fixtures the lease contract is enforceable; or

(b) The conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable; or

(c) The encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or
(d) The lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(6) Notwithstanding subsection (4)(a) but otherwise subject to subsections (4) and (5), the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(7) In cases not within the preceding subsections, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may: (i) On default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this article; or (ii) if necessary to enforce other rights and remedies of the lessor or lessee under this article, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the
98 party seeking removal gives adequate security for the
99 performance of this obligation.
100 (9) Even though the lease agreement does not create a
101 security interest, the interest of a lessor of fixtures, includ-
102 ing the lessor's residual interest, is perfected by filing a
103 financing statement as a fixture filing for leased goods
104 that are or are to become fixtures in accordance with the
105 relevant provisions of the article on secured transactions
106 (article nine).

§46-2A-310. Lessor's and lessee's rights when goods become
accessions.

(1) Goods are "accessions" when they are installed in
2 or affixed to other goods.

(2) The interest of a lessor or a lessee under a lease
contract entered into before the goods became accessions
is superior to all interests in the whole except as stated in
subsection (4).

(3) The interest of a lessor or a lessee under a lease
contract entered into at the time or after the goods became
accessions is superior to all subsequently acquired interests
in the whole except as stated in subsection (4) but is sub-
ordinate to interests in the whole existing at the time the
lease contract was made unless the holders of such inter-
ests in the whole have in writing consented to the lease or
disclaimed an interest in the goods as part of the whole.

(4) The interest of a lessor or a lessee under a lease
contract described in subsection (2) or (3) is subordinate
17 to the interest of:

(a) A buyer in the ordinary course of business or a
lessee in the ordinary course of business of any interest in
the whole acquired after the goods became accessions; or

(b) A creditor with a security interest in the whole
perfected before the lease contract was made to the extent
that the creditor makes subsequent advances without
knowledge of the lease contract.

(5) When under subsections (2) or (3) and (4) a lessor
or a lessee of accessions holds an interest that is superior
to all interests in the whole, the lessor or the lessee may:

(a) On default, expiration, termination, or cancellation of
the lease contract by the other party but subject to the
provisions of the lease contract and this article; or (b) if
necessary to enforce his or her other rights and remedies
under this article, remove the goods from the whole, free
and clear of all interests in the whole, but he or she must
reimburse any holder of an interest in the whole who is
not the lessee and who has not otherwise agreed for the
cost of repair of any physical injury but not for any dimi-
nuation in value of the whole caused by the absence of the
goods removed or by any necessity for replacing them. A
person entitled to reimbursement may refuse permission
to remove until the party seeking removal gives adequate
security for the performance of this obligation.

§46-2A-311. Priority subject to subordination.

Nothing in this article prevents subordination by
agreement by any person entitled to priority.

PART 4. PERFORMANCE OF LEASE CONTRACT:
REPUDIATED, SUBSTITUTED AND EXCUSED.


(1) A lease contract imposes an obligation on each
party that the other's expectation of receiving due perfor-
mance will not be impaired.

(2) If reasonable grounds for insecurity arise with
respect to the performance of either party, the insecure
party may demand in writing adequate assurance of due
performance. Until the insecure party receives that assur-
ance, if commercially reasonable the insecure party may
suspend any performance for which he or she has not
already received the agreed return.

(3) A repudiation of the lease contract occurs if assur-
ance of due performance adequate under the circumstanc-
es of the particular case is not provided to the insecure
party within a reasonable time, not to exceed thirty days
after receipt of a demand by the other party.
(4) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.

(5) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.


If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

(a) For a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

(b) Make demand pursuant to section 2A-401 and await assurance of future performance adequate under the circumstances of the particular case; or

(c) Resort to any right or remedy upon default under the lease contract or this article, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction. In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this article on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (section 2A-524).


(1) Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has canceled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.
(2) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under section 2A-401.

(3) Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.


(1) If without fault of the lessee, the lessor and the supplier, the agreed berthing, loading or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation:

(a) The lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; and

(b) If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive or predatory.


Subject to section 2A-404 on substituted performance, the following rules apply:

(a) Delay in delivery or nondelivery, in whole or in part, by a lessor or a supplier who complies with paragraphs (b) and (c) is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or
order, whether or not the regulation or order later proves to be invalid.

(b) If the causes mentioned in paragraph (a) affect only part of the lessor's or the supplier's capacity to perform, he or she shall allocate production and deliveries among his or her customers but at his or her option may include regular customers not then under contract for sale or lease as well as his or her own requirements for further manufacture. He or she may so allocate in any manner that is fair and reasonable.

(c) The lessor seasonably shall notify the lessee and in the case of a finance lease the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under paragraph (b), of the estimated quota thus made available for the lessee.


(1) If the lessee receives notification of a material or indefinite delay or an allocation justified under section 2A-405, the lessee may by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 2A-510):

(a) Terminate the lease contract (section 2A-505(2)); or

(b) Except in a finance lease that is not a consumer lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.

(2) If, after receipt of a notification from the lessor under section 2A-405, the lessee fails so to modify the lease agreement within a reasonable time not exceeding 30 days, the lease contract lapses with respect to any deliveries affected.

In the case of a finance lease that is not a consumer lease the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.

A promise that has become irrevocable and independent under subsection (1):

(a) Is effective and enforceable between the parties, and by or against third parties including assignees of the parties; and

(b) Is not subject to cancellation, termination, modification, repudiation, excuse or substitution without the consent of the party to whom the promise runs.

This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods.

In the case of a consumer lease, the promises of each party are dependent on the promises of the other party or parties.

PART 5. DEFAULT.

A. IN GENERAL


Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this article.

If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this article and, except as limited by this article, as provided in the lease agreement.

If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this article.
(4) Except as otherwise provided in section 1-106(1) or this article or the lease agreement, the rights and remedies referred to in subsections (2) and (3) are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this part does not apply.


Except as otherwise provided in this article or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement.

§46-2A-503. Modification or impairment of rights and remedies.

(1) Except as otherwise provided in this article, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this article and may limit or alter the measure of damages recoverable under this article.

(2) Resort to a remedy provided under this article or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose, or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this article.

(3) Consequential damages may be liquidated under section 2A-504, or may otherwise be limited, altered or excluded unless the limitation, alteration or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation, alteration or exclusion of damages where the loss is commercial is not prima facie unconscionable.

(4) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral
or ancillary to the lease contract are not impaired by this article.

§46-2A-504. Liquidation of damages.

(1) Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

(2) If the lease agreement provides for liquidation of damages, and such provision does not comply with subsection (1), or such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this article.

(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (section 2A-525 or 2A-526), the lessee is entitled to restitution of any amount by which the sum of his or her payments exceeds:

(a) The amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection (1); or

(b) In the absence of those terms, twenty percent of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer lease, the lesser of such amount or five hundred dollars.

(4) A lessee's right to restitution under subsection (3) is subject to offset to the extent the lessor establishes:

(a) A right to recover damages under the provisions of this article other than subsection (1); and

(b) The amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract.

§46-2A-505. Cancellation and termination and effect of cancellation, termination, rescission, or fraud on rights and remedies.
(1) On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the canceling party also retains any remedy for default of the whole lease contract or any unperformed balance.

(2) On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.

(3) Unless the contrary intention clearly appears, expressions of "cancellation," "rescission," or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.

(4) Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this article for default.

(5) Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy.


(1) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within four years after the cause of action accrued. By the original lease contract the parties may reduce the period of limitation to not less than one year.

(2) A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. A cause of action for indemnity accrues when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later.

(3) If an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same default or breach of
warranty or indemnity, the other action may be com-
menced after the expiration of the time limited and within
six months after the termination of the first action unless
the termination resulted from voluntary discontinuance or
from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the
statute of limitations nor does it apply to causes of action
that have accrued before this article becomes effective.

§46-2A-507. Proof of market rent; time and place.

(1) Damages based on market rent (section 2A-519 or
2A-528) are determined according to the rent for the use
of the goods concerned for a lease term identical to the
remaining lease term of the original lease agreement and
prevailing at the times specified in sections 2A-519 and
2A-528.

(2) If evidence of rent for the use of the goods con-
cerned for a lease term identical to the remaining lease
term of the original lease agreement and prevailing at the
times or places described in this article is not readily avail-
able, the rent prevailing within any reasonable time before
or after the time described or at any other place or for a
different lease term which in commercial judgment or
under usage of trade would serve as a reasonable substitute
for the one described may be used, making any proper
allowance for the difference, including the cost of trans-
porting the goods to or from the other place.

(3) Evidence of a relevant rent prevailing at a time or
place or for a lease term other than the one described in
this article offered by one party is not admissible unless
and until he or she has given the other party notice the
court finds sufficient to prevent unfair surprise.

(4) If the prevailing rent or value of any goods regu-
larly leased in any established market is in issue, reports in
official publications or trade journals or in newspapers or
periodicals of general circulation published as the reports
of that market are admissible in evidence. The circum-
stances of the preparation of the report may be shown to
affect its weight but not its admissibility.

B. DEFAULT BY LESSOR

1. (1) If a lessor fails to deliver the goods in conformity to the lease contract (section 2A-509) or repudiates the lease contract (section 2A-402), or a lessee rightfully rejects the goods (section 2A-509) or justifiably revokes acceptance of the goods (section 2A-517), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 2A-510), the lessor is in default under the lease contract and the lessee may:

   (a) Cancel the lease contract (section 2A-505(1));

   (b) Recover so much of the rent and security as has been paid and is just under the circumstances;

   (c) Cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (sections 2A-518 and 2A-520), or recover damages for nondelivery (sections 2A-519 and 2A-520);

   (d) Exercise any other rights or pursue any other remedies provided in the lease contract.

2. (2) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:

   (a) If the goods have been identified, recover them (section 2A-522); or

   (b) In a proper case, obtain specific performance or replevy the goods (section 2A-521).

3. (3) If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in section 2A-519(3).

4. (4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (section 2A-519(4)).

5. (5) On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the
Lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to section 2A-527(5).

(6) Subject to the provisions of section 2A-407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

§46-2A-509. Lessee's rights on improper delivery; rightful rejection.

(1) Subject to the provisions of section 2A-510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

(2) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.

§46-2A-510. Installment lease contracts; rejection and default.

(1) Under an installment lease contract a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (2) and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.

(2) Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action.
§46-2A-511. Merchant lessee's duties as to rightfully rejected goods.

(1) Subject to any security interest of a lessee (section 2A-508(5)), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in his or her possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) If a merchant lessee (subsection (1)) or any other lessee (section 2A-512) disposes of goods, he or she is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding ten percent of the gross proceeds.

(3) In complying with this section or section 2A-512, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

(4) A purchaser who purchases in good faith from a lessee pursuant to this section or section 2A-512 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this article.

§46-2A-512. Lessee's duties as to rightfully rejected goods.

(1) Except as otherwise provided with respect to goods that threaten to decline in value speedily (section 2A-511) and subject to any security interest of a lessee (section 2A-508(5)): 
(a) The lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;

(b) If the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in section 2A-511; but

c) The lessee has no further obligations with regard to goods rightfully rejected.

(2) Action by the lessee pursuant to subsection (1) is not acceptance or conversion.

§46-2A-513. Cure by lessor of improper tender or delivery; replacement.

(1) If any tender or delivery by the lessor or the supplier is rejected because nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

(2) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if he or she seasonably notifies the lessee.


(1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) If, stated seasonably, the lessor or the supplier could have cured it (section 2A-513); or
(b) Between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent on the face of the documents.


(1) Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and:

(a) The lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or

(b) The lessee fails to make an effective rejection of the goods (section 2A-509(2)).

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

§46-2A-516. Effect of acceptance of goods; notice of default; burden of establishing default after acceptance; notice of claim or litigation to person answerable over.

(1) A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

(2) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this article or the lease agreement for nonconformity.

(3) If a tender has been accepted:
(a) Within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified;

(b) Except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (section 2A-211) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

(c) The burden is on the lessee to establish any default.

(4) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over the following apply:

(a) The lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the person notified may come in and defend, and that if the person notified does not do so, that person will be bound in any action against that person by the lessee by any determination of fact common to the two litigations, then unless the person notified after seasonable receipt of the notice does come in and defend, that person is so bound;

(b) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (section 2A-211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand does turn over control, the lessee is so barred.

(5) Subsections (3) and (4) apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (section 2A-211).


(1) A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if the lessee has accepted it:
(a) Except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) Without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

(2) Except in the case of a finance lease that is not a consumer lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

(3) If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.

(4) Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

(5) A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them.

§46-2A-518. Cover; substitute goods.

(1) After a default by a lessor under the lease contract of the type described in section 2A-508(1), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A-504) or otherwise determined pursuant to agreement of the parties (sections 1-102(3) and 2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee
may recover from the lessor as damages: (i) The present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement; and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and section 2A-519 governs.

§46-2A-519. Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A-504) or otherwise determined pursuant to agreement of the parties (sections 1-102(3) and 2A-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under section 2A-518(2), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (section 2A-516(3)), the measure of damages for nonconforming tender or
delivery or other default by a lessor is the loss resulting in
the ordinary course of events from the lessor's default as
determined in any manner that is reasonable together with
incidental and consequential damages, less expenses saved
in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damag-
es for breach of warranty is the present value at the time
and place of acceptance of the difference between the
value of the use of the goods accepted and the value if
they had been as warranted for the lease term, unless spe-
cial circumstances show proximate damages of a different
amount, together with incidental and consequential dam-
ages, less expenses saved in consequence of the lessor's
default or breach of warranty.

§46-2A-520. Lessee's incidental and consequential damages.

(1) Incidental damages resulting from a lessor's de-
fault include expenses reasonably incurred in inspection,
receipt, transportation and care and custody of goods
rightfully rejected or goods the acceptance of which is
justifiably revoked, any commercially reasonable charges,
expenses or commissions in connection with effecting
cover, and any other reasonable expense incident to the
default.

(2) Consequential damages resulting from a lessor's
default include:

(a) Any loss resulting from general or particular re-
quirements and needs of which the lessor at the time of
contracting had reason to know and which could not rea-
sonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting
from any breach of warranty.

§46-2A-521. Lessee's right to specific performance or replev-
in.

(1) Specific performance may be decreed if the goods
are unique or in other proper circumstances.
(2) A decree for specific performance may include any terms and conditions as to payment of the rent, damages or other relief that the court deems just.

(3) A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing.

§46-2A-522. Lessee's right to goods on lessor's insolvency.

(1) Subject to subsection (2) and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (section 2A-217) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within ten days after receipt of the first installment of rent and security.

(2) A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract.

C. DEFAULT BY LESSEE


(1) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 2A-510), the lessee is in default under the lease contract and the lessor may:

(a) Cancel the lease contract (section 2A-505(1));

(b) Proceed respecting goods not identified to the lease contract (section 2A-524);

(c) Withhold delivery of the goods and take possession of goods previously delivered (section 2A-525);
(d) Stop delivery of the goods by any bailee (section 2A-526);

(e) Dispose of the goods and recover damages (section 2A-527), or retain the goods and recover damages (section 2A-528), or in a proper case recover rent (section 2A-529);

(f) Exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (1), the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.

(3) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

(a) If the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsection (1) or (2); or

(b) If the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (2).

§46-2A-524. Lessor’s right to identify goods to lease contract.

(1) After default by the lessee under the lease contract of the type described in section 2A-523(1) or section 2A-523(3)(a) or, if agreed, after other default by the lessee, the lessor may:

(a) Identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and
(b) Dispose of goods (section 2A-527(1)) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

(2) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

§46-2A-525. Lessor's right to possession of goods.

(1) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(2) After a default by the lessee under the lease contract of the type described in section 2A-523(1) or 2A-523(3)(a) or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (section 2A-527).

(3) The lessor may proceed under subsection (2) without judicial process if it can be done without breach of the peace or the lessor may proceed by action.

§46-2A-526. Lessor's stoppage of delivery in transit or otherwise.

(1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.
(2) In pursuing its remedies under subsection (1), the lessor may stop delivery until:

(a) Receipt of the goods by the lessee;

(b) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) Such an acknowledgment to the lessee by a carrier via reshipment or as warehouseman.

(3)(a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

§46-2A-527. Lessor's rights to dispose of goods.

(1) After a default by a lessee under the lease contract of the type described in section 2A-523(1) or 2A-523 (3)(a) or after the lessor refuses to deliver or takes possession of goods (section 2A-525 or 2A-526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A-504) or otherwise determined pursuant to agreement of the parties (sections 1-102(3) and 2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages: (i) Accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement; (ii) the present value, as of the same date, of the total rent for the then remaining
lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement; and (iii) any incidental damages allowed under section 2A-530, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and section 2A-528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this article.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (section 2A-508(5)).

§46-2A-528. Lessor's damages for nonacceptance, failure to pay, repudiation, or other default.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A-504) or otherwise determined pursuant to agreement of the parties (sections 1-102(3) and 2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under section 2A-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in section 2A-523(1) or 2A-523(3)(a), or, if agreed, for other default of the lessee; (i) Accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an
earlier date on which the lessee makes a tender of the goods to the lessor; (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term; and (iii) any incidental damages allowed under section 2A-530, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under section 2A-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

§46-2A-529. Lessor's action for the rent.

(1) After default by the lessee under the lease contract of the type described in section 2A-523(1) or 2A-523(3)(a) or, if agreed, after other default by the lessee, if the lessor complies with subsection (2), the lessor may recover from the lessee as damages:

(a) For goods accepted by the lessee and not reposessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (section 2A-219): (i) Accrued and unpaid rent as of the date of entry of judgment in favor of the lessor; (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement; and (iii) any incidental damages allowed under section 2A-530, less expenses saved in consequence of the lessee's default; and

(b) For goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing: (i) Accrued and unpaid rent as of the date of entry of judgment in favor of
the lessor; (ii) the present value as of the same date of the
rent for the then remaining lease term of the lease agree-
ment; and (iii) any incidental damages allowed under
section 2A-530, less expenses saved in consequence of the
lessee's default.

(2) Except as provided in subsection (3), the lessor
shall hold for the lessee for the remaining lease term of
the lease agreement any goods that have been identified to
the lease contract and are in the lessor's control.

(3) The lessor may dispose of the goods at any time
before collection of the judgment for damages obtained
pursuant to subsection (1). If the disposition is before the
end of the remaining lease term of the lease agreement,
the lessor's recovery against the lessee for damages is gov-
erned by section 2A-527 or section 2A-528, and the lessor
will cause an appropriate credit to be provided against a
judgment for damages to the extent that the amount of the
judgment exceeds the recovery available pursuant to sec-
section 2A-527 or 2A-528.

(4) Payment of the judgment for damages obtained
pursuant to subsection (1) entitles the lessee to the use and
possession of the goods not then disposed of for the re-
remaining lease term of and in accordance with the lease
agreement.

(5) After default by the lessee under the lease contract
of the type described in section 2A-523(1) or section
2A-523(3)(a) or, if agreed, after other default by the les-
see, a lessor who is held not entitled to rent under this
section must nevertheless be awarded damages for nonac-
ceptance under section 2A-527 or section 2A-528.

§46-2A-530. Lessor's incidental damages.

Incidental damages to an aggrieved lessor include any
commercially reasonable charges, expenses or commis-
sions incurred in stopping delivery, in the transportation,
care and custody of goods after the lessee's default, in
connection with return or disposition of the goods, or
otherwise resulting from the default.

§46-2A-531. Standing to sue third parties for injury to goods.
If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract: (a) The lessor has a right of action against the third party; and (b) the lessee also has a right of action against the third party if the lessee:

(i) Has a security interest in the goods;
(ii) Has an insurable interest in the goods; or
(iii) Bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

(2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, his or her suit or settlement, subject to his or her own interest, is as a fiduciary for the other party to the lease contract.

(3) Either party with the consent of the other may sue for the benefit of whom it may concern.

§46-2A-532. Lessor’s rights to residual interest.

In addition to any other recovery permitted by this article or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor’s residual interest in the goods caused by the default of the lessee.

ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER.

§46-9-113. Security interests arising under article on sales or under article on leases.

A security interest arising solely under the article on sales (article two) or the article on leases (article two-a) is subject to the provisions of this article except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods;

(a) No security agreement is necessary to make the security interest enforceable; and

(b) No filing is required to perfect the security inter-
(c) The rights of the secured party on default by the debtor are governed: (i) By the article on sales (article two) in the case of a security interest arising solely under such article; or (ii) by the article on leases (article two-a) in the case of a security interest arising solely under such article.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

Article
1. Short Title, Definitions and General Provisions.
2. Consumer Credit Protection.
7. Administration.

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.

§46A-l-102. General definitions.
§46A-l-104. Application.
§46A-l-106. Sales, leases or loans subject to chapter by agreement of parties.


In addition to definitions appearing in subsequent articles, in this chapter: (1) "Actuarial method" means the method, defined by rules adopted by the commissioner, of allocating payments made on a debt between principal or amount financed and loan finance charge or sales finance charge pursuant to which a payment is applied first to the accumulated loan finance charge or sales finance charge and the balance is applied to the unpaid principal or unpaid amount financed.

(2) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance. A "consumer credit agreement" is an agreement where credit is granted.

(3) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing or manufacture of agricultural products.

*Clerk's Note: This section was also amended by S. B. 366 (Chapter 73), which passed subsequent to this act.
by a natural person who cultivates, plants, propagates or
nurters the agricultural products. "Agricultural products"
includes agricultural, horticultural, viticultural and dairy
products, livestock, wildlife, poultry, bees, forest products,
fish and shellfish, and any products thereof, including
processed and manufactured products, and any and all
products raised or produced on farms and any processed
or manufactured products thereof.

(4) "Amount financed" means the total of the following
items to the extent that payment is deferred:

(a) The cash price of the goods, services or interest in
land, less the amount of any down payment whether made
in cash or in property traded in;

(b) The amount actually paid or to be paid by the
seller pursuant to an agreement with the buyer to dis-
charge a security interest in or a lien on property traded
in; and

(c) If not included in the cash price:

(i) Any applicable sales, use, privilege, excise or docu-
mentary stamp taxes;

(ii) Amounts actually paid or to be paid by the seller
for registration, certificate of title or license fees; and

(iii) Additional charges permitted by this chapter.

(5) "Average daily balance" in a billing cycle for
which a sales finance charge or loan finance charge is
made is the sum of the amount unpaid each day during
that cycle divided by the number of days in that cycle.
The amount unpaid on a day is determined by adding to
the balance, if any, unpaid as of the beginning of that day
all purchases and other debits and deducting all payments
and other credits made or received as of that day.

(6) The "cash price" of goods, services or an interest in
land means the price at which the goods, services or inter-
est in land are offered for sale by the seller to cash buyers
in the ordinary course of business, and may include (a)
applicable sales, use, privilege, and excise and documenta-
ry stamp taxes, (b) the cash price of accessories or related
services such as delivery, installation, servicing, repairs, alterations and improvements, and (c) amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees.

(7) "Closing costs" with respect to a debt secured by an interest in land include:

(a) Fees or premiums for title examination, title insurance or similar purposes including surveys;
(b) Fees for preparation of a deed, deed of trust, mortgage, settlement statement or other documents;
(c) Escrows for future payments of taxes and insurance;
(d) Official fees and fees for notarizing deeds and other documents;
(e) Appraisal fees; and
(f) Credit reports.

(8) "Code" means the official code of West Virginia, one thousand nine hundred thirty-one, as amended.

(9) "Commercial facsimile transmission" means the electronic or telephonic transmission in the state to a facsimile device to encourage a person to purchase goods, realty or services.

(10) "Commissioner" means the commissioner of banking of West Virginia.

(11) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the court.

(12) "Consumer" means a natural person who incurs debt pursuant to a consumer credit sale or a consumer loan, or debt or other obligations pursuant to a consumer lease.

(13) (a) Except as provided in paragraph (b), "consumer credit sale" is a sale of goods, services or an interest in land in which:
(i) Credit is granted either by a seller who regularly engages as a seller in credit transactions of the same kind or pursuant to a seller credit card;

(ii) The buyer is a person other than an organization;

(iii) The goods, services or interest in land are purchased primarily for a personal, family, household or agricultural purpose;

(iv) Either the debt is payable in installments or a sales finance charge is made; and

(v) With respect to a sale of goods or services, the amount financed does not exceed forty-five thousand dollars or the sale is of a factory-built home as defined in section two, article fifteen, chapter thirty-seven of this code.

(b) "Consumer credit sale" does not include a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement.

(14) (a) "Consumer lease" means a lease of goods:

(i) Which a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family, household or agricultural purpose;

(ii) In which the total of payments under the lease, excluding payments for options to renew or buy, do not exceed forty-five thousand dollars or in which the lease is of a factory-built home as defined in section two, article fifteen, chapter thirty-seven of this code; and

(iii) Which is for a term exceeding four months.

(b) "Consumer lease" does not include a lease made pursuant to a lender credit card or similar arrangement.

(15) "Consumer loan" is a loan made by a person regularly engaged in the business of making loans in which:

(a) The debtor is a person other than an organization;
(b) The debt is incurred primarily for a personal, family, household or agricultural purpose;

(c) Either the debt is payable in installments or a loan finance charge is made; and

(d) Either the principal does not exceed forty-five thousand dollars or the debt is secured by an interest in land or a factory-built home as defined in section two, article fifteen, chapter thirty-seven of this code.

(16) "Cosigner" means a natural person who assumes liability for the obligation on a consumer credit sale or consumer loan without receiving goods, services or money in return for the obligation or, in the case of a revolving charge account or revolving loan account of a consumer, without receiving the contractual right to obtain extensions of credit under the account. The term cosigner includes any person whose signature is requested as a condition to granting credit to a consumer or as a condition for forbearance on collection of a consumer's obligation that is in default. The term cosigner does not include a spouse whose signature is required to perfect a security interest. A person who meets the definition in this paragraph is a "cosigner" whether or not the person is designated as such on the credit obligation.

(17) "Credit" means the privilege granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(18) "Earnings" means compensation paid or payable to an individual or for his account for personal services rendered or to be rendered by him, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension, retirement or disability program.

(19) "Facsimile device" means a machine that receives and copies reproductions or facsimiles of documents or photographs that have been transmitted electronically or telephonically over telecommunications lines.

(20) "Federal Consumer Credit Protection Act" means the "Consumer Credit Protection Act" (Public Law 90-321;
(21) "Goods" includes goods not in existence at the time the transaction is entered into and gift and merchandise certificates, but excludes money, chattel paper, documents of title and instruments.

(22) "Home solicitation sale" means a consumer credit sale in excess of twenty-five dollars in which the buyer receives a solicitation of the sale at a place other than the seller's business establishment at a fixed location and the buyer's agreement or offer to purchase is there given to the seller or a person acting for the seller. The term does not include a sale made pursuant to a preexisting open-end credit account with the seller in existence for at least three months prior to the transaction, a sale made pursuant to prior negotiations between the parties at the seller's business establishment at a fixed location, a sale of motor vehicles, mobile homes or farm equipment or a sale which may be rescinded under the Federal Truth in Lending Act (being Title I of the Federal Consumer Credit Protection Act). A sale which would be a home solicitation sale if credit were extended by the seller is a home solicitation sale although the goods or services are paid for, in whole or in part, by a consumer loan in which the creditor is subject to claims and defenses arising from the sale.

(23) Except as otherwise provided, "lender" includes an assignee of the lender's right to payment but use of the term does not in itself impose on an assignee any obligation of the lender.

(24) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:

(a) By the lender's honoring a draft or similar order for the payment of money drawn or accepted by the con-
(b) By the lender's payment or agreement to pay the consumer's obligations; or

c) By the lender's purchase from the obligee of the consumer's obligations.

(25) "Loan" includes:

(a) The creation of debt by the lender's payment of or agreement to pay money to the consumer or to a third party for the account of the consumer other than debts created pursuant to a seller credit card;

(b) The creation of debt by a credit to an account with the lender upon which the consumer is entitled to draw immediately;

c) The creation of debt pursuant to a lender credit card or similar arrangement; and

d) The forbearance of debt arising from a loan.

(26) (a) "Loan finance charge" means the sum of (i)

All charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit, including any of the following types of charges which are applicable: Interest or any amount payable under a point, discount, or other system of charges, however denominated, premium or other charge for any guarantee or insurance protecting the lender against the consumer's default or other credit loss; and (ii) charges incurred for investigating the collateral or credit worthiness of the consumer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the lender had no notice of the charges when the loan was made. The term does not include charges as a result of default, additional charges, delinquency charges or deferral charges.

(b) If a lender makes a loan to a consumer by purchasing or satisfying obligations of the consumer pursuant to a lender credit card or similar arrangement, and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the loan finance charge.
(27) "Merchandise certificate" or "gift certificate" means a writing issued by a seller or issuer of a seller credit card, not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

(28) "Official fees" means:

(a) Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, terminating or satisfying a security interest related to a consumer credit sale or consumer loan; or

(b) Premiums payable for insurance or fees escrowed in a special account for the purpose of funding self-insurance or its equivalent in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease or loan, if such premium or fee does not exceed the fees and charges described in paragraph (a) which would otherwise be payable.

(29) "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative or association.

(30) "Payable in installments" means that payment is required or permitted by agreement to be made in (a) Two or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which a sales finance charge is made, (b) four or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which no sales finance charge is made, or (c) two or more periodic payments with respect to a debt arising from a consumer loan. If any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment, excluding the down payment, the consumer credit sale or consumer loan is "payable in installments."

(31) "Person" or "party" includes a natural person or an individual, and an organization.
(32) "Person related to" with respect to an individual means (a) The spouse of the individual, (b) a brother, brother-in-law, sister or sister-in-law of the individual, (c) an ancestor or lineal descendant of the individual or his spouse, and (d) any other relative, by blood or marriage, of the individual or his spouse who shares the same home with the individual. "Person related to" with respect to an organization means (a) a person directly or indirectly controlling, controlled by or under common control with the organization, (b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization, (c) the spouse of a person related to the organization, and (d) a relative by blood or marriage of a person related to the organization who shares the same home with him.

(33) "Precomputed loan." A loan, refinancing or consolidation is "precomputed" if:

(A) The debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance; or

(B) The loan is expressed in terms of the principal amount; the loan installment payments are a scheduled, fixed amount including principal and interest and assume payment on the installment due date; and interest payments will not vary or result in an adjustment during the term of the loan or at its final payment as a result of the actual installment payment dates.

(34) "Precomputed sale." A sale, refinancing or consolidation is "precomputed" if:

(A) The debt is expressed as a sum comprising the amount financed and the amount of the sales finance charge computed in advance; or

(B) The debt is expressed in terms of the principal amount; the debt installment payments are a scheduled, fixed amount including principal and interest and assume payment on the installment due date; and interest payments will not vary or result in an adjustment during the
term of the debt or at its final payment as a result of the actual installment payment dates.

(35) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(36) "Principal" of a loan means the total of:

(a) The net amount paid to, receivable by or paid or payable for the account of the debtor;

(b) The amount of any discount excluded from the loan finance charge; and

(c) To the extent that payment is deferred:

(i) Amounts actually paid or to be paid by the lender for registration, certificate of title, or license fees if not included in (a); and

(ii) Additional charges permitted by this chapter.

(37) "Revolving charge account" means an agreement between a seller and a buyer by which (a) The buyer may purchase goods or services on credit or a seller credit card, (b) the balances of amounts financed and the sales finance and other appropriate charges are debited to an account, (c) a sales finance charge if made is not precomputed but is computed periodically on the balances of the account from time to time, and (d) there is the privilege of paying the balances in installments.

(38) "Revolving loan account" means an arrangement between a lender and a consumer including, but not limited to, a lender credit card or similar arrangement, pursuant to which (a) the lender may permit the consumer to obtain loans from time to time, (b) the unpaid balances of principal and the loan finance and other appropriate charges are debited to an account, (c) a loan finance charge if made is not precomputed but is computed periodically on the outstanding unpaid balances of the principal of the consumer's account from time to time, and (d) there is the privilege of paying the balances in installments.
(39) "Sale of goods" includes any agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with his obligations under the agreement.

(40) "Sale of an interest in land" includes a lease in which the lessee has an option to purchase the interest and all or a substantial part of the rental or other payments previously made by him are applied to the purchase price.

(41) "Sale of services" means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

(42) "Sales finance charge" means the sum of (a) All charges payable directly or indirectly by the buyer and imposed directly or indirectly by the seller or issuer of a seller credit card as an incident to the extension of credit, including any of the following types of charges which are applicable: Time-price differential, however denominated, including service, carrying or other charge, premium or other charge for any guarantee or insurance protecting the seller against the buyer's default or other credit loss, and (b) charges incurred for investigating the collateral or credit worthiness of the buyer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable; unless the seller had no notice of the charges when the credit was granted. The term does not include charges as a result of default, additional charges, delinquency charges or deferral charges. If the seller or issuer of a seller credit card purchases or satisfies obligations of the consumer and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the sales finance charge.

(43) Except as otherwise provided, "seller" includes an assignee of the seller's right to payment but use of the term does not in itself impose on an assignee any obligation of the seller.
"Seller credit card" means an arrangement pursuant to which a person gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification primarily for the purpose of purchasing or leasing goods or services from that person, that person and any other person or persons, a person related to that person, or others licensed or franchised or permitted to do business under his business name or trade name or designation or on his behalf.

"Services" includes (a) Work, labor and other personal services, (b) privileges with respect to transportation, use of vehicles, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like, and (c) insurance.

"Supervised financial organization" means a person, other than a supervised lender or an insurance company or other organization primarily engaged in an insurance business:

(a) Organized, chartered or holding an authorization certificate under the laws of this state or of the United States which authorizes the person to make consumer loans; and

(b) Subject to supervision and examination with respect to such loans by an official or agency of this state or of the United States.

"Supervised lender" means a person authorized to make or take assignments of supervised loans.

"Supervised loan" means a consumer loan made by other than a supervised financial organization, including a loan made pursuant to a revolving loan account, where the principal does not exceed two thousand dollars, and in which the rate of the loan finance charge exceeds eight percent per year as determined according to the actuarial method.

§46A-1-104. Application.
(1) This chapter applies if a consumer, who is a resident of this state, is induced to enter into a consumer credit sale made pursuant to a revolving charge account, to enter into a revolving charge account, to enter into a consumer loan made pursuant to a revolving loan account, or to enter into a consumer lease, by personal or mail solicitation, and the goods, services or proceeds are delivered to the consumer in this state, and payment on such account is to be made from this state.

(2) With respect to consumer credit sales or consumer loans consummated in another state, a creditor may not collect in an action brought in this state a sales finance charge or loan finance charge in excess of that permitted by this chapter.

§46A-1-106. Sales, leases or loans subject to chapter by agreement of parties.

The parties to any sale, lease or loan, other than a consumer credit sale, consumer lease or consumer loan, may agree in writing signed by the parties that the sale, lease or loan is subject to the provisions of this chapter applying to consumer credit sales, consumer leases or consumer loans. If the parties so agree, the sale, lease or loan is subject to this chapter.


Except as otherwise provided in this chapter, a consumer may not waive or agree to forego rights or benefits under this chapter or under article two-a, chapter forty-six of this code.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-103a. Lessor subject to claims and defenses arising from leases.
§46A-2-104. Notice to consigners.
§46A-2-106. Notice of consumer's right to cure default; cure; acceleration.
§46A-2-114. Receipts; statements of account; evidence of payment.
§46A-2-117. Authorization to confess judgment prohibited.
§46A-2-118. No garnishment before judgment.
§46A-2-121. Unconscionability; inducement by unconscionable conduct.
§46A-2-122. Definitions.
§46A-2-130. Limitation on garnishment.

§46A-2-131. No discharge or reprisal because of garnishment.


§46A-2-103a. Lessor subject to claims and defenses arising from leases.

(a) The following provisions shall be applicable to claims and defenses of lessees arising from finance leases which are consumer leases or arising from sale and lease back agreements which include consumer leases:

(1) A lessor, other than the issuer of a credit card who, with respect to a particular transaction, makes a consumer lease for the purpose of enabling a lessee to lease goods or services, other than primarily for an agricultural purpose, is subject to all claims and defenses of the lessee against the supplier arising from that specific lease of goods or services if the lessor participates in or is connected with the lease transaction. A lessor is considered to be connected with the lease transaction if:

(A) The lessor and the supplier have arranged for a commission or brokerage or referral fee for the agreement to lease by the lessor;

(B) The lessor is a person related to the supplier unless the relationship is remote or is not a factor in the transaction;

(C) The supplier guarantees the payments or otherwise assumes the risk of loss by the lessor upon the lease other than a risk of loss arising solely from the lessor's failure to perfect a lien if necessary;

(D) The lessor directly supplies the supplier with documents used by the lessee to evidence the transaction, or the supplier directly supplies the lessor with documents used by the lessee to evidence the transaction;

(E) The lease is conditioned upon the lessee's lease of the goods or services from the particular supplier, but the lessor's payment of proceeds of the lease to the supplier does not in itself establish that the lease was so conditioned;
(F) The supplier in such sale has specifically recom-
ments such lessor by name to the lessee, and the lessor
has made ten or more leases to lessees within a period of
twelve months, within which period the lease in question
was made, for goods or services supplied by the supplier
or a person related to the supplier, if in connection with
such other ten or more leases, the supplier also specifically
recommended such lessor by name to the lessees involved;
or

(G) The supplier was the issuer of a credit card other
than a lender credit card which may be used by the lessee
in the transaction as a result of a prior agreement between
the issuer and the supplier.

(b) The total of all claims and defenses which a lessee
is permitted to assert against a lessor under the provisions
of this section shall not exceed the sums due to the lessor
for that lease, except (1) As to any claim or defense
founded in fraud: Provided, That as to any claim or de-
fense founded in fraud, the total sought shall not exceed
the total sum due or payable under the lease, and (2) for
any excess charges and penalties recoverable under sec-
tion one hundred one, article five of this chapter.

(c) An agreement may not limit or waive the claims
and defenses of a lessee under this section.

(d) "Lender credit card" as used in this section means
an arrangement or loan agreement, other than a seller
credit card, pursuant to which a lender gives a debtor the
privilege of using the credit card in transactions which
entitle the user thereof to purchase goods or services from
at least one hundred persons not related to the issuer of
the lender credit card, out of which debt arises:

(1) By the lender's honoring a draft or similar order
for the payment of money drawn or accepted by the con-
sumer;

(2) By the lender's payment or agreement to pay the
consumer's obligation; or

(3) By the lender's purchase from the obligee of the
consumer's obligations.
(e) A claim or defense which a lessee may assert against a lessor under the provisions of this section may be asserted only as a defense to or setoff against a claim by the lessor: Provided, That if a lessee shall have a claim or defense which could be asserted under the provisions of this section as a matter of defense to or set off against a claim which is asserted by the lessor, then the lessee shall have the right to institute and maintain an action or proceeding seeking to obtain the cancellation, in whole or in part, of the obligation evidenced by the lease agreement or the release, in whole or in part, of any lien upon real or personal property securing the payment thereof: Provided, however, That any claim or defense founded in fraud, lack or failure of consideration, or in a violation of the provisions of this chapter as specified in section one hundred one, article five of this chapter, may be asserted by a lessee at any time, subject to the provisions of this code relating to limitation of actions.

(f) Nothing contained in this section shall be construed in any manner as affecting any transaction entered into prior to the operative date of this chapter.

(g) Notwithstanding any provisions of this section, a lessor shall not be subject to any claim or defense arising from or growing out of personal injury or death resulting therefrom, or damage to property.

(h) Nothing contained in this section shall be construed as affecting any lessee's right of action, claim or defense which is otherwise provided in this code or at common law.

§46A-2-104. Notice to cosigners.

(a) No person shall be held liable as cosigner, or be charged with personal liability for payment in a consumer credit sale, consumer lease or consumer loan unless that person, in addition to and before signing any instrument evidencing the transaction, signs and receives a separate notice which clearly explains his liability in the event of default by the consumer and also receives a copy of any disclosure required by the "Federal Consumer Credit Protection Act."
(b) Such notice shall be sufficient in a consumer credit sale or consumer loan if it appears under the conspicuous caption "NOTICE TO COSIGNER" and contains substantially the following language:

"You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay it if you have to, and that you want to accept this responsibility."

"You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount."

"The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record."

"This notice is not the contract that makes you liable for the debt."

The caption shall be typewritten or printed in at least twelve point bold upper case type. The body of the notice shall be typewritten or printed in at least eight point regular type, in upper or lower case, where appropriate.

(c) Such notice shall be sufficient in a consumer lease transaction if it appears under the conspicuous caption "NOTICE TO COSIGNER" and contains substantially the following language:

"You are being asked to guarantee this lease. Think carefully before you do. If the lessee doesn't pay, you will have to. Be sure you can afford to pay it if you have to, and that you want to accept this responsibility."

"You may have to pay up to the full amount if the lessee does not pay. You may also have to pay late fees or collection costs, which increase this amount."
"The creditor can collect this debt from you without first trying to collect from the lessee. The creditor can use the same collection methods against you that can be used against the lessee, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record."

"This notice is not the contract which makes you liable for the debt."

The caption shall be typewritten or printed in at least twelve point bold upper case type. The body of the notice shall be typewritten or printed in at least eight point regular type, in upper or lower case, where appropriate.

§46A-2-106. Notice of consumer’s right to cure default; cure; acceleration.

After a consumer has been in default on any installment obligation or any other secured obligation for five days for failure to make a scheduled payment or otherwise perform pursuant to such a consumer credit sale, consumer lease or consumer loan other than with respect to a covenant to provide insurance for or otherwise to protect and preserve the property covered by a security interest, the creditor may give him notice of such fact in the manner provided for herein. Actual delivery of such notice to a consumer or delivery or mailing of same to the last known address of the consumer is sufficient for the purpose of this section. If given by mail, notice is given when it is deposited in a mailbox properly addressed and postage prepaid. Notice shall be in writing and shall conspicuously state the name, address and telephone number of the creditor to whom payment or other performance is owed, a brief description of the transaction, the consumer's right to cure such default and the amount of payment and other required performance and date by which it must be paid or accomplished in order to cure the default. A copy of the notice required by this section shall be (i) Retained by the creditor, (ii) certified in the manner prescribed by this section by an officer or other authorized representative of such creditor, and (iii) notarized by a person licensed as a notary under the laws of the state of West Virginia or any other state or territory of the United States. The certifica-
tion required by this section shall substantially conform to
the following language:

"I, ___________________________ (name of
person certifying),

the ___________________________ (title of per-
son certifying)

of ___________________________ (creditor's name),

hereby certify that the notice of the consumer's right to
cure default on which this certification appears (or to
which this certification is attached) was on this ________
day of ________________, 19____, mailed to the per-
son(s) whose name(s) appear herein (therein) at the ad-
dress(es) set forth herein (therein).

__________________________________________

(Signature)

Except as hereinafter provided in this section, after a
default on any installment obligation or any other secured
obligation other than with respect to a covenant to provide
insurance for or otherwise to protect and preserve the
property covered by a security interest or lease, a creditor
may not accelerate maturity of the unpaid balance of any
such installment obligation or any other such secured
obligation, commence any action or demand or take pos-
session of collateral on account of default until ten days
after notice has been given to the consumer of his right to
cure such default. Until such period expires, the consum-
er shall have the right to cure any default by tendering the
amount of all unpaid sums due at the time of the tender,
without acceleration, plus any unpaid delinquency or
deferral charges and by tendering any other performance
necessary to cure such default. Any such cure shall re-
store a consumer to all his rights under the agreement the
same as if there had been no default. A consumer who
has been in default three or more times on the same obli-
gation and who has been given notice of such fact three or
more times shall not have the right to cure a default under
this section even though previous defaults have been cured
and his creditor's right to proceed against him and his
collateral shall not be impaired or limited in any way by
this section. There shall be no acceleration of the maturi-
ty of all or part of any amount owing in such a consumer
credit sale, consumer lease or consumer loan, except where
nonperformance specified in the agreement as constituting
default has occurred.


A consumer is authorized to pay the original creditor
until he receives notification of assignment of rights to
payment pursuant to a consumer credit sale, consumer
lease or a consumer loan and that payment is to be made
to the assignee. A notification which does not reasonably
identify the rights assigned is ineffective. If requested by
the consumer, the assignee must seasonably furnish rea-
sonable proof that the assignment has been made and
unless he does so the consumer may pay the original cred-
itor.

§46A-2-114. Receipts; statements of account; evidence of pay-
ment.

(1) The creditor shall deliver or mail to the consumer,
without request, a written receipt for each payment by coin
or currency on an obligation pursuant to a consumer
credit sale, consumer lease or consumer loan. A periodic
statement showing a payment received complies with this
subsection.

(2) Upon written request of a consumer, the person to
whom an obligation is owed pursuant to a consumer credit
sale, consumer lease or consumer loan, other than one
pursuant to a revolving charge account or revolving loan
account, shall provide a written statement of the dates and
amounts of payments made within the past twelve months
and the total amount unpaid. The requested statement
shall be provided without charge once during each year of
the term of the sale, lease or loan. If additional statements
are requested the creditor may charge not in excess of
three dollars for each additional statement.

(3) After a consumer has fulfilled all obligations with
respect to a consumer credit sale, consumer lease or con-
sumer loan, other than one pursuant to a revolving charge
account or revolving loan account, the person to whom the
obligation was owed shall, upon the request of the con-
sumer, deliver or mail to the consumer written evidence
acknowledging payment in full of all obligations with
respect to the transaction.


1 (1) The maximum part of the aggregate disposable
2 earnings of an individual for any workweek which may be
3 subjected to any one or more assignments of earnings for
4 the payment of a debt or debts arising from one or more
5 consumer credit sales, consumer leases or consumer loans,
6 or one or more sales as defined in section one hundred
two, article six of this chapter, may not exceed twenty-five
percent of his disposable earnings for that week.

2 (2) As used in this section:

3 (a) "Disposable earnings" means that part of the earn-
ings of an individual remaining after the deduction from
those earnings of amounts required by law to be withheld;
and

4 (b) "Assignment of earnings" includes all forms of
assignments, deductions, transfers, or sales of earnings to
another, either as payment or as security, and whether
stated to be revocable or nonrevocable, and includes any
deductions authorized under the provisions of section
three, article five, chapter twenty-one of this code, except
deductions for union or club dues, pension plans, payroll
savings plans, charities, stock purchase plans and hospital-
ization and medical insurance.

5 (3) Any assignment of earnings and any deduction
under said section three, article five, chapter twenty-one of
this code shall be revocable by the employee at will at any
time, notwithstanding any provision to the contrary.

6 (4) The priority of multiple assignments of earnings
shall be according to the date and time of each such as-

ignment.

§46A-2-117. Authorization to confess judgment prohibited.

1 A consumer may not authorize any person to confess
2 judgment on a claim arising out of a consumer credit sale,
consumer lease or a consumer loan. An authorization in
violation of this section is void. The provisions of this
section shall not be construed as in any way impliedly
authorizing a confession of judgment in any other type of
transaction.

§46A-2-118. No garnishment before judgment.

Prior to entry of judgment in an action against the
debtor for debt arising from a consumer credit sale, con-
sumer lease or a consumer loan, the creditor may not
attach unpaid earnings of the debtor by garnishment or
like proceedings. The provisions of this section shall not
be construed as in any way impliedly authorizing garnish-
ment before judgment in any other type of transaction.

§46A-2-121. Unconscionability; inducement by unconscion-
able conduct.

(1) With respect to a transaction which is or gives rise
to a consumer credit sale, consumer lease or consumer
loan, if the court as a matter of law finds:

(a) The agreement or transaction to have been uncon-
scionable at the time it was made, or to have been induced
by unconscionable conduct, the court may refuse to en-
force the agreement, or

(b) Any term or part of the agreement or transaction
to have been unconscionable at the time it was made, the
court may refuse to enforce the agreement, or may en-
force the remainder of the agreement without the uncon-
scionable term or part, or may so limit the application of
any unconscionable term or part as to avoid any uncon-
scionable result.

(2) If it is claimed or appears to the court that the
agreement or transaction or any term or part thereof may
be unconscionable, the parties shall be afforded a reason-
able opportunity to present evidence as to its setting, pur-
pose and effect to aid the court in making the determina-
tion.

(3) For the purpose of this section, a charge or prac-
tice expressly permitted by this chapter is not unconscio-
nable.
§46A-2-122. Definitions.

For the purposes of this section and sections one hundred twenty-three, one hundred twenty-four, one hundred twenty-five, one hundred twenty-six, one hundred twenty-seven, one hundred twenty-eight, one hundred twenty-nine, and one hundred twenty-nine-a of this article, the following terms shall have the following meanings:

(a) "Consumer" means any natural person obligated or allegedly obligated to pay any debt.

(b) "Claim" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or service which is the subject of the transaction is primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment.

(c) "Debt collection" means any action, conduct or practice of soliciting claims for collection or in the collection of claims owed or due or alleged to be owed or due by a consumer.

(d) "Debt collector" means any person or organization engaging directly or indirectly in debt collection. The term includes any person or organization who sells or offers to sell forms which are, or are represented to be, a collection system, device or scheme, and are intended or calculated to be used to collect claims.

§46A-2-130. Limitation on garnishment.

(1) For the purposes of the provisions in this chapter relating to garnishment:

(a) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld; and

(b) "Garnishment" means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is sub-
The amount by which his disposable earnings for that week exceed thirty times the federal minimum hourly wage prescribed by section 6(a) (1) of the "Fair Labor Standards Act of 1938," U.S.C. Title 19, Sec. 206(a)(1), in effect at the time the earnings are payable.

(c) In the case of earnings for a pay period other than a week, the commissioner shall prescribe by rule a multiple of the federal minimum hourly wage equivalent in effect to that set forth in subdivision (b), subsection (2) of this section.

(3) No court may make, execute or enforce an order or process in violation of this section. Any time after a consumer's earnings have been executed upon pursuant to article five-a or article five-b, chapter thirty-eight of this code by a creditor resulting from a consumer credit sale, consumer lease or consumer loan, such consumer may petition any court having jurisdiction of such matter or the circuit court of the county wherein he resides to reduce or temporarily or permanently remove such execution upon his earnings on the grounds that such execution causes or will cause undue hardship to him or his family. When such fact is proved to the satisfaction of such court, it may reduce or temporarily or permanently remove such execution.

(4) No garnishment governed by the provisions of this section will be given priority over a voluntary assignment of wages to fulfill a support obligation, a garnishment to collect arrearages in support payments, or a notice of withholding from wages of amounts payable as support, notwithstanding the fact that the garnishment in question or the judgment upon which it is based may have preceded the support-related assignment, garnishment, or notice of withholding in point of time or filing.
§46A-2-131. No discharge or reprisal because of garnishment.

No employer shall discharge or take any other form of reprisal against an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment arising from a consumer credit sale, consumer lease or consumer loan.


Any consumer residing in this state may set apart and hold personal property to be exempt from execution or other judicial process resulting from consumer credit transactions or consumer leases, except for the purchase money due on such property, in such amounts as follows:

1. Clothing and other wearing apparel of the consumer, his spouse and any dependents of such consumer, not to exceed the fair market value of two hundred dollars; furniture, appliances, furnishings and fixtures regularly used for family purposes in the consumer's residence, to the extent of the fair market value of one thousand dollars; children's books, pictures, toys and other such personal property of children; all medical health equipment used for health purposes by the consumer, his spouse and any dependent of such consumer; tools of trade, including any income-producing property used in the consumer's principal occupation, to the extent of the fair market value of one thousand dollars; and any policy of life or endowment insurance which is payable to the spouse or children of the insured consumer or to a trustee for their benefit, except the cash value of any accrued dividends thereon.

When a consumer claims personal property as exempt under the provisions of this section, he shall deliver a list containing all the personal property owned or claimed by him and all items of such property he claims as exempt hereunder, with the value of each separate item listed according to his best knowledge, to the officer holding the execution or other such process. Such list shall be sworn to by affidavit. If the value of the property named in such list exceeds the amounts specified in this section, the con-
sumer shall state at the foot thereof what part of such property he claims as exempt. If such value does not exceed the amounts specified in this section, the claim of exemption shall be held to extend to the whole thereof without stating more and, if no appraisement is demanded, the property so claimed shall be set aside as exempt. Where the consumer owning exempt property is absent or incapable of acting or neglects or declines to act hereunder, the claim of exemption may be made, the list delivered and the affidavit made by his spouse with the same effect as if the owner had done so. Upon receipt of such a list, the officer to whom it is given shall immediately exhibit such list to the creditor or his agent or attorney. The rights granted and procedures provided for in article eight, chapter thirty-eight of this code shall apply to any proceeding under this section, except that the provisions of sections one and three of such article shall not apply.

ARTICLE 6. GENERAL CONSUMER PROTECTION.

§46A-6-102. Definitions.

When used in this article the following words, terms and phrases, and any variations thereof required by the context, shall have the meaning ascribed to them in this article, except where the context indicates a different meaning:

(a) "Advertisement" means the publication, dissemination or circulation of any matter, oral or written, including labeling, which tends to induce, directly or indirectly, any person to enter into any obligation, sign any contract, or acquire any title or interest in any goods or services and includes every word device to disguise any form of business solicitation by using such terms as "renewal," "invoice," "bill," "statement" or "reminder," to create an impression of existing obligation when there is none, or other language to mislead any person in relation to any sought-after commercial transaction.

(b) "Consumer" means a natural person to whom a sale or lease is made in a consumer transaction, and a "consumer transaction" means a sale or lease to a natural per-
son or persons for a personal, family, household or agri-
cultural purpose.

(c) "Merchantable" means, in addition to the qualities
prescribed in section three hundred fourteen, article two,
chapter forty-six of this code, that the goods conform in
all material respects to applicable state and federal statutes
and regulations establishing standards of quality and safety
of goods and, in the case of goods with mechanical,
electrical or thermal components, that the goods are in
good working order and will operate properly in normal
usage for a reasonable period of time.

(d) "Sale" includes any sale, offer for sale or attempt to
sell any goods for cash or credit or any services or offer
for services for cash or credit.

(e) "Trade" or "commerce" means the advertising,
offering for sale, sale or distribution of any goods or ser-
vice and shall include any trade or commerce, directly or
indirectly, affecting the people of this state.

(f) "Unfair methods of competition and unfair or
deceptive acts or practices" means and includes, but is not
limited to, any one or more of the following:

1. Passing off goods or services as those of another;

2. Causing likelihood of confusion or of misunder-
standing as to the source, sponsorship, approval or certifi-
cation of goods or services;

3. Causing likelihood of confusion or of misunder-
standing as to affiliation, connection or association with, or
certification by another;

4. Using deceptive representations or designations of
geographic origin in connection with goods or services;

5. Representing that goods or services have sponsor-
ship, approval, characteristics, ingredients, uses, benefits or
quantities that they do not have, or that a person has a
sponsorship, approval, status, affiliation or connection that
he does not have;

6. Representing that goods are original or new if they
are deteriorated, altered, reconditioned, reclaimed, used or
secondhand;
(7) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;

(8) Disparaging the goods, services or business of another by false or misleading representation of fact;

(9) Advertising goods or services with intent not to sell them as advertised;

(10) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(11) Making false or misleading statements of fact concerning the reasons for, existence of or amounts of price reductions;

(12) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding;

(13) The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby;

(14) Advertising, printing, displaying, publishing, distributing or broadcasting, or causing to be advertised, printed, displayed, published, distributed or broadcast in any manner, any statement or representation with regard to the sale of goods or the extension of consumer credit including the rates, terms or conditions for the sale of such goods or the extension of such credit, which is false, misleading, or deceptive, or which omits to state material information which is necessary to make the statements therein not false, misleading or deceptive;

(15) Representing that any person has won a prize, one of a group of prizes or any other thing of value, if receipt of the prize or thing of value is contingent upon any payment of a service charge, mailing charge, handling charge or any other similar charge by the person or upon mandatory attendance by the person at a promotion or
sales presentation at the seller's place of business or any other location: Provided, That a person may be offered one item or the choice of several items conditioned on the person listening to a sales promotion or entering a consumer transaction if the true retail value and an accurate description of the item or items are clearly and conspicuously disclosed along with the person's obligations upon accepting the item or items; such description and disclosure shall be typewritten or printed in at least eight point regular type, in upper or lower case, where appropriate; or

(16) Violating any provision or requirement of article six-b of this chapter.

(g) "Warranty" means express and implied warranties described and defined in sections three hundred thirteen, three hundred fourteen and three hundred fifteen, article two, chapter forty-six of this code and expressions or actions of a merchant which assure the consumer that the goods have described qualities or will perform in a described manner.

ARTICLE 7. ADMINISTRATION.

§46A-7-102. Power of attorney general; reliance on rules of attorney general or commissioner of banking; duty to report.

§46A-7-109. Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.

§46A-7-102. Power of attorney general; reliance on rules of attorney general or commissioner of banking; duty to report.

(1) In addition to other powers granted by this chapter, the attorney general within the limitations provided by law may:

(a) Receive and act on complaints, take action designed to obtain voluntary compliance with this chapter or commence proceedings on his own initiative;

(b) Counsel persons and groups on their rights and duties under this chapter;

(c) Establish programs for the education of consumers with respect to credit and leasing practices and problems;
(d) Make studies appropriate to effectuate the purposes and policies of this chapter and make the results available to the public;

(e) Adopt, amend and repeal such reasonable rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, as are necessary and proper to effectuate the purposes of this chapter and to prevent circumvention or evasion thereof; and

(f) Delegate his powers and duties under this chapter to qualified personnel in his office, who shall act under the direction and supervision of the attorney general and for whose acts he shall be responsible.

(2) Except for refund of an excess charge, no liability is imposed under this chapter for an act done or omitted in conformity with a rule of the attorney general or commissioner, notwithstanding that after the act or omission the rule may be amended or repealed or be determined by judicial or other authority to be invalid for any reason. Any form or procedure which has been submitted to the commissioner and the attorney general in writing and approved in writing by them shall not be deemed a violation of the penalty provisions of this chapter notwithstanding that such approval may be subsequently amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(3) Except for refund of an excess charge, in any action brought pursuant to the provisions of this chapter, it shall be a defense that the act or omission complained of was in conformity with a published opinion of the attorney general issued in compliance with section one, article three, chapter five of this code or in conformity with an examination report issued by the commissioner to the person against whom the action is brought pursuant to section six, article two, chapter thirty-one-a of this code, or a declaratory ruling issued to the person against whom the action is brought pursuant to subdivision (9), subsection (c), section four of said article.

(4) On or before the first day of December of each year, the attorney general and commissioner shall jointly
or separately submit a report or reports to the governor
and to the Legislature on the operation of their offices, on
the use of consumer credit and on consumer protection
problems in the state, and on the problems of persons of
small means obtaining credit from persons regularly en-
engaged in extending sales or loan credit. For the purpose
of making such report or reports, the attorney general and
commissioner are authorized to conduct research and
make appropriate studies. The report or reports shall
include a description of the examination and investigation
procedures and policies of their offices, a statement of
policies followed in deciding whether to investigate or
examine the offices of credit suppliers subject to this
chapter, a statement of the number and percentages of
offices which are periodically investigated or examined, a
statement of the types of consumer credit and consumer
protection problems of both creditors and consumers
which have come to their attention through their examina-
tions and investigations and the disposition of them under
existing law, and a general statement of the activities of
their offices and of others to promote the purposes of this
chapter.

§46A-7-109. Injunctions against unconscionable agreements
and fraudulent or unconscionable conduct.

(1) The attorney general may bring a civil action to
restrain a creditor or a person acting in his behalf from
engaging in a course of:

(a) Making or enforcing unconscionable terms or
provisions of consumer credit sales, consumer leases or
consumer loans;

(b) Fraudulent or unconscionable conduct in induc-
ing consumers to enter into consumer credit sales, con-
sumer leases or consumer loans; or

(c) Fraudulent or unconscionable conduct in the
collection of debts arising from consumer credit sales,
consumer leases or consumer loans.

(2) In an action brought pursuant to this section the
court may grant relief only if it finds:
(a) That the respondent has made unconscionable agreements or has engaged or is likely to engage in a course of fraudulent or unconscionable conduct;

(b) That the agreements or conduct of the respondent have caused or are likely to cause injury to consumers; and

(c) That the respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are credit or lease transactions.

(3) In applying this section, consideration shall be given to each of the following factors, among others:

(a) Belief by the creditor at the time consumer credit sales, consumer leases or consumer loans are made that there was no reasonable probability of payment in full of the obligation by the debtor;

(b) In the case of consumer credit sales, knowledge by the seller at the time of the sale of the inability of the buyer to receive substantial benefits from the property or services sold;

(c) In the case of consumer credit sales, gross disparity between the price of the property or services sold and the value of the property or services measured by the price at which similar property or services are readily obtainable in credit transactions by like buyers;

(d) The fact that the creditor contracted for or received separate charges for insurance with respect to consumer credit sales, consumer leases or consumer loans with the effect of making the sales or loans, considered as a whole, unconscionable; and

(e) The fact that the respondent has knowingly taken advantage of the inability of the debtor reasonably to protect his interests by reason of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement, or similar factors.

(4) In an action brought pursuant to this chapter, a charge or practice expressly permitted by this chapter is not unconscionable.
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, all relating to legislative rules; authorizing specific regulations relating to higher education, including higher education report cards and contracts and consortium agreements with public schools, private schools or private industry.

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, all 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.

(i) The legislative rules filed in the state register on the fourth day of December, one thousand nine hundred ninety-five, 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 fifteenth day of February, one thousand nine hundred
ninety-six, relating to the board of trustees (higher education report card), 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.

(j) The legislative rules filed in the state register on the eighteenth day of April, one thousand nine hundred ninety-five, relating to the board of directors (contracts and consortium agreements with public schools, private schools or private industry), are authorized.

(k) The legislative rules filed in the state register on the seventeenth day of November, one thousand nine hundred ninety-five, 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 fourth day of January, one thousand nine hundred ninety-six, relating to the board of directors (higher education report cards), are authorized.
AN ACT to amend and reenact section twelve, article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the disapproval of proposed legislative rules by the Legislature.

Be it enacted by the Legislature of West Virginia:

That section 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 to read as follows:

ARTICLE 3. RULE MAKING.

§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 during its regular session disapproves 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, except that the agency may resubmit the same or similar proposed rule to the legislative rule-making review committee in accordance with the provisions of section eleven of this article.

(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) As a part of any act that amends chapter sixty-four of this code, authorizing the promulgation of a proposed legislative rule or rules, the Legislature may also provide, by general language or with specificity, for the disapproval of rules not approved or acted upon by the Legislature.

(f) 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.

(g) 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 163

(Com. Sub. for H. B. 4224—By Delegates Douglas, Gallagher, Faircloth, Compton, Linch and Riggs)

[Passed March 9, 1996; in effect from passage. Approved by the Governor.]
emission standards for hazardous air pollutants, as filed; authorizing the division of environmental protection to promulgate legislative rules relating to 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 filed; authorizing the division of environmental protection to promulgate legislative rules relating to underground storage tanks, as modified; authorizing division of environmental protection to promulgate legislative rules relating to hazardous waste management regulations, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to surface mining and reclamation regulations, as modified and amended; authorizing the division of environmental protection to promulgate legislative rules relating to coalbed methane wells, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to waste tire management, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to sewage sludge management, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to sewage sludge management, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to prevention and control of air pollution from the emission of volatile organic compounds, as amended; authorizing the division of environmental protection to promulgate legislative rules relating to monitoring well design standards, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to solid waste management, as modified and amended; authorizing the environmental quality board to promulgate legislative rules relating to requirements governing water quality standards as modified and amended; authorizing the solid waste management board to promulgate legislative rules relating to development of comprehensive litter and solid waste control plans, as modified.

Be it enacted by the Legislature of West Virginia:

That section one, article one, and sections one and two, article three, all of chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:
ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.

§64-1-1. Legislative authorization.

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 eleven 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 eleven 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 eleven 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. All proposed legislative rules for which bills of authorization have been introduced in the Legislature not specifically authorized under articles two through eleven of this chapter are disapproved by the Legislature.

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 twenty-eighth day of July, one thousand nine hundred ninety-five, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the division of environmental protection (emission standards for hazardous air pollutants pursuant to 40 CFR Part 63, 45CSR34), are authorized.

(b) The legislative rules filed in the state register on the twenty-eighth day of July, one thousand nine hundred
ninety-five, authorized under the authority of section four, article five, chapter twenty-two of this code, 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-seventh day of October, 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, 45CSR25), are authorized.

(c) The legislative rules filed in the state register on the twenty-eighth day of July, one thousand nine hundred ninety-five, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the division of environmental protection (acid rain provisions and permits, 45CSR33), are authorized.

(d) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section six, article seventeen, chapter twenty-two of this code, 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 eighteenth day of January, one thousand nine hundred ninety-six, relating to the division of environmental protection (underground storage tanks, 47CSR36), are authorized.

(e) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section six, article eighteen, chapter twenty-two of this code, 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 eighteenth day of January, one thousand nine hundred ninety-six, relating to the division of environmental protection (hazardous waste management regulations, 47CSR35), are authorized.

(f) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section four, article three, chapter twenty-two of this code, modified by the division of environmental protection to meet the ob-
jections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of January, one thousand nine hundred ninety-six, relating to the division of environmental protection (surface mining and reclamation regulations, 38CSR2), are authorized with the following amendments:

"On page 64, section 3.27, after the word 'Director' by striking out the word 'may' and inserting in lieu thereof the word 'shall';

On page 64, section 3.27, after the word 'completed' by striking out the remainder of the first paragraph and inserting in lieu thereof the following words:

'and reclamation activities are ongoing.'

On page 156, section 11.6(c)(6)(A) after the word 'operations' by striking out the words 'within five (5) years of the date of SMA approval,';

On page 156, section 11.6(c)(6)(B) after the word '(95-87)' by striking out the words 'within five (5) years of the date of SMA approval,';

On page 157, section 11.6(c)(6)(C) after the word 'State' by striking out the words 'within five (5) years of the date of SMA approval,';

On page 163, section 11.6(d)(6)(A), after the word 'applicant' by striking out the words 'within five (5) years of the date of SMA approval,';

On page 164, section 11.6(d)(6)(B), after the word '95-87' by striking out the words 'within five (5) years of the date of SMA approval,';

On page 164, section 11.6(d)(6)(C), after the word 'wetlands' by striking out the words 'within five (5) years of the date of SMA approval,';

On page 169, section 11.6(e)(5)(A), after the word '95-87' by striking out the words 'within five (5) years of the date of SMA approval,';
On page 169, section 11.6(e)(5)(B), after the word 'wetlands' by striking out the words 'within five (5) years of the date of SMA approval,'

On page 175, section 11.6(f)(5)(A), after the word '95-87', by striking out the words 'within five (5) years of the date of SMA approval,'

On page 175, section 11.6(f)(5)(B), after the word 'enhancement' by striking out the words 'of wetlands within five (5) years of the date of SMA approval,'

On page 178, section 12.2 subsection (e) by striking 12.2.e in its entirety and inserting in lieu thereof the following:

'Notwithstanding any other provisions of this rule, no bond release or reduction will be granted if, at the time, water discharged from or affected by the operation requires chemical treatment in order to comply with applicable effluent limitations or water quality standards: Provided, That the Director may approve a request for Phase I but not Phase II or III, release if the applicant demonstrates to the satisfaction of the Director that either:

(A) The remaining bond is adequate to assure long term treatment of the drainage; or

(B) The operator has irrevocably committed other financial resources which are adequate to assure long term treatment of the drainage: Provided, That the alternate financial resources must be in acceptable form, and meet the standards set forth in Section 11 of the Act and Section 11 of this rule: Provided, however, That the alternate financial arrangements shall provide a mechanism whereby the Director can assume management of the resources and treatment work in the event that the operator defaults for any reason: And provided further, That default on a treatment obligation under this paragraph shall be considered equivalent to a bond forfeiture, and the operator will be subject to penalties and sanctions, including permit blocking, as if a bond forfeiture had occurred.
In order to make such demonstration as referenced above, the applicant shall address, at a minimum, the current and projected quantity and quality of drainage to be treated, the anticipated duration of treatment, the estimated capital and operating cost of the treatment facility, and the calculations which demonstrate the adequacy of the remaining bond or of the alternate financial resources.

On page sixteen, section 38-2-2.106, after the words 'sum of the loading' by inserting the words 'or driving'; and by striking out the words 'in a constructed valley fill, backfill, dam, or refuse pile' and inserting in lieu thereof the words 'as determined by acceptable engineering practices';

On page twenty-eight, section 38-2-3.2(e), after the words 'limited number of minor changes' by inserting the words 'that do not significantly affect the health, safety or welfare of the public and';

On page thirty-six, section 38-2-3.6(h)(5), after the words 'as defined in' by striking out the words 'Article 5D of Chapter 20' and inserting in lieu thereof the words 'Article 14 of Chapter 22';

On page thirty-nine, section 38-2-3.8(c), at the end after the words 'reasonable time for compliance.', by inserting a new sentence to read as follows: 'Provided, That those structures and facilities, where it can be demonstrated that reconstruction or revision would result in greater environmental harm and the performance standards set forth in the Act and these regulations can otherwise be met, may be exempt from revision or reconstruction.';

On page one hundred seventy-eight, section 38-2-12.2(d), after the words 'until all coal extraction operations' by inserting the words 'for the permit or increment thereof', and after the words 'the entire disturbed area' by inserting the words 'for the permit or increment thereof';

On page one hundred ninety-seven, section 38-2-14.3(c)(2), after the words 'medium is the best' by inserting the word 'reasonably';
And,

On page two hundred fifteen, section 38-2-14.14(e)(4), by striking the sentence 'Runoff from areas above and adjacent to the fill shall not be allowed to flow onto the fill surface, and shall be diverted into stabilized diversion channels, designed and constructed to safely pass the peak runoff from a 100 year, 24 hour precipitation event.' and inserting in lieu thereof the sentences '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.'

(g) The legislative rules filed in the state register on the twenty-sixth day of July, one thousand nine hundred ninety-five, authorized under the authority of section four, article twenty-one, chapter twenty-two of this code, 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 fourteenth day of December, one thousand nine hundred ninety-five, relating to the division of environmental protection (coalbed methane wells, 38CSR23), are authorized.

(h) The legislative rules filed in the state register on the twenty-third day of November, one thousand nine hundred ninety-four, authorized under the authority of section eight, article eleven, chapter twenty of this code, 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 twentieth day of December, one thousand nine hundred ninety-five, relating to the division of environmental protection (waste tire management, 47CSR38G), are authorized.

(i) The legislative rules filed in the state register on the twenty-second day of June, one thousand nine hundred ninety-five, authorized under the authority of section twenty, article fifteen, chapter twenty-two of this code,
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-second day of December, one thousand nine hun-
dred ninety-five, relating to the division of environmental
protection (sewage sludge management, 47CSR38D), are
authorized with the amendments set forth below:

On page seven, section 3.2.2, by striking out the words
"Table 3 of this rule will automatically be repealed and
replaced with Table 3A of this rule on December 31,
1997, unless this provision is modified prior to that date."
;
And,

On page seven, section 3.2.2, after the word "rule," by
inserting the following: The director is authorized until
Dec. 31, 1999, to issue variances to this section to allow
land application to soils which exceed the maximum soil
concentrations of metals listed in Table 3 where soil analy-
ses demonstrate that other soil factors, including, but not
limited to, soil pH, cation exchange capacity, organic mat-
ter content, or clay content, will limit mobility and avail-
ability of the metals. No later than June 30, 1999, the
director shall propose revisions to Table 3 to adequately
protect soil quality, human health and the environment,

And,

On page 20, by striking the following from Table 3:
"NOTE: Table 3 of this rule will automatically be re-
pealed and replaced with Table 3A of this rule on Decem-
ber 31, 1997, unless the provision of paragraph 3.2.2 of
this rule is modified prior to that date."

And,

On page 21, by striking out all of Table 3A.

(j) The legislative rules filed in the state register on the
thirty-first day of July, one thousand nine hundred
ninety-five, authorized under the authority of section four,
article five, chapter twenty-two of this code, relating to the
division of environmental protection (to prevent and con-
trol of air pollution from the emission of volatile organic
compounds, 45CSR21), are authorized with the following amendment:

"On pages 170 and 171, by striking out section 40 in its entirety and inserting in lieu thereof a new section 40, to read as follows:

§45-21-40. Other Facilities that Emit Volatile Organic Compound (VOC).

40.1. Applicability.

a. This section 40. applies to any facility that has aggregate maximum theoretical emissions of 90.7 megagrams (mg) (100 tons) or more of volatile organic compounds (VOCs) per calendar year in the absence of control devices; provided that this section 40. applies to any sources or sources within such facility other than those sources subject to regulation under sections 11. through 39. VOC emissions from sources regulated under sections 11. through 39., but which fall below the applicability thresholds of these sections, and thus are not subject to the emissions control standards of these sections, shall be included in the determination of maximum theoretical emissions for a facility but shall not be subject to the requirements of this section 40. Emissions from sources listed in section 40.1.d. shall not be included in the determination of maximum theoretical emissions for a facility.

b. The owner or operator of a coating line or operation, whose emissions are below this applicability threshold, shall comply with the certification, recordkeeping, and reporting requirements of section 40.6.a.

c. The owner or operator of a non-coating source, whose emissions are below this applicability threshold, shall comply with the certification, recordkeeping, and reporting requirements of section 40.6.b.

d. The requirements of this section 40. shall not apply to coke ovens (including by-product recovery plants), fuel combustion sources, barge loading facilities, jet engine test cells, vegetable oil processing facilities, wastewater treatment facilities, iron and steel production, surface impoundments, pits; and boilers, industrial furnaces, and
incinerators having a destruction efficiency of 95 percent or greater.

e. The requirements of this section 40. shall not apply to any facility bound by an order or permit, enforceable by the Director, which limits the facility's emissions to less than 100 tons of VOC per calendar year without the application of control devices.

40.2. Definitions. — As used in this section 40., all terms not defined herein shall have the meaning given to them in section 2.

a. 'Reasonably available control measures' (also denoted as RACM) means an emission limit or limits that reflect the application of control technology and/or abatement techniques or measures that are reasonably available, considering technological and economic feasibility. Such emission limits may be considered on a plant-wide basis to achieve emission reduction requirements in the most cost effective manner.

b. "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

40.3. Standards. — The owner or operator of a facility subject to this section 40. shall:

a. Except as provided in section 40.3.b.,

1. With respect to any existing non-fugitive emission source which has maximum theoretical emissions of 6 pounds per hour or more, comply with an emission control plan established on a case-by-case basis approved by the Director that meets the definition of reasonably available control measures (RACM) and achieves at least a 90 percent reduction in emissions below the total (aggregate) maximum theoretical emissions from all such non-fugitive emission sources subject to RACM requirements; and

2. With respect to each process unit producing a product or products, intermediate or final, in excess of 1000 megagrams (Mg) (1,100 tons) per year, regardless of whether such product or products are listed in 40 CFR
310 60.489, comply with an emission control plan for fugitive
311 sources using the methods and criteria of section 37., or
312 alternative methods and criteria approved by the Director.
313 The Director may exempt a process unit from fugitive
314 emission control requirements upon satisfactory demon-
315 stration that emissions are of minor significance.
316
317 b. With respect to such sources as described in sections
318 40.3.a.1. and 40.3.a.2., comply with emission limits and
319 measures based upon an alternative emissions reduction
320 plan approved by the Director considering technical, eco-
321 nomic and air quality benefit considerations that, at a
322 minimum, maintains emission control measures incorpo-
323 rated as part of any federally approved maintenance plan
324 for the county or area in which the source is located.
325
c. With respect to any source at a facility subject to this
326 section 40., which source has maximum theoretical emis-
327 sions of 6 pounds per hour or more and is constructed,
328 modified or begins operating after the effective date of
329 this rule, comply with a control plan developed on a
330 case-by-case basis approved by the Director that meets the
331 definition of reasonably available control technology
332 (RACT) in section 2.60. for both fugitive and non-fugitive
333 emission sources.
334
335 40.4. Submissions and Approval of Control Plans
336 a. Within 90 days after the effective date of this rule,
337 the owner or operator of a facility subject to this section
338 40. shall submit any required amendments to the
339 case-by-case RACT control plans previously submitted to
340 the Director, that revise such control plans to meet the
341 definition of reasonably available control measures
342 (RACM).
343
344 b. Notwithstanding the provisions of section 9.2., the
345 owner or operator of a facility subject to this rule solely
346 due to this section 40., that requires a major process
347 change and/or major capital investment to comply with
348 RACM requirements, may petition the Director for an
349 additional extension beyond December 31, 1996, for
350 compliance certification, and the Director may grant such
351 extension when warranted. Provided however, such com-
 rural certification date shall be no later than July 31, 1997.

c. The Director shall not approve a RACM plan or an alternative emissions reduction plan under this section 40, unless such plan includes:

1. A commitment to develop and submit a complete RACT plan to the Director within 180 days of a finding by the Director that a violation of the National Ambient Air Quality Standard for ozone has occurred within the county or maintenance area in which the source is located; and

2. A commitment to achieving full implementation of RACT within 2 years of approval of the RACT plan by the Director.

d. A finding by the Director that a violation of the National Ambient Air Quality Standard for ozone has occurred shall be made based upon verification of a monitored ozone standard violation in the county or maintenance area in which the source is located. The three maintenance areas (the Huntington area, comprising Cabell and Wayne counties; the Charleston area, comprising Kanawha and Putnam counties; and the Parkersburg area, comprising Wood county) shall be treated separately and independently for any such finding(s).

e. All RACM control plans, RACT control plans, and alternative emissions reduction plans approved by the Director pursuant to this section 40, shall be embodied in a consent order or permit in accordance with 45CSR13 or 45CSR30, as required. A facility owner or operator may at any time petition the Director to approve revisions to these plans. The decision concerning said petition shall be issued by the Director in accordance with 45CSR13 or 45CSR30, as required, or a consent order. Any such revisions shall be subject to the public participation requirements of 45CSR13 or 45CSR30.

f. The owner or operator of a facility subject to this section 40, may submit for approval by the Director an
emission control plan that meets the definition of reasonably available control technology (RACT) in section 2.60.

40.5. Test methods and procedures. — The owner or operator of any source subject to this section 40. shall demonstrate compliance with section 40.3. by using the applicable test methods specified in sections 41. through 46 or by other means approved by the Director. Notwithstanding the requirements of section 41.1., EPA approval for alternate test methods to demonstrate compliance shall not be required for sources which are subject solely to emission control requirements specified in section 40.3.

40.6. Reporting and Recordkeeping Requirements for Exempt Non-Control Technique Guideline (CTG) Sources.

a. An owner or operator of a coating line or operation that is exempt from the emission limitations in section 40.3. shall comply with the certification, recordkeeping, and reporting requirements in section 4.2.

b. An owner or operator of a non-coating source that is exempt from the emission limitations in section 40.3. shall submit, upon request by the Director, records that document that the source is exempt from these requirements.

1. These records shall be submitted to the Director within 30 days from the date of request.

2. If such records are not made available, the source will be considered subject to the limits in section 40.3.

40.7. Reporting and Recordkeeping Requirements for Subject Non-CTG Coating Sources. — An owner or operator of a coating line or operation subject to this section 40. and complying with section 40.3. shall comply with the certification, recordkeeping, and reporting requirements in section 4.

40.8. Reporting and Recordkeeping Requirements for Subject Non-CTG, Non-Coating Sources.

a. The owner or operator of the subject VOC sources shall perform all testing and maintain the results of all tests
and calculations required under sections 40.3. and 40.5. to demonstrate that the subject source is in compliance.

b. The owner or operator of the subject VOC source shall maintain these records in a readily accessible location for a minimum of 3 years, and shall make these records available to the Director upon verbal or written request.

c. The owner or operator of any facility containing sources subject to this section 40. shall comply with the requirements in section 5. except that such requirements, as they apply to sources solely subject to this section 40., may be modified by the Director upon petition by the owner or operator. Any such modified requirements shall be embodied in the facility’s control plan (RACM, RACT or alternative plan) and reflected in the associated consent order or permit issued pursuant to 45CSR13 or 45CSR30."

(k) The legislative rules filed in the state register on the twenty-seventh day of July, one thousand nine hundred ninety-five, authorized under the authority of section five, article twelve, chapter twenty-two of this code, 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 seventeenth day of January, one thousand nine hundred ninety-six, relating to the division of environmental protection (monitoring well design standards, 47CSR60), are authorized.

(l) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section five, article fifteen, chapter twenty-two of this code, 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-fourth day of January, one thousand nine hundred ninety-six, relating to the division of environmental protection (solid waste management, 47CSR38), are authorized with the following amendments:

"On page 37, subdivision 3.8.4, after the words 'from the uppermost' by striking the word 'significant.'"
On page 142, by striking the existing subdivision 4.11.2.c.A and inserting in lieu thereof the following:

'4.11.2.c.A

The monitoring frequency for all constituents listed in Appendix I of this rule, must be at least twice a year during the active life of the facility, including closure and the post-closure periods. The director may require more frequent monitoring on a site-specific basis by considering aquifer flow rate and existing quality of the groundwater.'

On page 148, by striking the existing subdivision 4.11.3.i.A. and inserting in lieu thereof the following:

'4.11.3.i.A.

The director may consider an alternative groundwater protection standard in consultation with the environmental quality board pursuant to 47CSR57 for constituents for which water quality standards have not been established.'

On page 151, subdivision 4.11.5., by following the words 'any applicable groundwater quality protection standards' by inserting the words 'and/or background groundwater quality, pursuant to the requirements of the Groundwater Protection Act, WVC §22-12-1 et seq.'

On page 152, subdivision 4.11.6.b.A., by following the words 'Be protective of human health and the environment' inserting the words 'and maintain existing groundwater quality, pursuant to the requirements of the Groundwater Protection Act, WVC §22-12-1 et seq.'

On page 154, subdivision 4.11.6.d.B.(f), by striking the words 'Resource value of the aquifer' and inserting in lieu thereof the words 'The hydrogeologic characteristics of the facility and the surrounding land,'

On page 154, subdivision 4.11.6.d.B.(f).e by striking out the words "The hydrogeologic characteristics of the facility and surrounding land;"

And, by renumbering and relettering the remaining subdivisions of the rule.
On page 156, subdivision 4.11.7.a.A., by following the words 'Demonstrate compliance with' inserting the words 'the Groundwater Protection Act, WVC §22-12-1 et seq., and/or the"

And,

On page 173, subdivision 5.4.3, by adding the following sentence to the end of the subdivision: 'A class D facility other than a class D-1 solid waste facility shall not exceed two (2) acres in size.' 

§64-3-2. Environmental boards.

(a) The legislative rules filed by the environmental quality board in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, 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 nineteenth day of January, one thousand nine hundred ninety-six, relating to the environmental quality board (requirements governing water quality standards, 46CSR1), are authorized with the following amendments:

"On page one, section two, by deleting all of subsection 2.1;
On page one by renumbering the following subsection:
On page two, after subsection 2.1, by adding a new subsection 2.2 to read as follows:

'2.2. 'Cumulative' means a pollutant which increases in concentration in an organism by successive additions at different times or in different ways';
And,

On page eight, section five, after the words 'No mixing zones for human health criteria shall be' by striking out the remainder of subdivision c. and inserting in lieu there-
'established on a stream which has a seven (7) day, ten (10) year return frequency of 5 cfs or less.' "

(b) The legislative rules filed in the state register on the twenty-sixth day of July, one thousand nine hundred ninety-five, authorized under the authority of section six, article three, chapter twenty-two-c of this code, modified by the solid waste management board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of October, one thousand nine hundred ninety-five, relating to the solid waste management board (development of comprehensive litter and solid waste control plans, 54CSR3), are authorized.

CHAPTER 164

(Com. Sub. for H. B. 4229—By Delegates Douglas, Gallagher, Faircloth, Compton, Linch and Riggs)

[Passed March 9, 1996; 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; 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 certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee, as amended by the Legislature; authorizing department
of administration to promulgate legislative rules relating to purchasing as modified and amended; authorizing department of administration to promulgate legislative rules relating to parking, as modified; authorizing division of personnel to promulgate legislative rules relating to leave donation program, as modified and amended.

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. Department of administration.

§64-2-2. Division of personnel.

§64-2-1. Department of administration.

(a) The legislative rules filed in the state register on the twenty-fourth day of July, one thousand nine hundred ninety-five, under the authority of section four, article three, chapter five-a, of this code, modified by the department of administration to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of September, one thousand nine hundred ninety-five, relating to the department of administration (purchasing, 148 CSR1), are authorized with the following amendment:

"On page 11, section 7.1, subsection (a), line one, after the word 'five (5)' by inserting the word 'working' "

(b) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, under the authority of section five, article four, chapter five-a, of this code, modified by the department of administration to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of September, one thousand nine hundred ninety-five, relating to the department of administration (parking, 148 CSR6), are authorized.
§64-2-2. Division of personnel.

The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section twenty-seven, article six, chapter twenty-nine, of this code, 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 thirty-first day of October, one thousand nine hundred ninety-five, relating to the division of personnel (leave donation program, 143 CSR2), are authorized, with the following amendments:

"On page two, section 3.1, subsection (d), following the words 'one half a month' by inserting the word 'continuously';

On page four, section 5.2, subsection (d), subdivision C, following the word 'verification' by striking out the semicolon and the word 'or,' and inserting in lieu thereof the words 'or otherwise fails or ceases to meet eligibility requirements;'

On page four, section 5.2, subsection (d), subdivision D, following the word 'recipient' by striking out the period and inserting a semicolon and the word 'or'

And,

On page four, section 5.2, subsection (d), by creating a new subdivision E to read as follows: 'E. upon the recipient's return to work.' "

CHAPTER 165

(Com. Sub. for H. B. 4225—By Delegates Douglas, Gallagher, Faircloth, Compton, Linch and Riggs)

[Passed March 8, 1996; 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 ad-
ministrative 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 the cancer registry, as filed; authorizing the division of health to promulgate legislative rules relating to standards for local boards of health, as modified; authorizing the division of health to promulgate legislative rules relating to AIDS-related medical testing and confidentiality, as modified; authorizing the division of health to promulgate legislative rules relating to personal care home licensure, 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:

ARTICLES. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

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

(a) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section two-a, article five-a, chapter sixteen of this code, relating to the division of health (cancer registry, 64 CSR 68), are authorized.

(b) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section seven, article one, chapter sixteen of this code, 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 sixth day of December, one thousand 
nine hundred ninety-five, relating to the division of health 
(standards for local boards of health, 64 CSR 73), are 
authorized.

(c) The legislative rules filed in the state register on the 
fourth day of August, one thousand nine hundred 
ninety-five, authorized under the authority of section 
eight, article three-c, chapter sixteen of this code, 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 twenty-third day of January, one thou-
sand nine hundred ninety-six, relating to the division of 
health (AIDS-related medical testing and confidentiality, 
64 CSR 64), are authorized.

(d) The legislative rules filed in the state register on 
the fourth day of January, one thousand nine hundred 
ninety-six, authorized under the authority of section five, 
article five-c, chapter sixteen of this code, 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 twenty-third day of January, one thousand 
nine hundred ninety-six, relating to the division of health 
(personal care home licensure, 64 CSR 14), are authorized 
with the amendments set forth below:

"On page nine, section 4.3.1.d, after the word 'provi-
sions' by inserting the words 'in policy';

On page nine, section 4.3.1.d, by striking out the fol-
lowing: 'The provisions may be in the form of a bond, a 
property lien, or other form of guaranty acceptable to the 
secretary. The guaranty shall be in the amount of three 
hundred dollars ($300) per resident or ten thousand dol-
ars ($10,000), whichever is greater.' and inserting in lieu 
thereof the following: 'If the owner does not provide 
continuing care to all residents during this thirty (30) day 
period, any expenses incurred by the Department to pro-
vide continuing resident care (i.e., food, staff, etc.) during 
this thirty (30) day period, is the responsibility of the 
owner.';

On page seventeen, section 4.10.4, by striking out the
word 'State' and inserting in lieu thereof the word 'Secretary';

On page seventeen, section 4.10.4, after the words 'for each of the residents' by inserting the words 'affected by the waiver request';

On page twenty-four, section 5.8.2, after the words 'an additional' by striking out the words 'direct care' and inserting in lieu thereof the words 'personal care';

On page twenty-four, section 5.8.2, after the word 'day' by striking out the words 'and evening shifts' and inserting in lieu thereof the word 'shift';

On page twenty-four in section 5.8.2, after the words 'to have' by striking out the words 'no more than';

On page twenty-four in section 5.8.2, after the words 'two (2)' by inserting the words 'or more';

On page twenty-four, line sixty-seven, by striking out the words 'no more than';

On page twenty-four, section 5.8.2, after 'residents.' by inserting the following sentence: 'At a minimum, an additional personal care staff will be available on the evening shift for each fifteen (15) residents identified on their functional needs assessment to have no more than two (2) or more of the above care needs.';

On page twenty-four, section 5.8.2, after the words 'An additional' by striking out the word 'employee' and inserting in lieu thereof the words 'personal care staff';

On page twenty-four, section 5.8.2, after the word 'with' by striking out the words 'one (1)' and inserting in lieu thereof the words 'two (2)';

On page twenty-seven, section 6.1.7, after the words 'valid for' by striking out the words 'six (6) months' and inserting in lieu thereof the words 'one (1) year';

On page thirty-five, section 7.3.9, after the words 'personal care home' by striking out the words 'in need of nursing services as specified in this rule' and inserting the
following: 'The frequency with which a registered professional nurse shall provide services to the personal care home not providing limited and intermittent nursing services shall be based upon the needs of the residents, but not less than weekly.';

On page thirty-five, subsection 7.3.9, after the word 'Section' by striking out the number '13' and inserting in lieu thereof the number '12';

On page thirty-five, section 7.3.9, after the words 'professional registered nurse.' by striking out the following: 'The frequency with which a registered professional nurse shall provide services to the personal care home not providing limited and intermittent nursing services shall be based upon the needs of the residents.'

On page fifty-four, section 11.3.1, by striking out the sentence 'Existing and newly constructed buildings to be offered, maintained, and operated as personal care homes shall provide for accessibility in their entirety to individuals with a physical disability.' and inserting in lieu thereof the sentence 'Those personal care homes housing any resident with a physical disability shall provide access to areas used in common by all residents as well as to the resident's personal area.';

On page fifty-five, section 11.3.8, in the second sentence, after the word 'widths' by inserting the words 'for new construction';

On page fifty-five, section 11.3.10, after the words 'shall have a' by striking out the word 'central';

On page fifty-five, section 11.3.10, after the word 'weather' by striking out the following: 'Individual room units known as through the wall heating and cooling units are acceptable.';

On page fifty-five, section 11.3.17, after the word 'residents.' by adding the following: 'However, if existing facilities cannot comply with the janitor closet requirement on each floor, the facility must demonstrate a sanitary means of disposal of wastewater in an area that is not a resident sleeping area.';
On page fifty-seven, section 11.4.10, at the beginning of the first sentence, by striking out the word 'The' and inserting in lieu thereof the words 'In new facilities the';

On page fifty-seven, section 11.4.10, after the word 'area.' at the end of subsection ten by adding the following sentence: 'In existing facilities residents' rooms shall have an outside exposure through a vertical transparent window. In existing facilities rooms extending below ground level shall be allowed only if approved by the Secretary.';

On page fifty-eight, section 11.5.2, after the word 'every' by striking out the words 'four (4)' and inserting in lieu thereof the words 'five (5)';

On page fifty-eight, section 11.5.3, after the word 'per' by striking out the words 'five (5)' and inserting in lieu thereof the words 'ten (10)';

On page fifty-eight, section 11.5.3, after the word 'residents.' by striking out the following sentence: 'If the facility can show a process that functions well for residents, upon application, the secretary will grant a waiver of this requirement.'

On page sixty-one, section 11.13.3.a, at the beginning of the first sentence, by striking out the word 'Outlets' and inserting in lieu thereof the words 'In new facilities electrical outlets';

On page sixty-one, section 11.13.3.a, after the word 'walls;' by inserting a period and the words 'In existing facilities electrical outlets to meet the needs of the residents shall be provided;';

On page sixty-six, section 12.2.5.a, after the word 'services' by striking out the words 'through daily contact with the home and visits to the residents at least eight (8) hours a week'; and inserting in lieu thereof the words 'to residents';

On page sixty-six, by striking out section 12.2.5.d;

And,

By relettering the remaining subdivisions."
CHAPTER 166
(Com. Sub. for S. B. 196—By Senators Ross, Anderson, Boley, Buckalew, Grubb and Macnaughtan)

[Passed March 9, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article six, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing the jail and correctional facility standards commission to promulgate legislative rules relating to the minimum standards for construction, operation and maintenance of jails, as modified; authorizing the jail and correctional facility standards commission to promulgate legislative rules relating to the minimum standards for the construction, operation and maintenance of correctional facilities, as modified; authorizing the state police to promulgate legislative rules relating to the West Virginia DNA databank, as modified; authorizing the state police to promulgate legislative rules relating to state police grievance procedures, as modified and amended; authorizing the state police to promulgate legislative rules relating to cadet physical qualifications, as modified; authorizing the state police to promulgate legislative rules relating to West Virginia state police professional standards investigations, as modified; authorizing the division of veterans affairs to promulgate legislative rules relating to the state home for veterans-fiscal,
as modified; and authorizing the fire commission to promulgate legislative rules relating to the state building code, as modified and amended.

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. Jail and correctional facility standards commission.

§64-6-2. State police.

§64-6-3. Division of veterans affairs.

§64-6-4. Fire commission.

§64-6-1. Jail and correctional facility standards commission.

(a) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section nine, article twenty, chapter thirty-one of this code, modified by the jail and correctional facility standards commission 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-five, relating to the jail and correctional facility standards commission (West Virginia minimum standards for construction, operation and maintenance of jails, 95CSR1), are authorized.

(b) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section nine, article twenty, chapter thirty-one of this code, modified by the jail and correctional facility standards commission 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-six, relating to the jail and correctional facility standards commission (minimum standards for construction, operation
and maintenance of correctional facilities, 95CSR2), are authorized.

§64-6-2. State police.

(a) The legislative rules filed in the state register on the ninth day of May, one thousand nine hundred ninety-five, authorized under the authority of section twenty-four-a, article two, chapter fifteen of this code, modified by the state police to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of June, one thousand nine hundred ninety-five, relating to the state police (West Virginia DNA databank, 81CSR9), are authorized.

(b) The legislative rules filed in the state register on the twenty-third day of June, one thousand nine hundred ninety-five, authorized under the authority of section six, article two, chapter fifteen of this code, modified by the state police to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of September, one thousand nine hundred ninety-five, relating to the state police (state police grievance procedures, 81CSR8), are authorized, with the following amendment:

"On page four, section 4.6, after the words 'a grievant may', by striking out the words 'have no', and inserting in lieu thereof the words 'not have'."

(c) The legislative rules filed in the state register on the twenty-third day of June, one thousand nine hundred ninety-five, authorized under the authority of section twenty-five, article two, chapter fifteen of this code, modified by the state police to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of September, one thousand nine hundred ninety-five, relating to the state police (cadet physical qualifications, 81CSR2), are authorized.

(d) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section
twenty-five, article two, chapter fifteen of this code, modified by the state police to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of December, one thousand nine hundred ninety-five, relating to the state police (West Virginia state police professional standards investigations, 81CSR10), are authorized.

§64-6-3. Division of veterans affairs.

The legislative rules filed in the state register on the twenty-fourth day of July, one thousand nine hundred ninety-five, under the authority of section three, article two, chapter nine-a of this code, modified by the division of veterans affairs 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-five, relating to the division of veterans affairs (state home for veterans-fiscal, 86CSR2), are authorized.

§64-6-4. Fire commission.

The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety-four, modified by the fire commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of November, one thousand nine hundred ninety-four, relating to the fire commission (state building code, 87CSR4), are authorized with the following amendments:

"On page two, subsection 3.1, by striking out the words 'more stringent' and inserting in lieu thereof the words 'state fire';

And,

On page two, subsection 4.1, by striking out the words 'However, Section PM-104.4 "Right of Entry"' and inserting in lieu thereof the words 'This maintenance code.'"
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; 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 banking to promulgate legislative rules relating to the legal lending limit, as modified; authorizing the division of banking to promulgate legislative rules relating to permissible additional charges in connection with a consumer credit sale, as modified; authorizing the division of banking to promulgate legislative rules relating to the West Virginia industrial bank and industrial loan company act, as modified; authorizing the division of banking to promulgate legislative rules relating to the West Virginia consumer credit and protection act, as modified; authorizing the division of banking to promulgate legislative rules relating to the West Virginia consumer credit and protection act and the industrial bank and industrial loan company act, as modified; authorizing the tax division to promulgate legislative rules relating to the international fuel tax agreement, as modified; authorizing the tax division to promulgate legislative rules relating to bingo, as modified; authorizing the tax division to promulgate legislative rules relating to the tax credit for employing former members of the Colin Anderson center, as modified; authorizing the tax
division to promulgate legislative rules relating to pollution control facilities, as modified; authorizing the tax division to promulgate legislative rules relating to the business and occupation tax, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to actuarial opinions and memoranda, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to examiners' compensation, qualifications and classification, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to excess line brokers, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to continuing education for insurance agents, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to recognizing mortality tables for use in determining reserve liability for annuities, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to substandard risk motor vehicle insurance notice requirements, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to minimum reserve standards for individual and group health insurance contracts, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to filing procedures for health maintenance organizations, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to health maintenance organizations, as modified; authorizing the lottery commission to promulgate legislative rules relating to licensees and the Americans with disabilities act, as modified; and authorizing the lottery commission to promulgate legislative rules relating to the state lottery, 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; and that said article be further amended by adding thereto a new section, designated section four, all to read as follows:

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO PROMULGATE LEGISLATIVE RULES.
§64-7-1. Division of banking.

(a) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section twenty-six, article four, chapter thirty-one-a of this code, 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 first day of December, one thousand nine hundred ninety-five, relating to the division of banking (legal lending limit, 106CSR9), are authorized.

(b) The legislative rules filed in the state register on the twenty-eighth day of July, one thousand nine hundred ninety-five, authorized under the authority of section four, article two, chapter thirty-one-a of this code 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 first day of December, one thousand nine hundred ninety-five, relating to the division of banking (permissible additional charges in connection with a consumer credit sale, 106CSR11), are authorized.

(c) The legislative rules filed in the state register on the twenty-eighth day of July, one thousand nine hundred ninety-five, authorized under the authority of section twenty-six, article seven, chapter thirty-one of this code, 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 first day of December, one thousand nine hundred ninety-five, relating to the division of banking (West Virginia industrial bank and industrial loan company act, 106CSR5), are authorized.

(d) The legislative rules filed in the state register on the twenty-eighth day of July, one thousand nine hundred ninety-five, authorized under the authority of section four,
article two, chapter thirty-one-a of this code, modified by
the division of banking to meet the objections of the legis-
state register on the first day of December, one thousand
nine hundred ninety-five, relating to the division of bank-
ing (West Virginia consumer credit and protection act,
106CSR4), are authorized.

(e) The legislative rules filed in the state register on the
twenty-eighth day of July, one thousand nine hundred
ninety-five, authorized under the authority of section
twenty-six, article seven, chapter thirty-one of this code,
modified by the division of banking to meet the objec-
tions of the legislative rule-making review committee and
refiled in the state register on the first day of December,
one thousand nine hundred ninety-five, relating to the
division of banking (West Virginia consumer credit and
protection act and the industrial bank and industrial loan
company act, 106CSR2), are authorized.

§64-7-2. Department of tax and revenue; tax division; and
state tax commissioner.

(a) The legislative rules filed in the state register on the
twenty-eighth day of July, one thousand nine hundred
ninety-five, authorized under the authority of section
twelve, article fourteen-b, chapter eleven of this code,
modified by the tax division to meet the objections of the
legislative rule-making review committee and refiled in the
state register on the twenty-second day of September, one
thousand nine hundred ninety-five, relating to the tax
division (international fuel tax agreement, 110CSR14B),
are authorized.

(b) The legislative rules filed in the state register on the
twenty-eighth day of July, one thousand nine hundred
ninety-five, authorized under the authority of section
twenty-three, article twenty, chapter forty-seven of this
code, modified by the tax division to meet the objections
of the legislative rule-making review committee and re-
filed in the state register on the twenty-fourth day of Janu-
ary, one thousand nine hundred ninety-six, relating to the
tax division (bingo, 110CSR16), are authorized with the amendments set forth below:

"On page seven, subdivision 3.1.9, by striking out the word 'are' and inserting in lieu thereof the word 'is';

On page nineteen, subsection 11.1, by striking out the words 'limited occasion licenses' and inserting in lieu thereof the words 'limited occasion licensees';

On page twenty-three, subdivision 16.1.4, by striking out the words 'these regulations' and inserting in lieu thereof the words 'this rule';

And,

On page twenty-five, subsection 18.1, by striking out the words 'these regulations' and inserting in lieu thereof the words 'this rule'."

(c) The legislative rules filed in the state register on the twenty-eighth day of July, one thousand nine hundred ninety-five, authorized under the authority of section three, article thirteen-i, chapter eleven of this code, modified by the tax division to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of September, one thousand nine hundred ninety-five, relating to the tax division (tax credit for employing former members of Colin Anderson center, 110CSR13I), are authorized.

(d) The legislative rules filed in the state register on the twenty-eighth day of July, one thousand nine hundred ninety-five, authorized under the authority of section four, article six-a, chapter eleven of this code, modified by the tax division to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of September, one thousand nine hundred ninety-five, relating to the tax division (pollution control facilities, 110CSR6), are authorized.
(e) The legislative rules filed in the state register on the 
twenty-eighth day of July, one thousand nine hundred 
ninety-five, authorized under the authority of section five, 
article ten, chapter eleven of this code, modified by the tax 
division to meet the objections of the legislative 
rule-making review committee and refiled in the state 
register on the first day of December, one thousand nine 
hundred ninety-five, relating to the tax division (business 
and occupation tax, 110CSR13), are authorized.

§64-7-3. Insurance commissioner.

(a) The legislative rules filed in the state register on the 
twenty-seventh day of July, one thousand nine hundred 
ninety-five, authorized under the authority of section nine, 
article seven, chapter thirty-three of this code, 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-seventh day of November, one 
thousand nine hundred ninety-five, relating to the insur-
ance commissioner (actuarial opinion and memorandum 
rule, 114CSR41), are authorized.

(b) The legislative rules filed in the state register on 
the twenty-seventh day of July, one thousand nine hun-
dred ninety-five, authorized under the authority of section 
ten, article two, chapter thirty-three of this code, 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-seventh day of November, 
one thousand nine hundred ninety-five, relating to the 
insurance commissioner (examiners' compensation, quali-
fications and classification, 114CSR15), are authorized.

(c) The legislative rules filed in the state register on the 
twenty-eighth day of July, one thousand nine hundred 
ninety-five, authorized under the authority of section 
eleven, article twelve, chapter thirty-three of this code, 
modified by the insurance commissioner to meet the ob-
jections of the legislative rule-making review committee
and filed in the state register on the twenty-seventh day
of November, one thousand nine hundred ninety-five,
relating to the insurance commissioner (excess line bro-
kers, 114CSR20), are authorized.

(d) The legislative rules filed in the state register on
the twenty-eighth day of July, one thousand nine hundred
ninety-five, authorized under the authority of section ten,
article two, chapter thirty-three of this code, modified by
the insurance commissioner to meet the objections of the
legislative rule-making review committee and filed in the
state register on the twenty-seventh day of November, one
thousand nine hundred ninety-five, relating to the insur-
ance commissioner (continuing education for insurance
agents, 114CSR42), are authorized.

(e) The legislative rules filed in the state register on the
twenty-eighth day of July, one thousand nine hundred
ninety-five, authorized under the authority of section nine,
article seven, chapter thirty-three of this code, modified by
the insurance commissioner to meet the objections of the
legislative rule-making review committee and filed in the
state register on the twenty-seventh day of November, one
thousand nine hundred ninety-five, relating to the insur-
ance commissioner (recognizing mortality tables for use
in determining reserve liability for annuities, 114CSR45),
are authorized.

(f) The legislative rules filed in the state register on the
twenty-eighth day of July, one thousand nine hundred
ninety-five, authorized under the authority of section
thirty-one-c, article six, chapter thirty-three of this code,
modified by the insurance commissioner to meet the ob-
jections of the legislative rule-making review committee
and filed in the state register on the twenty-seventh day
of November, one thousand nine hundred ninety-five,
relating to the insurance commissioner (substandard risk
motor vehicle insurance notice requirements, 114CSR37),
are authorized.
(g) The legislative rules filed in the state register on the twenty-eighth day of July, one thousand nine hundred ninety-five, authorized under the authority of section nine, article seven, chapter thirty-three of this code, 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-seventh day of November, one thousand nine hundred ninety-five, relating to the insurance commissioner (minimum reserve standards for individual and group health insurance contracts, 114CSR44), are authorized.

(h) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section twenty, article twenty-five-a, chapter thirty-three of this code, 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-seventh day of November, one thousand nine hundred ninety-five, relating to the insurance commissioner (filing procedures for health maintenance organizations, 114CSR46), are authorized.

(i) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section twenty, article twenty-five-a, chapter thirty-three of this code, 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-seventh day of November, one thousand nine hundred ninety-five, relating to the insurance commissioner (health maintenance organizations, 114CSR43), are authorized.

§64-7-4. Lottery commission.

(a) The legislative rules filed in the state register on the twenty-sixth day of May, one thousand nine hundred ninety-five, under the authority of section ten, article
twenty-two, chapter twenty-nine of this code, modified by
the lottery commission to meet the objections of the legis-
lative rule-making review committee and refiled in the
state register on the fifteenth day of June, one thousand
nine hundred ninety-five, relating to the lottery comis-
sion (licensees and the Americans with disabilities act,
179CSR3), are authorized.

(b) The legislative rules filed in the state register on the
twenty-fourth day of July, one thousand nine hundred
ninety-five, under the authority of section five, article
twenty-two, chapter twenty-nine of this code, modified by
the lottery commission to meet the objections of the legis-
lative rule-making review committee and refiled in the
state register on the fourteenth day of September, one
thousand nine hundred ninety-five, relating to the lottery
commission (state lottery rule, 179CSR1), are authorized.

CHAPTER 168
(Com. Sub. for S. B. 201—By Senators Ross, Anderson, Boley,
Buckalew, Grubb and Macnaughtan)

[Passed March 7, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article eight, chapter sixty-four
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, all relating generally to the promul-
gation 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 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; relating to authorizing the division of motor
vehicles to promulgate legislative rules relating to the motor vehicle alcohol test and lock program, as modified; and relating to authorizing the division of motor vehicles to promulgate legislative rules relating to motor vehicle dealers, wrecker/dismantler/rebuilders, license services, automobile auctions, vehicle leasing companies and administrative due process, as modified.

Be it enacted by the Legislature of West Virginia:

That 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 motor vehicles.

(a) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section nine, article two, chapter seventeen-a of this code, modified by the division of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of September, one thousand nine hundred ninety-five, relating to the division of motor vehicles (motor vehicle dealers, wreckers/dismantlers/rebuilders, license services, automobile auctions, vehicle leasing companies and administrative due process 91CSR6), are authorized.

(b) The legislative rules filed in the state register on the twenty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section three-a, article five-a, chapter seventeen-c of this code, modified by the division of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of September, one thousand nine hundred ninety-five, relating to the division of motor vehicles (motor vehicle alcohol test and lock program, 91CSR9), are authorized.
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; 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 the inspection of meat and poultry, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to certified pesticide applicator, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to the West Virginia plant pest act, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to dairy products and imitation dairy products, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to frozen desserts and imitation frozen desserts, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to integrated pest management programs in schools and day care centers, as amended; authorizing the secretary of state to promulgate legislative rules relating to agencies designated to provide voter registration service, as modified; authorizing the secretary of state to promulgate legislative rules relating to guidelines for the use of nicknames and other designations on the ballot, as modified; authorizing the
secretary of state to promulgate legislative rules relating to the procedures for canvassing electronic ballot elections using punch card or optical scan ballots, as modified; authorizing the secretary of state to promulgate legislative rules relating to absentee voting by military voters who are members of reserve units called to active duty, as modified; authorizing the secretary of state to promulgate legislative rules relating to numbered divisions for the election of circuit judges, as modified; authorizing the secretary of state to promulgate legislative rules relating to combined voter registration and the driver licensing fund, as filed; authorizing the secretary of state to promulgate legislative rules relating to official election forms and vendor authorization, as modified; authorizing the secretary of state to promulgate legislative rules relating to procedures for handling ballots and counting write-in votes in counties using punch card or optical scan ballots, as modified; authorizing the secretary of state to promulgate legislative rules relating to a standard size and format for rules and procedures for publication of the state register, as modified and amended; authorizing the governor's committee on crime, delinquency and correction to promulgate legislative rules relating to the basic training academy, annual in-service and biennial in-service training standards, as modified; authorizing the state election commission to promulgate legislative rules relating to election expenditures, as modified; authorizing the state election commission to promulgate legislative rules relating to the regulation of campaign finances, as modified and amended; authorizing the state election commission to promulgate legislative rules relating to the fair campaign practices, as modified; authorizing the state election commission to promulgate legislative rules relating to corporate political activity, as modified and amended; authorizing the cable television advisory board to promulgate legislative rules relating to the calculation and collection of late fees, as modified; authorizing the contractor licensing board to promulgate legislative rules relating to the West Virginia contractor licensing act, as modified; and authorizing the infrastructure and jobs development council to promulgate legislative rules relating to infrastructure and jobs development council funding rules, as modified and amended.
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.
§64-9-5. Cable television advisory board.
§64-9-6. Contractor licensing board.

§64-9-1. Commissioner of agriculture.

(a) The legislative rules filed in the state register on the twenty-seventh day of July, one thousand nine hundred ninety-five, authorized under the authority of section three, article two-b, chapter nineteen of this code, 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 twentieth day of October, one thousand nine hundred ninety-five, relating to the commissioner of agriculture (inspection of meat and poultry, 61CSR16), are authorized.

(b) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section four, article sixteen-a, chapter nineteen of this code, 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 nineteenth day of September, one thousand nine hundred ninety-five, relating to the commissioner of agriculture (certified pesticide applicators, 61CSR12A), are authorized.

(c) The legislative rules filed in the state register on the first day of August, one thousand nine hundred ninety-five, authorized under the authority of section
three, article twelve, chapter nineteen of this code; 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 twenty-fifth day of October, one thousand nine hundred ninety-five, relating to the commissioner of agriculture (West Virginia plant pest act, 61CSR14), are authorized.

(d) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section ten, article eleven-a, chapter nineteen of this code, 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 twentieth day of December, one thousand nine hundred ninety-five, relating to the commissioner of agriculture (dairy products and imitation dairy products, 61CSR4C), are authorized.

(e) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section ten, article eleven-b, chapter nineteen of this code, 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 twentieth day of December, one thousand nine hundred ninety-five, relating to the commissioner of agriculture (frozen desserts and imitation frozen desserts, 61CSR4B), are authorized.

(f) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section four, article sixteen-a, chapter nineteen of this code, relating to the commissioner of agriculture (integrated pest management programs in schools and day care centers, 61CSR12J), are authorized, with the amendments set forth below:

"On page one, section 1.1, by striking out the words 'These legislative rules establish' and inserting in lieu thereof the words 'This legislative rule establishes';
On page two, section 2.5, after the words 'that creates' by striking out the word 'to';

On page two, section 2.7, by striking out the words 'integrated pest management';

On page two, section 2.10, by striking out the word 'and' and inserting in lieu thereof the word 'an';

On page two, section 2.11, after the words 'bases or' by inserting the word 'the';

On page three, section 3.2, by striking out the words 'Pesticides shall not be applied' and inserting in lieu thereof the words 'Schools and daycare centers covered by this rule shall not apply pesticides';

On page three, section 4.1, by striking out '1995';

On page three, section 4.1, by striking out the words 'or the most recent revision';

On page three, section 4.3, after the words 'the school', by striking out the word 'shall' and inserting in lieu thereof the word 'should';

On page three, section 4.3, after the words 'success of' by striking out the word 'and' and inserting in lieu thereof the word 'an';

On page three, section 4.3, after the words 'This record' by striking out the word 'shall' and inserting in lieu thereof the word 'should';

On page three, section 4.3, by striking out the word 'every six months' and inserting in lieu thereof the word 'periodically';

On page three, section 4.3, by striking out the word 'so';

On page three, section 4.4, after the words 'created by' by inserting the words 'West Virginia Code';

On page three, section 4.4, by striking out the words 'shall review and approve' and inserting in lieu thereof the words 'may comment on';
On page three, section 4.5, by striking out the words 'The completed integrated pest management shall be filed with the Commissioner for compliance inspection' and inserting in lieu thereof the following: 'Schools covered by this rule shall file completed integrated pest management plans with the Commissioner for compliance inspection';

On page three, section 4.5, after the words 'the program,' by inserting the words 'they shall submit';

On page three, section 4.5, by striking out the words 'shall be submitted' and inserting in lieu thereof the word 'to';

On page four, section 4.7, after the words 'Upon request' by inserting the words 'schools covered by this rule shall provide';

On page four, section 4.7, by striking out the words 'shall be provided';

On page four, section 4.8, by striking out the words 'these rules' and inserting in lieu thereof the words 'this rule';

On page four, section 5.1, by striking out '1995';

On page four, section 5.1, by striking out the words 'or the most recent revision';

On page five, section 5.3, after the words 'day care center' by striking out the word 'shall' and inserting in lieu thereof the word 'should';

On page five, section 5.3, after the words 'success of, by striking out the word 'and' and inserting in lieu thereof the word 'an';

On page five, section 5.3, after the word 'this record' by striking out the word 'shall' and inserting in lieu thereof the word 'should';

On page five, section 5.3, by striking out the words 'every six months' and inserting in lieu thereof the word 'periodically';
On page five, section 5.3, by striking out the word 'so';

On page five, section 5.4, by striking out the words 'The completed integrated pest management plan shall be filed with the Commissioner for compliance inspection' and inserting in lieu thereof the following: 'All day care centers covered by this rule shall file completed integrated pest management plans with the Commissioner for compliance inspection.';

On page five, section 5.4, after the words 'the program,' by inserting the words 'they shall submit';

On page five, section 5.4, by striking out the words 'shall be submitted' and inserting in lieu thereof the word 'to';

On page five, section 5.6, before the word 'Copies,' by inserting the words 'Day care centers covered by this rule shall provide';

On page five, section 5.6, by striking out the words 'shall be given to' and inserting in lieu thereof the words 'to a';

On page five, section 6.1.1, before the words 'The monitoring program,' by adding the following: 'Each school and day care center shall have a monitoring program.';

On page six, section 6.1.1, before the words 'The information' by adding the words 'Each school and day care center shall evaluate';

On page six, section 6.1.1, by striking out the words 'shall be evaluated';

On page six, section 6.1.2, by striking out the words 'A monitoring program shall be conducted in each facility on an ongoing basis' and inserting in lieu thereof the following: 'Each school and day care center shall conduct a monitoring program in suspect areas of their facility on an ongoing basis';

On page six, section 6.1.3.b.A, before the word 'Trap' by adding the word 'The';
On page six, section 6.1.3.b.A, after the word 'and' by inserting the word 'its';

On page six, section 6.1.3.b.B, before the word 'Date' by adding the word 'The';

On page six, section 6.1.3.b.C, by striking out the word 'Trap' and inserting in lieu thereof the words 'The trap's';

On page six, section 6.1.3.b.D, before the word 'Numbers' by inserting the word 'The';

On page six, section 6.1.3.b.F, after the words 'pest management,' by adding a semicolon and the word 'and';

On page six, section 6.1.3.c, by striking out the words 'at least every two months or';

On page six, section 6.1.3.c, after the words 'tacky or when' by inserting the word 'the';

On page six, section 6.1.3.c, after the word 'first' by adding a semicolon and the word 'and';

On page seven, section 6.2, by striking out the comma and the words 'Use of the Least Hazardous Materials', and inserting in lieu thereof the words 'of this rule';

On page seven, after the section heading, by adding the following:

'In an integrated pest management program, persons responsible for pest management should evaluate all possible control options. Control options range from non-chemical methods to least hazardous pesticides to pesticides with a higher degree of risk to human health. In keeping with the legislative mandate for integrated pest management, the pest control contractor shall, after monitoring for pest infestations, proceed in controlling pests using the least hazardous method that is both practical and effective as outlined in this section.'

And by renumbering the remaining sections;

On page seven, section 7.1.1, by striking out the word 'shall' and inserting in lieu thereof the word 'should';
On page seven, section 7.1.1, before the word 'preventive' by striking out the word 'Such' and inserting in lieu thereof the word 'These';

On page seven, section 7.1.1, before the word 'Consult' by adding the words 'A school or day care center shall';

On page seven, section 7.1.1, by striking out the words '1995, or the most recent revision';

On page seven, section 7.1.1, by striking out the word 'IPM' and inserting in lieu thereof the words 'integrated pest management';

On page seven, section 7.1.1, by striking out the words 'Note that';

On page seven, section 7.2.1, after the word 'necessary' by inserting the words, 'for a school or day care center';

On page seven, section 7.3.1, before the word 'Products' by adding the words 'Schools and day care centers shall apply';

On page seven, section 7.3.1, by striking out the words 'and applied';

On page eight, section 7.3.3, by striking out the word 'are' and inserting in lieu thereof the word 'shall';

On page eight, section 7.3.3, after the word 'out' and by inserting the words 'of the treated area';

On page eight, section 7.4.3, after the word 'greater' by adding the words 'except when the air in the treated area can be purged by the heating, cooling and ventilation system, the period of reentry shall be 4 hours or the period specified on the label of the pesticide product as registered by the United States Environmental Protection Agency, which ever is greater.';

On page eight, section 8.1.a, by striking out the comma and the words 'Use of the Least Hazardous Materials';

On page eight, section 8.1.b, before the word 'School' by adding the words 'At the beginning of the school year,';
On page eight, section 8.1.b, at the end of the section by adding the following: 'The notice shall instruct the employee of the location of posting of the treatment schedule and notification of any necessary unscheduled treatments. School administrators shall also notify their employees of the treatment schedule at faculty senate meetings.';

On page eight, section 8.2.a, by striking out the word 'in' and inserting in lieu thereof the word 'is';

On page eight, section 8.2.a, after the words 'parents or' by inserting the word 'legal';

On page eight, section 8.2.a, after the word 'pesticides' by striking out the words 'in levels 3 and 4 as detailed in section 4, Use of the Least Hazardous Materials, of this rule.' and inserting in lieu thereof the words 'as detailed in section 4 of this rule.';

On page nine, section 8.2.b, after the words 'parents or' by inserting the word 'legal';

On page nine, section 8.2.b, after the words 'parent or' by inserting the word 'legal';

On page nine, section 8.2.c, after the words 'parent or' by inserting in the word 'legal';

On page nine, section 8.2.c, by striking out the word 'such';

On page nine, section 8.3.a, after the words 'parent or' by adding the word 'legal';

On page nine, section 8.3.a, after the word 'pesticide' by striking out the words 'in levels 3 and 4 as detailed in section 4, Use of the Least Hazardous Materials, of this rule.' and inserting in lieu thereof the words 'as detailed in section 4 of this rule';

On page nine, section 8.3.b, after the words 'to the parent or' by inserting the word 'legal';

On page nine, section 8.3.b, by striking out the word 'Such' and inserting in lieu the word 'The';
On page nine, section 8.3.b, after the words 'where the parent or' by inserting the word 'legal';

On page nine, section 9.1, after the word 'pesticide applicators' by striking out the comma and inserting in lieu thereof a period;

On page nine, section 9.1, by striking out the words 'Except that';

On page nine, section 9.4, after the words 'pesticide applicators', by inserting a comma and striking out the word 'or';

On page nine, section 9.4, by striking out the words 'certified in General Pest Control';

On page nine, section 9.4, after the words 'outlined in' by striking out the words 'Title 61 Series 12A, Certified Pesticide Applicator Rules' and inserting in lieu thereof the words 'West Virginia Department of Agriculture Certified Pesticide Applicator Rules, 61 CSR 12A';

On page ten, section 9.5.1, before the word 'specialized' by striking out the word 'The' and inserting in lieu thereof the word 'Any';

On page ten, section 9.5.1, by striking out the word 'program' and inserting in lieu thereof the words 'programs not offered by the commissioner';

On page ten, section 9.5.2, by striking out the words 'Title 61 Series 12A' and inserting in lieu thereof the words '61 CSR 12A';

On page ten, section 9.5.2, by striking out the word 'July' and inserting in lieu thereof the word 'September';

On page ten, section 9.5.3, by striking out the word 'July' and inserting in lieu thereof the word 'September';

On page ten, section 9.5.3, by striking out the words 'Title 61 Series 12A' and inserting in lieu thereof the words '61 CSR 12A';

On page ten by striking out all of section 10.1, and inserting in lieu thereof the following:
306 '10.1. Schools and day care centers covered by this
307 rule shall keep for a period of two years all documents
308 required to be in the Integrated Pest Management Files as
309 detailed in Section 4.6 and Section 5.5, respectively, of
310 this rule.';

311 On page ten, by striking out all of section 11.1 and
312 renumbering the remaining sections;

313 On page ten, section 11.2, by striking out '1995';

314 And,

315 On page eleven, section 11.5, by striking out the words
316 'these rules' and inserting in lieu thereof the words 'this
317 rule'."

§64-9-2. Secretary of state.

(a) The legislative rules filed in the state register on the
twelfth day of January, one thousand nine hundred
ninety-five, authorized under the authority of section
thirteen, article two, chapter three of this code, modified
by the secretary of state to meet the objections of the legis-
islative rule-making review committee and refiled in the
state register on the twenty-second day of June, one thou-
sand nine hundred ninety-five, relating to the secretary of
state (agencies designated to provide voter registration
services, 153CSR28), are authorized.

(b) The legislative rules filed in the state register on
the twenty-fifth day of July, one thousand nine hundred
ninety-five, authorized under the authority of section six,
article one-a, chapter three of this code, 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 twenty-third day of January, one thousand
nine hundred ninety-six, relating to the secretary of state
(guidelines for the use of nicknames and other designa-
tions on the ballot, 153CSR14), are authorized.

(c) The legislative rules filed in the state register on the
twenty-eighth day of July, one thousand nine hundred
ninety-five, authorized under the authority of section six,
article one-a, chapter three of this code, 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 eighth day of December, one thousand nine hundred ninety-five, relating to the secretary of state (procedures for canvassing electronic ballot elections using punch card or optical scan ballots, 153CSR18), are authorized.

(d) The legislative rules filed in the state register on the twenty-fifth day of July, one thousand nine hundred ninety-five, authorized under the authority of section six, article one-a, chapter three of this code, 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 twenty-fourth day of January, one thousand nine hundred ninety-six, relating to the secretary of state (absentee voting by military voters who are members of reserve units called to active duty, 153CSR23), are authorized.

(e) The legislative rules filed in the state register on the twenty-sixth day of July, one thousand nine hundred ninety-five, authorized under the authority of section six, article one-a, chapter three of this code, 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 twenty-fourth day of January, one thousand nine hundred ninety-six, relating to the secretary of state (numbered divisions for the election of circuit judges, 153CSR24), are authorized.

(f) The legislative rules filed in the state register on the twenty-sixth day of July, one thousand nine hundred ninety-five, authorized under the authority of section three, article two, chapter three of this code, relating to the secretary of state (combined voter registration and driver licensing fund, 153CSR 25), are authorized.

(g) The legislative rules filed in the state register on the twenty-sixth day of July, one thousand nine hundred ninety-five, authorized under the authority of section six, article one-a, chapter three of this code, relating to the secretary of state (official election forms and vendor authorization, 153CSR26), are authorized.
(h) The legislative rules filed in the state register on the twenty-sixth day of July, one thousand nine hundred ninety-five, authorized under the authority of section six, article one-a, chapter three of this code, 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 twenty-fourth day of January, one thousand nine hundred ninety-six, relating to the secretary of state (procedures for handling ballots and counting write-in votes in counties using punch card or optical scan ballots, 153CSR27), are authorized.

(i) The legislative rules filed in the state register on the twenty-seventh day of July, one thousand nine hundred ninety-five, authorized under the authority of section six, article two, chapter twenty-nine-a of this code, 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 twenty-second day of January, one thousand nine hundred ninety-six, relating to the secretary of state (standard size and format for rules and procedures for publication of the state register, 153CSR6), are authorized, with the amendments set forth below:

"On page ten, subsection 13.1, after the word 'format' by inserting a comma and the words 'following all formatting rules of the Secretary of State';

On page ten, paragraph 13.1.b, by striking out the word 'double' and inserting in lieu thereof the word 'high';

On page ten, after subparagraph 13.1.b.2, by adding a new subsection to read as follows:

'13.2. If an agency does not comply with the formatting as specified by the Secretary of State, the electronic version will be refused and sent back for correction to the agency.'"

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

The legislative rules filed in the state register on the twenty-eighth day of July, one thousand nine hundred ninety-five, under the authority of section three, article
twenty-nine, chapter thirty of this code, modified by the
governor's committee on crime, delinquency and correct-
tion 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-five, relating to the governor's committee on crime,
delinquency and correction (basic training academy, an-
nual in-service and biennial in-service training standards,
149CSR2), are authorized.


(a) The legislative rules filed in the state register on the
thirty-first day of July, one thousand nine hundred
ninety-five, under the authority of section five, article
one-a, chapter three of this code, modified by the state
election commission to meet the objections of the legisla-
tive rule-making review committee and refiled in the state
register on the twenty-second day of December, one thou-
sand nine hundred ninety-five, relating to the state election
commission (election expenditures, 146CSR4), are autho-
11 rized.

(b) The legislative rules filed in the state register on
the thirty-first day of July, one thousand nine hundred
ninety-five, under the authority of section five, article
one-a, chapter three of this code, modified by the state
election commission to meet the objections of the legisla-
tive rule-making review committee and refiled in the state
register on the twenty-third day of January, one thousand
ninety-six, relating to the state election com-
mission (regulation of campaign finances, 146CSR3), are
authorized, with the amendments set forth below:

"On page seventeen, section 12.2, by striking out sec-
tion 12.1 in its entirety, and inserting in lieu thereof the
following:

12.1. Any person violating this rule is subject to the
penalties imposed by W. Va. Code §§3-8-7, 3-8-11 and
3-9-23."

(c) The legislative rules filed in the state register on the
thirty-first day of July, one thousand nine hundred
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29 ninety-five, under the authority of section five, article
30 one-a, chapter three of this code, modified by the state
31 election commission to meet the objections of the legisla-
32 tive rule-making review committee and refiled in the state
33 register on the twenty-second day of December, one thou-
34 sand nine hundred ninety-five, relating to the state election
35 commission (fair campaign practices, 146CSR2), are au-
36 thorized.

(d) The legislative rules filed in the state register on
38 the thirty-first day of July, one thousand nine hundred
39 ninety-five, under the authority of section eight, article
40 eight, chapter three of this code, modified by the state
41 election commission to meet the objections of the legisla-
42 tive rule-making review committee and refiled in the state
43 register on the twenty-second day of December, one thou-
44 sand nine hundred ninety-five, relating to the state election
45 commission (corporate political activity, 146CSR1), are
46 authorized, with the amendments set forth below:

47 "On page 8, section 146-1-7. penalty provisions, by
48 striking out section 7.1 and inserting in lieu thereof the
49 following:

7.1. Any person violating this rule shall be guilty of a
51 misdemeanor and, upon conviction thereof, shall be fined
52 not more than five thousand dollars pursuant to West Vir-
53 ginia Code §3-8-8."

§64-9-5. Cable television advisory board.

1 The legislative rules filed in the state register on the
2 eighteenth day of July, one thousand nine hundred
3 ninety-five, under the authority of section twenty-six,
4 article eighteen, chapter five of this code, modified by the
5 cable television advisory board to meet the objections of
6 the legislative rule-making review committee and refiled in
7 the state register on the nineteenth day of September, one
8 thousand nine hundred ninety-five, relating to the cable
9 television advisory board (calculation and collection of
10 late fees, 187CSR6), are authorized.

§64-9-6. Contractor licensing board.
The legislative rules filed in the state register on the twenty-eighth day of July, one thousand nine hundred ninety-five, under the authority of section five, article eleven, chapter twenty-one of this code, modified by the contractor licensing board to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of December, one thousand nine hundred ninety-five, relating to the contractor licensing board (West Virginia contractor licensing act, 28CSR2), are authorized.


The legislative rules filed in the state register on the seventh day of July, one thousand nine hundred ninety-five, under the authority of section four, article fifteen-a, chapter thirty-one of this code, modified by the infrastructure and jobs development council to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixth day of December, one thousand nine hundred ninety-five, relating to the infrastructure and jobs development council (infrastructure and jobs development council funding rules, 167CSR1), are authorized, with the amendments set forth below:

"On page ten, section five, subsection 5.7, by striking out '1 1/2%' and inserting in lieu thereof '1%';

And,

On page eleven, section five, subsection 5.9, by striking out all of subsection 5.9 and inserting in lieu thereof the following: 'Terms of Grant. Where a project sponsor has received infrastructure grant money to fund a project and the project is thereafter sold, then to the extent that proceeds are available, the project sponsor shall reimburse the infrastructure fund the amount of the infrastructure grant. In the alternative, the council may allow repayment of the grant by converting the grant into a loan from the infrastructure fund. The proceeds from the repayment of any such grant or grant which has been converted to a loan shall retain their character as proceeds available for grants. The amount of repayment may be reduced by the
applicable share of accumulated depreciation of the project or the applicable share of accumulated accelerated depreciation of the project as determined by the council. The infrastructure council shall review any agreement between the project sponsor and the person or entity purchasing the project to determine whether the agreement was structured so that no proceeds would become available for the repayment of the grant funds. If the infrastructure council finds that the transaction was structured by the parties to intentionally preclude the availability of proceeds for the repayment of the infrastructure grant funds, then the council may require the project sponsor to repay the full amount of any infrastructure grant. The council shall prepare a report listing those projects which received infrastructure grant money and are sold. The report shall include a description of the terms by which the infrastructure grant will be repaid. The report shall be provided on or before the tenth day of January each year to the Joint Committee on Government and Finance.' "

CHAPTER 170

(Com. Sub. for H. B. 4268—By Delegates Douglas, Linch, Compton, Gallagher, Riggs and Faircloth)

[Passed March 8, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article ten, 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 promul-
gate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing division of labor to promulgate legislative rules relating to commercial bungee jumping safety act, as modified; authorizing board of miner training to promulgate legislative rules relating to safety training program for prospective coal miners; authorizing division of natural resources to promulgate legislative rules relating to commercial sale of wildlife, as modified; authorizing division of natural resources to promulgate legislative rules relating to miscellaneous permits and licenses, as modified; authorizing division of natural resources to promulgate legislative rules relating to boating, as modified; authorizing division of natural resources to promulgate legislative rules relating to special boating, as modified and amended; authorizing division of natural resources to promulgate legislative rules relating to wildlife damage control agents, as modified; authorizing division of natural resources to promulgate legislative rules relating to wildlife scientific collecting permits, as modified; authorizing division of natural resources to promulgate legislative rules relating to hunting and trapping prohibitions, as modified; authorizing division of natural resources to promulgate legislative rules relating to special waterfowl hunting, as modified; authorizing division of natural resources to promulgate legislative rules relating to public use of state parks, forests and wildlife management areas, as modified and amended; authorizing division of natural resources to promulgate legislative rules relating to public use of state campgrounds, as modified; authorizing division of natural resources to promulgate legislative rules relating to public use of state swimming areas, as modified.

Be it enacted by the Legislature of West Virginia:

That article ten, 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 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 thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section three, article twelve, chapter twenty-one of this code, 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 eighth day of November, one thousand nine hundred ninety-five, relating to the division of labor (commercial bungee jumping safety act, 42 CSR 23), are authorized.

(b) The legislative rules filed in the state register on the twenty-seventh day of March, one thousand nine hundred ninety-five, authorized under the authority of section six, article seven, chapter twenty-two-a of this code, relating to the board of miner training, education and certification (governing the safety training program for prospective surface coal miners in West Virginia, 48 CSR 3), are authorized.

§64-10-2. Division of natural resources.

(a) The legislative rules filed in the state register on the twenty-second day of December, one thousand nine hundred ninety-four, authorized under the authority of section eleven, article two, chapter twenty of this code, 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 twentieth day of July, one thousand nine hundred ninety-five, relating to the division of natural resources (commercial sale of wildlife, 58 CSR 63), are authorized.

(b) The legislative rules filed in the state register on the twenty-second day of December, one thousand nine hundred ninety-four, authorized under the authority of section eleven, article two, chapter twenty of this code, 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 twentieth day of September, one thousand nine hundred ninety-five, relating to the division of natural resources (miscellaneous permits and licenses, 58 CSR 64), are authorized.
(c) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section twenty-two, article seven, chapter twenty of this code, 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 twentieth day of September, one thousand nine hundred ninety-five, relating to the division of natural resources (boating, 58 CSR 25), are authorized.

(d) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section twenty-two, article seven, chapter twenty of this code, 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 twenty-eighth day of October, one thousand nine hundred ninety-five, relating to the division of natural resources (special boating, 58 CSR 26), are authorized, with the following amendments:

On page two, six, eight and nine, sections 3.6, 3.65, 3.71, 3.87, 3.102 and 3.109, following the words "must have the propeller removed", by inserting the words "or have the motor withdrawn to the maximum trailorable limit".

(e) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section fifty-a, article two, chapter twenty of this code, 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 twentieth day of September, one thousand nine hundred ninety-five, relating to the division of natural resources (wildlife damage control agents, 58 CSR 41), are authorized.

(f) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section seven, article one, chapter twenty of this code, 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 twentieth day of September, one
thousand nine hundred ninety-five, relating to the division
of natural resources (wildlife scientific collecting permits,
58 CSR 42), are authorized.

(g) The legislative rules filed in the state register on
the thirty-first day of July, one thousand nine hundred
ninety-five, authorized under the authority of section
seven, article one, chapter twenty of this code, 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 twentieth day of September, one
thousand nine hundred ninety-five, relating to the division
of natural resources (prohibitions when hunting and trap-
ning, 58 CSR 47) are authorized.

(h) The legislative rules filed in the state register on
the thirty-first day of July, one thousand nine hundred
ninety-five, authorized under the authority of section
seven, article one, chapter twenty of this code, 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 twentieth day of September, one
thousand nine hundred ninety-five, relating to the division
of natural resources (special waterfowl hunting, 58 CSR
58), are authorized.

(i) The legislative rules filed in the state register on the
thirty-first day of July, one thousand nine hundred
ninety-five, authorized under the authority of section
seventeen-a, article one, chapter five-b of this code, modi-
ified by the division of natural resources to meet the objec-
tions of the legislative rule-making review committee and
refiled in the state register on the twenty-fifth day of Octo-
ber, one thousand nine hundred ninety-five, relating to the
division of natural resources (public use of West Virginia
state parks, state forests, and state wildlife management
areas under the division of natural resources, 58 CSR 31),
are authorized,

"with the following amendment:

On page 4 section 2.22 by striking out section 2.22 in
its entirety and inserting in lieu thereof the following:
2.22. The Director of the Division of Natural Resources is authorized to issue special use permits and enter into written agreements with persons who demonstrate to the satisfaction of the Director that they have good cause to utilize a motor driven vehicle on the Greenbrier River Trail or the North Bend Rail Trail. The Director may also authorize persons with legitimate need to utilize motorized vehicles on the trails as authorized in subdivision 2.22.3.

2.22.1. The director may, upon application in writing and for good cause shown, issue a written special use permit authorizing limited use of motorized vehicles on either the North Bend Rail Trail or Greenbrier River Trail. A separate permit is required for each use. Each permit shall specify the limitation on access, including such things as the date, time not to exceed three days, place, method and distance the applicant will be allowed to have access to the trail. As part of the permit process, the Director shall enter into a written agreement to allow the use of motorized vehicles on the trails. The agreement shall specify the limitations of the use and require, in exchange for such use, that the persons allowed to use motorized vehicles on the trails shall maintain a specified area of the trail for a specified length of time. The terms of the maintenance portion of the agreement shall depend on the length and nature of the use.

2.22.2. Good cause may be shown by (a) those persons in need of limited access to adjacent land that the applicant owns or leases for agriculture purposes and who have demonstrated no other reasonable means to gain entry to the adjacent land; (b) those persons who have a vested right of ingress to and egress from the trail and (c) those persons required by law to plug or reclaim oil or gas wells.

2.22.3. Persons with a legitimate need to use motorized vehicles on the trails are exempt from the permit requirements. A legitimate need is limited to (a) those persons who are authorized by the Director to use motorized vehicles in the management, construction, maintenance and operation of the trails and facilities and (b)
persons and equipment to fight forest fires and handle other emergencies."

(j) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section seven, article one, chapter twenty of this code, 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 twenty-fifth day of October, one thousand nine hundred ninety-five, relating to the division of natural resources (rules governing public use of campgrounds in West Virginia state parks, state forests and state wildlife management areas under the division of natural resources, 58 CSR 32), are authorized.

(k) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-five, authorized under the authority of section seven, article one, chapter twenty of this code, 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 twenty-fifth day of October, one thousand nine hundred ninety-five, relating to the division of natural resources (rules governing public use of swimming areas in West Virginia state parks, state forests and state wildlife management areas under the division of natural resources, 58 CSR 33), are authorized.

CHAPTER 171

(H. B. 4310—By Delegates Douglas, Gallagher, Faircloth, Compton, Linch and Riggs)

[Passed March 9, 1996; in effect ninety days 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 eleven, relating generally to the promulgation of administrative rules by the various executive and administrative agencies and the procedures relating thereto; and authorizing certain of these agencies to update and make technical corrections to legislative rules.

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 eleven, to read as follows:

ARTICLE 11. TECHNICAL CORRECTIONS TO THE CODE OF STATE RULES.

§64-11-1. Purpose.

§64-11-2. Radiologic technologists board of examiners.

§64-11-3. Division of labor.


§64-11-5. Environmental quality board.


§64-11-7. Division of natural resources.


§64-11-10. Insurance commissioner.

§64-11-11. Criminal justice and highway safety division, Governor's committee on crime, delinquency and correction.

§64-11-12. Division of highways.

§64-11-1. Purpose.

(a) It is hereby declared to be the purpose and policy of the Legislature in enacting this article to allow technical corrections to the code of state rules. Corrections made under this article shall be limited to those necessary to correct and update the names of agencies and their subdivisions and boards, addresses, phone numbers, code references, gender specific pronouns and any other changes considered necessary which do not effect substantive changes in the rules. Any amendment contained in this article which imparts the force of law, supplies a basis for the imposition of civil or criminal liability, or grants or denies a specific benefit is void and the language of the
rule in effect immediately prior to the passage of the amendment remains in full force and effect.

(b) The secretary of state is hereby granted the authority to correct inconsistencies with regard to effective dates of rules and numbers of series, pages, sections or subsections contained in this article to meet the purpose and intent of the amendments offered in this article.

§64-11-2. Radiologic technologists board of examiners.

The legislative rule relating to the radiologic technologists board of examiners (rules and regulations of the West Virginia board of examiners of radiologic technologists, 18 CSR 1), effective the twenty-third day of May, one thousand nine hundred eighty-four, is reauthorized with the following amendment:

"On page 1, subsection 1.7, by striking out the words 'Room 514, Medical Arts Bldg., 1021 Quarrier St., Charleston, West Virginia 25301' and inserting in lieu thereof the words 'Room 303, 3049 Robert C. Byrd Drive, Beckley, West Virginia 25801'."

§64-11-3. Division of labor.

(a) The legislative rule relating to the division of labor (supervision of private employment agencies, legislative and procedural rules and regulations, 42 CSR 1), effective the thirty-first day of December, one thousand nine hundred eighty-two, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the words 'DEPARTMENT OF LABOR' and inserting in lieu thereof the words 'DIVISION OF LABOR';

And,

On page 3, subsection 7.1(d), by inserting the words 'or her' immediately following the word 'his'."

(b) The legislative rule relating to the division of labor (West Virginia safety code for aerial passenger tramways, lifts and tows, 42 CSR 2), effective the twenty-sixth day of May, one thousand nine hundred
eighty-three, is reauthorized with the following amendment:

"On page 1, in the title, by striking out the words 'DEPARTMENT OF LABOR' and inserting in lieu thereof the words 'DIVISION OF LABOR'."

(c) The legislative rule relating to the division of labor (steam boiler inspection, 42 CSR 3), effective the first day of April, one thousand nine hundred eighty-eight, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the words 'DEPARTMENT OF LABOR' and inserting in lieu thereof the words 'DIVISION OF LABOR';

Beginning on page 1, subsection 2.2, and continuing throughout the text of the rule, by inserting the words 'or her' immediately following the word 'his';

Beginning on page 2, subsection 2.2, and continuing throughout the text of the rule, by inserting the words 'or her' immediately following the word 'him';

Beginning on page 3, subsection 2.11, and continuing throughout the text of the rule, by inserting the words 'or herself' immediately following the word 'himself';

Beginning on page 4, subsection 2.15, and continuing throughout the text of the rule, by inserting the words 'or she' immediately following the word 'he';

And,

Beginning on page 6, subsection 2.27, and continuing throughout the text of the rule, by striking out the words 'this Department' and inserting in lieu thereof the words 'the Division of Labor'."

(d) The legislative rule relating to the division of labor (hazardous chemical substances, 42 CSR 4), effective the thirty-first day of December, one thousand nine hundred eighty-two, is reauthorized with the following amendment:
"On page 1, in the title, by striking out the words 'DEPARTMENT OF LABOR' and inserting in lieu thereof the words 'DIVISION OF LABOR'."

(e) The legislative rule relating to the division of labor (wage payment and collection act, 42 CSR 5), effective the twenty-ninth day of May, one thousand nine hundred ninety, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the word 'DEPARTMENT' and inserting in lieu thereof the word 'DIVISION';

Beginning on page 2, subsection 2.5(b), and continuing throughout the text of the rule, by inserting the words 'or her' immediately following the word 'his';

Beginning on page 4, subsection 9.1, and continuing throughout the text of the rule, by inserting the words 'or she' immediately following the word 'he';

On page 1, subsection 2.4, by striking the words 'the Wage and Hour Division of the Labor Department' and inserting in lieu thereof the words 'the Wage and Hour Section of the Division of Labor';

And,

On page 7, subsection 14.3, in two occurrences in the paragraph numbered 6., by inserting the words 'or her' immediately following the word 'him'."

(f) The legislative rule relating to the division of labor (polygraph examinations, limitations of use, requirements, licenses and penalties, 42 CSR 6), effective the sixth day of June, one thousand nine hundred eighty-five, is reauthorized with the following amendments:

"On page 1, in the title, by striking out the words 'DEPARTMENT OF LABOR' and inserting in lieu thereof the words 'DIVISION OF LABOR';

And,

On page 1, subsection 2.1, by inserting the words 'or her' immediately following the word 'his'."
(g) The legislative rule relating to the division of labor (rules and regulations for the West Virginia prevailing wage act, 42 CSR 7), effective the thirty-first day of December, one thousand nine hundred eighty-two, is reauthorized with the following amendments:

"Beginning on page 1, subsection 1.1, and continuing throughout the text of the rule, by inserting the words 'or her' immediately following the word 'his';

On page 1, in the title, by striking out the words 'DEPARTMENT OF LABOR' and inserting in lieu thereof the words 'DIVISION OF LABOR';

On page 1, subsection 2.3, by striking out the word 'Department' and inserting in lieu thereof the word 'Division' in each of the two occurrences;

On page 4, subsection 3.1(m), by striking out the words 'No person, for himself or another, shall not request' and inserting in lieu thereof the words 'No person, whether personally or for another, shall request';

On page 4, subsection 5.1, by striking out the word 'Department' and inserting in lieu thereof the word 'Division' in each of the two occurrences;

On page 6, subsection 8.3, by striking out the words 'for himself or another' and inserting in lieu thereof the words 'whether personally or for another';

And,

On page 7, subsection 12.1(b)(1), by inserting the words 'or she' immediately following the word 'he' in each of the two occurrences."

(h) The legislative rule relating to the division of labor (minimum wages and maximum hours standards regulations, 42 CSR 8), effective the thirty-first day of December, one thousand nine hundred eighty-two, is reauthorized with the following amendments:

"Beginning on page 1, subsection 2.3, and continuing throughout the text of the rule, by inserting the words 'or her' immediately following the word 'his';
Beginning on page 3, subsection 5.1, and continuing throughout the text of the rule, by inserting the words 'or her' immediately following the word 'him';

Beginning on page 3, subsection 6.1, and continuing throughout the text of the rule, by inserting the words 'or she' immediately following the word 'he';

On page 1, in the title, by striking out the words 'DEPARTMENT OF LABOR' and inserting in lieu thereof the words 'DIVISION OF LABOR';

On page 1, subsection 2.3, by striking out the word 'Department' and inserting in lieu thereof the word 'Division';

On page 1, subsection 2.5, by striking out the word 'Department' and inserting in lieu thereof the word 'Division' in each of the two occurrences;

On page 1, subsection 2.6, by striking out the word 'Division' and inserting in lieu thereof the word 'Section' in each of the two occurrences;

On page 2, subsection 3.3, in the subsection heading, by striking out the word 'department' and inserting in lieu thereof the word 'division';

On page 2, subsection 3.3, by striking out the words 'The Wage and Hour Division of the West Virginia Department of Labor' and inserting in lieu thereof the words 'The Wage and Hour Section of the West Virginia Division of Labor';

On page 3, subsection 4.4, by striking out the word 'Division' and inserting in lieu thereof the word 'Section';

On page 4, subsection 7.2, by striking out the word 'Department' and inserting in lieu thereof the word 'Division';

On page 7, subsection 8.17, by striking out the word 'Salesmen' and inserting in lieu thereof the word 'Salespersons', by striking out the word 'salesman' and inserting in lieu thereof the word 'salesperson', and by striking out the word 'partsman' and inserting in lieu thereof the word 'partsperson'."
(i) The legislative rule relating to the division of labor (child labor, 42 CSR 9), effective the fourteenth day of April, one thousand nine hundred seventy-five, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the words 'DEPARTMENT OF LABOR' and inserting in lieu thereof the words 'DIVISION OF LABOR';

Beginning on page 7, subsection 8.2(c)(2), and continuing throughout the text of the rule, by inserting the words 'or her' immediately following the word 'his';

Beginning on page 14, subsection 9.1, and continuing throughout the text of the rule, by inserting the words 'or she' immediately following the word 'he';

On page 8, subsection 8.4(b)(10), by inserting the words 'or herself' immediately following the word 'himself';

And,

On page 15, subsection 10.1(a)(1), by inserting the words 'or her' immediately following the word 'him'."

(j) The legislative rule relating to the division of labor (bedding and upholstered furniture, 42 CSR 12), effective the thirty-first day of December, one thousand nine hundred eighty-two, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the word 'DEPARTMENT' and inserting in lieu thereof the word 'DIVISION';

On page 1, subsection 2.3, by striking out the words 'Division refers to the Division of weights, measures and bedding' and by inserting in lieu thereof the words 'Section refers to the weights, measures and bedding section';

On page 2, subsection 3.1, by striking out the words 'a division entitled "The Division of Weights, Measures and Bedding"' and by inserting in lieu thereof the words
section entitled "The Weights, Measures and Bedding Section";
And,
On page 2, subsection 3.1, in the third sentence, by striking out the word 'Division' and inserting the word 'Section'."

(k) The legislative rule relating to the division of labor (safety glazing act, 42 CSR 13), effective the sixth day of August, one thousand nine hundred seventy-one, is reauthorized with the following amendment:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the words 'DEPARTMENT OF LABOR' and inserting in lieu thereof the words 'DIVISION OF LABOR'."

(l) The legislative rule relating to the division of labor (building construction, highway construction and heavy construction, 42 CSR 14), effective the sixth day of January, one thousand nine hundred ninety-four, is reauthorized with the following amendment:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the words 'DEPARTMENT OF LABOR' and inserting in lieu thereof the words 'DIVISION OF LABOR'."

(m) The legislative rule relating to the division of labor (West Virginia occupational safety and health act - adoption of federal standards, 42 CSR 15), effective the first day of April, one thousand nine hundred eighty-eight, is reauthorized with the following amendment:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the words 'DEPARTMENT OF LABOR' and inserting in lieu thereof the words 'DIVISION OF LABOR'."

(n) The legislative rule relating to the division of labor (standards for weights and measures inspectors - adoption of NBS handbook 130, 1987, 42 CSR 16), effective the first day of April, one thousand nine hundred
eighty-eight, is reauthorized with the following amendment:
"On page 1, in the title, by striking out the words 'DEPARTMENT OF LABOR' and inserting in lieu thereof the words 'DIVISION OF LABOR'."

(o) The legislative rule relating to the division of labor (amusement rides and amusement attractions safety act, 42 CSR 17), effective the fifteenth day of June, one thousand nine hundred eighty-nine, is reauthorized with the following amendments:
"Beginning on page 1, subsection 2.6, and continuing throughout the text of the rule, by inserting the words 'or her' immediately following the word 'his';
Beginning on page 2, and continuing throughout the text of the rule, by striking out the word 'department' and inserting in lieu thereof the word 'division';
On page 1, in the title, by striking out the words 'DEPARTMENT OF LABOR' and inserting in lieu thereof the words 'DIVISION OF LABOR';
On page 1, SUBSECTION 2.6, by striking out the words 'Department of Labor' and inserting in lieu thereof the words 'Division of Labor';
And,
On page 1, subsection 2.7, by striking out the words 'Department. The West Virginia Department of Labor to include all its divisions and personnel.' and inserting in lieu thereof the words 'Division. The West Virginia Division of Labor to include all its sections and personnel.'.
(a) The legislative rule relating to the water development authority (requirements governing disbursement of loans and grants to governmental agencies for the design, acquisition or construction of water development projects, 44 CSR 1), effective the first day of June, one thousand nine hundred eighty-seven, is reauthorized with the following amendments:
8 "Beginning on page 1, section 2, and continuing throughout the text of the rule, by striking out the words 'article five-c, chapter twenty of the Code of West Virginia' and inserting in lieu thereof the words 'W. Va. Code Chapter 22C, Article 1';

13 Beginning on page 1, subsection 2.1.1, and continuing throughout the text of the rule, by striking out the words 'Department of Natural Resources' and inserting in lieu thereof the words 'Division of Environmental Protection';

23 Beginning on page 13, subsection 8.1, and continuing throughout the text of the rule, by striking out the words 'Department of Water Resources' and inserting in lieu thereof the words 'Office of Water Resources';

29 On page 1, subsection 1.2, by striking out the code reference '§20-5C-6' and inserting in lieu thereof the code reference '§22C-1-6(1)';

39 And,

43 (b) The legislative rule relating to the water development authority (requirements governing disbursement of loans and grants to governmental agencies for the acquisition or construction of water development projects (water facilities), 44 CSR 2), effective the first day of July, one thousand nine hundred eighty-five, is reauthorized with the following amendments:

60 "Beginning on page 1, section 2, and continuing throughout the text of the rule, by striking out the words 'article five-c, chapter twenty of the Code of West Virginia' and inserting in lieu thereof the words 'W. Va. Code Chapter 22C, Article 1';
45 On page 1, subsection 1.2, by striking out the code reference §20-5C-6' and inserting in lieu thereof the code reference '§22C-1-6(1)';

48 And,

49 On page 3, subsection 3.5.2(i), by striking out the words 'Department of Health' and inserting in lieu thereof the words 'Bureau of Public Health'."

52 (c) The legislative rule relating to the water development authority (rule confirming existing practices and establishing additional, new procedures in relation to providing public notice of date, time, place and purpose of meetings of West Virginia water development board, 44 CSR 3), effective the seventh day of July, one thousand nine hundred eighty-nine, is reauthorized with the following amendment:

60 "On page 1, subsection 1.2, by striking out the code reference '§20-5C-6(1)' and inserting in lieu thereof the code reference '§22C-1-6(1)'. "

§64-11-5. Environmental quality board.

1 The legislative rule relating to the environmental quality board (requirements governing groundwater standards, 46 CSR 12), effective the twenty-fifth day of August, one thousand nine hundred ninety-three, is reauthorized with the following amendments:

6 "On page 1, in the title of the rule, by striking out the words 'Water Resources Board' and inserting in lieu thereof the words 'Bureau of the Environment' on one line and on the next line the words 'Environmental Quality Board';

10 On page 1, subsection 1.2, by striking out the code references §§20-5M-4 and 20-5-5' and inserting in lieu thereof the code references '§22-12-4 and §22B-3-4';

13 On page 1, subsection 2.2, by striking out the words 'State Water Resources Board' and inserting in lieu thereof the words 'Environmental Quality Board';

16 On page 2, subsection 3.4(a), by striking out the code reference '§22B' and inserting in lieu thereof the words 'Chapter 22, Articles 6, 7, 8, 9 or 10';

(a) The legislative rule relating to the solid waste management board (disbursement of loans and grants to governmental agencies for the acquisition or construction of solid waste disposal projects, 54 CSR 1), effective the seventeenth day of June, one thousand nine hundred ninety-one, is reauthorized with the following amendments:

"On page 1, subsection 1.2, by striking out the code reference '§16-26-1 et seq.' and inserting in lieu thereof the code reference '§22C-3-1 et seq.';"

On page 1, subsection 2.1.1, by striking out the code reference '§16-26-1 et seq.' and inserting in lieu thereof the code reference '§22C-3-1 et seq.';

On page 1, subsection 2.1.3, by striking out the code reference '§16-26-4' and inserting in lieu thereof the code reference '§22C-3-4';

And,

(b) The legislative rule relating to the solid waste management board (the establishment of fee schedule and cost allocations applicable to the issuance of bonds by the West Virginia solid waste management board, 54 CSR 2), effective the seventeenth day of June, one thousand nine hundred ninety-one, is reauthorized with the following amendments:
"On page 1, subsection 1.2, by striking out the code reference '§16-26-1 et seq.' and inserting in lieu thereof the code references '§22C-3-1 et seq.';

On page 1, subsection 2.1.1, by striking out the code reference '§16-26-1 et seq.' and inserting in lieu thereof the code references '§22C-3-1 et seq.';

And,

On page 1, subsection 2.1.3, by striking out the code reference '§16-26-4' and inserting in lieu thereof the code reference '§22C-3-4'."

(c) The legislative rule relating to the solid waste management board (the development of commercial solid waste facility siting plans, 54 CSR 4), effective the seventeenth day of June, one thousand nine hundred ninety-one, is reauthorized with the following amendments:

"On page 1, subsection 1.1, by striking out the code reference '§20-9-12a' and inserting in lieu thereof the code reference '§22C-4-24';

On page 1, subsection 1.4, by striking out the code reference '§16-26-6' and inserting in lieu thereof the code reference '§22C-3-6' and by striking out the code reference '§20-9-12a' and inserting in lieu thereof the code reference '§22C-4-24';

On page 1, subsection 2.1, by striking out the code reference '§20-5F-1 et seq.' and inserting in lieu thereof the code reference '§22-15-1 et seq.';

On page 1, subsection 2.2, by striking out the code reference '§20-9-3' and inserting in lieu thereof the code reference '§22C-4-3', by striking out the code reference '§20-9-4' and inserting in lieu thereof the code reference '§22C-4-4', and by striking out the code reference '§20-9-5a' and inserting in lieu thereof the code reference '§22C-4-6';

On page 1, subsection 2.3, by striking out the code reference '§16-26-4' and inserting in lieu thereof the code reference '§22C-3-4';
On page 1, subsection 2.4, by striking out the code reference '§20-9' and inserting in lieu thereof the code reference '§22C-4';

On page 2, subsection 2.17, by striking out the code reference '§20-9-12a' and inserting in lieu thereof the code reference '§22C-4-24';

On page 3, subsection 2.21, by striking out the code reference '§20-5A' and inserting in lieu thereof the code reference '§22-11', by striking out the code reference '§20-SE' and inserting in lieu thereof the code reference '§22-18', and by striking out the words 'Chapter 22B' and inserting in lieu thereof the words 'Chapter 22C';

And,

On page 4, subsection 5.1.2, by striking out the code reference '§20-9-7' and inserting in lieu thereof the code reference '§22C-4-8'.

§64-11-7. Division of natural resources.

(a) The legislative rule relating to the division of natural resources (West Virginia wildlife management areas, 58 CSR 6), effective the ninth day of May, one thousand nine hundred ninety-five, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '6' and inserting in lieu thereof the series number '43';

On page 1, subsection 2.7, by striking out the reference '47 C.S.R. 11A' and inserting in lieu thereof the reference '58 CSR 46';

And,

On page 2, subsection 3.7, by striking out the reference '47 C.S.R. 11, 12 and 20' and inserting in lieu thereof the reference '58 CSR 45, 55 and 60'."

(b) The legislative rule relating to the division of natural resources (cooperation with federal government in management of federal lands within the state, 58 CSR 7),
effective the third day of October, one thousand nine hundred eighty-three, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '7' and inserting in lieu thereof the series number '44';

And,

On page 1, in the title, by striking out the words 'DEPARTMENT OF NATURAL RESOURCES' and inserting in lieu thereof the words 'DIVISION OF NATURAL RESOURCES'."

(c) The legislative rule relating to the division of natural resources (rules and regulations governing shoreline camping on government owned reservoir areas in West Virginia, 58 CSR 8), effective the first day of January, one thousand nine hundred eighty-three, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the words 'DEPARTMENT OF NATURAL RESOURCES' and inserting in lieu thereof the words 'DIVISION OF NATURAL RESOURCES';

And,

Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '8' and inserting in lieu thereof the series number '30'."

(d) The legislative rule relating to the division of natural resources (regulations defining the terms to be used concerning all hunting and trapping regulations, 58 CSR 11A), effective the first day of July, one thousand nine hundred ninety-three, is reauthorized with the following amendment:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '11A' and inserting in lieu thereof the series number '46'."
(e) The legislative rule relating to the division of natural resources (special bear hunting rule, 58 CSR 1 IC), effective the ninth day of May, one thousand nine hundred ninety-five, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '1 IC' and inserting in lieu thereof the series number '48';

On page 1, subsection 2.1, by striking out the reference '58 C.S.R. 1 IA' and inserting in lieu thereof the reference '58 CSR 46';

And,

On page 1, subsection 3.2, by striking out the reference '58 C.S.R. 11' and inserting in lieu thereof the reference '58 CSR 45'."

(f) The legislative rule relating to the division of natural resources (general hunting regulations, 58 CSR 11 D), effective the first day of July, one thousand nine hundred ninety-three, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '11 D' and inserting in lieu thereof the series number '49';

And,

On page 1, subsection 2.1, by striking out the reference '58 C.S.R. 1 IA' and inserting in lieu thereof the reference '58 CSR 46'."

(g) The legislative rule relating to the division of natural resources (deer hunting regulations, 58 CSR 11 E), effective the first day of July, one thousand nine hundred ninety-three, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '11 E' and inserting in lieu thereof the series number '50';
On page 1, subsection 2.1, by striking out the reference '47 C.S.R. 11A' and inserting in lieu thereof the reference '58 CSR 46';

On page 1, subsection 3.1, by striking out the reference '47 C.S.R. 11' and inserting in lieu thereof the reference '58 CSR 45' in each of the two occurrences;

And,

On page 1, subsection 3.6, by striking out the reference '47 C.S.R. 11' and inserting in lieu thereof the reference '58 CSR 45'.

(h) The legislative rule relating to the division of natural resources (wild turkey regulations, 58 CSR 11F), effective the first day of July, one thousand nine hundred ninety-three, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '11F' and inserting in lieu thereof the series number '51';

And,

On page 1, subsection 2.1, by striking out the reference '47 C.S.R. 11A' and inserting in lieu thereof the reference '58 CSR 46'."

(i) The legislative rule relating to the division of natural resources (wild boar hunting regulations, 58 CSR 11G), effective the ninth day of May, one thousand nine hundred ninety-five, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '11G' and inserting in lieu thereof the series number '52';

And,

On page 1, subsection 2.1, by striking out the reference '58 C.S.R. 11A' and inserting in lieu thereof the reference '58 CSR 46'."
(j) The legislative rule relating to the division of natural resources (general trapping regulations, 58 CSR 11H), effective the first day of July, one thousand nine hundred ninety-three, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '11H' and inserting in lieu thereof the series number '53';

On page 1, subsection 2.1, by striking out the reference '47 C.S.R. 11A' and inserting in lieu thereof the reference '58 CSR 46';

And,

On page 2, subsection 3.17, by striking out the reference '47 C.S.R. 11' and inserting in lieu thereof the reference '58 CSR 45'."

(k) The legislative rule relating to the division of natural resources (dog training regulations, 58 CSR 11I), effective the first day of July, one thousand nine hundred ninety-three, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '11I' and inserting in lieu thereof the series number '54';

And,

On page 1, subsection 2.1, by striking out the reference '47 C.S.R. 11A' and inserting in lieu thereof the reference '58 CSR 46'."

(l) The legislative rule relating to the division of natural resources (special migratory bird hunting regulations, 58 CSR 12A), effective the first day of July, one thousand nine hundred ninety-three, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '12A' and inserting in lieu thereof the series number '56';
And,

On page 1, subsection 2.6, by striking out the reference '47 C.S.R. 12' and inserting in lieu thereof the reference '58 CSR 55'.

(m) The legislative rule relating to the division of natural resources (transporting and selling wildlife pelts, 58 CSR 16), effective the first day of May, one thousand nine hundred ninety, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the word 'Department' and inserting in lieu thereof the word 'Division';

Beginning on page 1, subsection 2.8, and continuing throughout the text of the rule, by striking out the words 'Series 16A' and inserting in lieu thereof the words 'Series 17';

Beginning on page 2, subsection 4.2, and continuing throughout the text of the rule, immediately following the word 'his', by inserting the words 'or her';

On page 1, subsection 2.8, by striking out the words 'Title 47' and inserting in lieu thereof the words 'Title 58';

And,

On page 1, subsection 2.8, by striking out the reference '47 CSR 16A' and inserting in lieu thereof the reference '58 CSR 17'.

(n) The legislative rule relating to the division of natural resources (special fishing rule, 58 CSR 21), effective the ninth day of May, one thousand nine hundred ninety-five, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '21' and inserting in lieu thereof the series number '61';

And,
On page 1, subsection 1.5, by striking out the reference '58 C.S.R. 20' and inserting in lieu thereof the reference '58 CSR 60'.

(o) The legislative rule relating to the division of natural resources (catching and selling bait fish, 58 CSR 22), effective the first day of June, one thousand nine hundred eighty-nine, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '22' and inserting in lieu thereof the series number '62';

And,

On page 2, subsection 8.1, by striking out the reference '47 C.S.R. 20' and inserting in lieu thereof the reference '58 CSR 60'.

(p) The legislative rule relating to the division of natural resources (point system for the revocation of hunting and fishing licenses, 58 CSR 24), effective the first day of January, one thousand nine hundred eighty-three, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the word 'Department' and inserting in lieu thereof the word 'Division';

On page 1, subsection 6.1, immediately preceding the word 'Department' by striking out the word 'the';

And,

On page 1, subsection 6.3, immediately following the word 'his', by inserting the words 'or her'.

(q) The legislative rule relating to the division of natural resources (special motorboating regulations, 58 CSR 25C), effective the tenth day of May, one thousand nine hundred ninety-two, is reauthorized with the following amendment:
"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '25C' and inserting in lieu thereof the series number '27'."

(r) The legislative rule relating to the division of natural resources (special requirements concerning boating, 58 CSR 25D), effective the first day of October, one thousand nine hundred ninety-three, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '25D' and inserting in lieu thereof the series number '28';

And,

On page 1, subsection 2.1, by striking out the reference '47 CSR 25' and inserting in lieu thereof the reference '58 CSR 25'."

(s) The legislative rule relating to the division of natural resources (commercial whitewater outfitters, 58 CSR 27), effective the seventh day of April, one thousand nine hundred ninety-four, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '27' and inserting in lieu thereof the series number '12';

Beginning on page 2, subsection 4.3, and continuing throughout the text of the rule, by inserting the words 'or her' immediately following the word 'him';

And,

Beginning on page 4, subsection 7.2, and continuing throughout the text of the rule, by inserting the words 'or her' immediately following the word 'his'."

(t) The legislative rule relating to the division of natural resources (recycling assistance fund grant program, 58 CSR 43), effective the thirtieth day of June, one thousand
nine hundred ninety-three, is reauthorized with the following amendment:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '43' and inserting in lieu thereof the series number '5'."

(u) The legislative rule relating to the division of natural resources (conservation officers - supplemental pay in lieu of overtime, 58 CSR 45), effective the first day of January, one thousand nine hundred eighty-three, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the words 'DEPARTMENT OF NATURAL RESOURCES' and inserting in lieu thereof the words 'DIVISION OF NATURAL RESOURCES';

And,

Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '45' and inserting in lieu thereof the series number '13'."

(v) The legislative rule relating to the division of natural resources (regulations for handling and firing of firearms, 58 CSR 46), effective the first day of January, one thousand nine hundred eighty-three, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the words 'DEPARTMENT OF NATURAL RESOURCES' and inserting in lieu thereof the words 'DIVISION OF NATURAL RESOURCES';

Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '46' and inserting in lieu thereof the series number '14';

And,
On page 1, subsection 1.2, by striking out the code reference '61-7-2(e)' and inserting in lieu thereof the code reference '61-7-4(a)(8)'.

(w) The legislative rule relating to the division of natural resources (revocation of hunting and fishing licenses, 58 CSR 49), effective the first day of August, one thousand nine hundred ninety-three, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '49' and inserting in lieu thereof the series number '23';

And,

Beginning on page 2, subsection 3.3, and continuing throughout the text of the rule, by inserting the words 'or her' immediately following the word 'his'."

(x) The legislative rule relating to the division of natural resources (hunting or fishing outfitters and guides, 58 CSR 50), effective the first day of April, one thousand nine hundred eighty-eight, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the words 'DEPARTMENT OF NATURAL RESOURCES' and inserting in lieu thereof the words 'DIVISION OF NATURAL RESOURCES';

Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '50' and inserting in lieu thereof the series number '11';

Beginning on page 1, subsection 2.1, and continuing throughout the text of the rule, by inserting the words 'or her' immediately following the word 'his';

And,

On page 1, subsection 3.5, by striking out the word 'Department's' and inserting in lieu thereof the word 'Division's'."

(a) The legislative rule relating to the West Virginia department of agriculture (primary and secondary containment of fertilizers, 61 CSR 6B), effective the first day of July, one thousand nine hundred ninety-three, is reauthorized with the following amendments:

"On page 1, subsection 1.2, by striking out the code reference '§20-5M-5-c' and inserting in lieu thereof the code reference '§22-12-5(c)';

On page 3, subsection 4.1.8, by striking out the code reference '§20-5M-10' and inserting in lieu thereof the code reference '§22-12-10';

On page 12, subsection 13.1, by striking out the code references '§§20-5M-10 and 20-5M-11' and inserting in lieu thereof the code references '§22-12-10 and §22-12-11';

On page 12, subsection 14.1, by striking out the code reference '§20-5M-10a' and inserting in lieu thereof the code reference '§22-12-10a';

And,

On page 12, subsection 14.1, by striking out the code reference '§20-5M-10c' and inserting in lieu thereof the code reference '§22-12-10c';

And,

(b) The legislative rule relating to the West Virginia department of agriculture (general groundwater protection rules for fertilizer and manures, 61 CSR 6C), effective the first day of July, one thousand nine hundred ninety-three, is reauthorized with the following amendments:

"On page 1, subsection 1.2, by striking out the code reference '§20-5M-5-c' and inserting in lieu thereof the code reference '§22-12-5(c)';

On page 3, subsection 5.1.8, by striking out the code reference 'WV Code 20-5M-1 et seq.' and inserting in lieu thereof the code reference 'W. Va. Code §22-12-1 et seq.';
On page 3, subsection 5.1.12, by striking out the code reference '§20-5M-10' and inserting in lieu thereof the code reference '§22-12-10';

On page 4, subsection 7.1, by striking out the code reference '§20-5M et seq.' and inserting in lieu thereof the code reference '§22-12 et seq.';

On page 4, subsection 7.1, by striking out the code reference '§20-5M-10' and inserting in lieu thereof the code reference '§22-12-10';

On page 4, subsection 8.1, by striking out the code references '§§20-5M-10 and 20-5M-11' and inserting in lieu thereof the code reference '§22-12-10 and §22-12-11';

And,

On page 4, subsection 8.2, by striking out the code reference '§20-5M et seq.' and inserting in lieu thereof the code reference '§22-12 et seq.'

(c) The legislative rule relating to the West Virginia department of agriculture (general groundwater protection rules for pesticides, 61 CSR 12G), effective the first day of July, one thousand nine hundred ninety-three, is reauthorized with the following amendments:

"Beginning on page 3, subsection 5.1.14, and continuing throughout the text of the rule, by striking out the code reference '§20-5M-10' and inserting in lieu thereof the code reference '§22-12-10';

On page 1, subsection 1.2, by striking out the code references '§§19-16A-4-6(N) and 20-5M-5-c' and inserting in lieu thereof the code references '§19-16A-4(6)(N) and §22-12-5(c)';

And,

On page 3, subsection 5.1.9, by striking out the code reference '§20-5M-1 et seq.' and inserting in lieu thereof the code reference '§22-12-1 et seq.'

(d) The legislative rule relating to the West Virginia department of agriculture (non-bulk pesticide rules for permanent operational areas, 61 CSR 12I), effective the
first day of July, one thousand nine hundred ninety-three, is reauthorized with the following amendment:

"On page 3, subsection 5.1, by striking out the code reference '§20-5M-1 et seq.' and inserting in lieu thereof the code reference '§22-12-1 et seq.'"

(e) The legislative rule relating to the West Virginia department of agriculture (generic state management plan for pesticides and fertilizers in groundwater, 61 CSR 22), effective the first day of November, one thousand nine hundred ninety-two, is reauthorized with the following amendments:

"Beginning on page 2, subsection 4.1.a, and continuing throughout the text of the rule, by striking out the words 'Division of Natural Resources' and inserting in lieu thereof the words 'Department of Environmental Protection';

On page 1, subsection 1.2, by striking out the code references '§§19-16A-4 and 20-5M-5' and inserting in lieu thereof the code references '§19-16A-4 and §22-12-5';

On page 2, subsection 4.1.a, by striking out the code reference '§20-5M-1 et seq.' and inserting in lieu thereof the code reference '§22-12-1 et seq.';

On page 2, subsection 4.3.a, by striking out the words 'Water Resources Section' and inserting in lieu thereof the words 'Office of Water Resources';

On page 3, subsection 4.6, by striking out the words 'State Department of Natural Resources' and inserting in lieu thereof the words 'State Department of Environmental Protection';

On page 4, subsection 5.1.b.A., by striking out the code reference '§20-5M-1 et seq.' and inserting in lieu thereof the code reference '§22-12-1 et seq.';

On page 4, subsection 5.1.b.D., by striking out the code reference '§20-5F-1 et seq.' and inserting in lieu thereof the code reference '§22-15-1 et seq.';
On page 5, subsection 7.5, by striking out the words 'Department of Natural Resources' and inserting in lieu thereof the words 'Department of Environmental Protection';

On page 5, subsection 7.5, by striking out the words 'Soil Conservation Service, Agricultural Stabilization and Conservation Service' and inserting in lieu thereof the words 'Environmental Resource Conservation Service, Consolidated Farm Service Agency';

On page 6, subsection 8.2.b., by striking out the word 'SCS' and inserting in lieu thereof the words 'Environmental Resource Conservation Service';

And,

On page 7, subsection 9.5.b.A., by striking out the word 'SCS' and inserting in lieu thereof the words 'Environmental Resource Conservation Service'.

(f) The legislative rule relating to the West Virginia department of agriculture (best management practices for fertilizers and manures, 61 CSR 22B), effective the sixth day of December, one thousand nine hundred ninety-two, is reauthorized with the following amendment:

"On page 1, subsection 1.2, by striking out the code reference '§20-5M-5-c' and inserting in lieu thereof the code reference '§22-12-5(c)'.''


(a) The legislative rule relating to the division of banking (regulations pertaining to the West Virginia consumer credit and protection act and the money and interest article of chapter forty-seven, 106 CSR 1), effective the twenty-fourth day of April, one thousand nine hundred ninety-two, is reauthorized with the following amendments:

"On page 2, subsection 2.3(e), by striking out the code reference '§46A-1-102(24)(a)' and inserting in lieu thereof the code reference '§46A-1-102(26)(a)', and by striking out the code reference '§46A-1-102(40)' and inserting in lieu thereof the code reference '§46A-1-102(42)'."
And,

On page 2, subsection 2.10(a)(2), by striking out the code reference 'U.S.C. Title 29' and inserting in lieu thereof the code reference 'U.S.C. Title 19'.

(b) The legislative rule relating to the division of banking (legislative rule pertaining to the installation, operation and sharing of customer bank communication terminals and the utilization of nonexclusive access interchange system, 106 CSR 7), effective the eleventh day of May, one thousand nine hundred eighty-three, is reauthorized with the following amendments:

"On page 2, subsection 2.4, in the heading, by striking out the word 'Banking', and inserting in lieu thereof the word 'Banking';

And,

On page 2, subsection 3.4, in the heading, by striking out the word 'Banking', and inserting in lieu thereof the word 'Banking'."

(c) The legislative rule relating to the division of banking (regulations pertaining to the West Virginia consumer credit and protection act, 106 CSR 8), effective the twenty-third day of April, one thousand nine hundred eighty-two, is reauthorized with the following amendments:

"On page 1, subsection 1.2, by striking out the code reference '§31A-3-4(c)(12)' and inserting in lieu thereof the code reference '§31A-2-4(c)(12)';

On page 1, subsection 2.1, by striking out the code reference 'West Virginia Code subsection (23), section one hundred two, article one, chapter forty-six-a' and inserting in lieu thereof the code reference 'W. Va. Code §46A-1-102(26)';

On page 1, subsection 2.1, by striking out the code reference 'West Virginia Code subsection (39), section one hundred two, article one, chapter forty-six-a' and inserting in lieu thereof the code reference 'W. Va. Code §46A-1-102(42)';
On page 1, subsection 2.1, by striking out the code reference 'West Virginia Code subsection (14), section one hundred two, article one, chapter forty-six-a' and inserting in lieu thereof the code reference 'W. Va. Code §46A-1-102(15)';

And,

On page 1, subsection 2.1, by striking out the code reference 'West Virginia Code subsection (12), section one hundred two, article one, chapter forty-six-a' and inserting in lieu thereof the code reference 'W. Va. Code §46A-1-102(13)'.

§64-11-10. Insurance commissioner.

The legislative rule relating to the insurance commissioner (insurance holding company systems reporting forms, 114 CSR 35), effective the thirteenth day of April, one thousand nine hundred ninety-four, is reauthorized with the following amendment:

"On page 5, subsection 7.1, by striking out the words 'Section 2(b) of Article 27, Chapter 33 of the Code' and inserting in lieu thereof the code reference 'W. Va. Code §33-27-2a'."

§64-11-11. Criminal justice and highway safety division, Governor's committee on crime, delinquency and correction.

The legislative rule relating to the criminal justice and highway safety division, Governor's committee on crime, delinquency and correction (police response to domestic violence, 149 CSR 3), effective the fourteenth day of April, one thousand nine hundred ninety-five, is reauthorized with the following amendments:

"On page 1, subsection 3.1, by striking out the words 'Division of Public Safety' and inserting in lieu thereof the words 'State Police';

And,

On page 5, subsection 5.4.10, by striking out the code reference '§61-1C-17c' and inserting in lieu thereof the code reference '§62-1C-17c'."
§64-11-12. Division of highways.

1. The legislative rule relating to the division of highways (transportation of hazardous wastes upon the roads and highways, 157 CSR 7), effective the twenty-second day of April, one thousand nine hundred eighty-eight, is reauthorized with the following amendment:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the words 'Department of Highways' and inserting in lieu thereof the words 'Division of Highways';

Beginning on page 1, subsection 1.1, and continuing throughout the text of the rule, by striking out the words 'Department of Natural Resources' and inserting in lieu thereof the words 'Division of Environmental Protection';

On page 1, subsection 1.5, by striking out the words 'Highway Services' and inserting in lieu thereof the word 'Enforcement';

On page 4, subsection 6.3.1, by striking out the words 'Washington Street' and inserting in lieu thereof the words 'Kanawha Boulevard', and by striking out the telephone number '348-3028' and inserting in lieu thereof the telephone number '558-3028';

And,

On page 4, subsection 6.3.2, by striking out the words 'Division of Waste Management' and inserting in lieu thereof the words 'Office of Waste Management'."

CHAPTER 172

(S. B. 595—By Senators Wooton, Bowman, Buckalew, Schoonover, Wagner, White and Yoder)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authority to subpoena witnesses; applicability of whistle-blower law; and penalty.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL BUILDING; PREFILING OF BILLS AND RESOLUTIONS; STANDING COMMITTEES; INTERIM MEETINGS; NEXT MEETING OF THE SENATE.

§4-1-5. Authority to subpoena witnesses and documents; penalty for refusal to comply; applicability of whistle-blower law.

(a) When the Senate or House of Delegates, or a committee of either house, authorized to examine witnesses, by resolution or by rules of the Senate or of the House of Delegates, shall order the attendance of any witness, or the production of any books, papers, documents or records necessary for the Senate, House of Delegates or a committee thereof to perform its duties, a summons shall be issued accordingly, signed by the presiding officer or clerk of such house, or the chairman of such committee, directed to the sheriff or other proper officer of any county, or to the sergeant at arms of such house, or any person deputed by him. When a committee is appointed by each house under any joint or concurrent resolution, and directed to sit jointly, with authority to examine witnesses or send for persons or documents, the subpoena aforesaid may be signed by the chairman of the committee on the part of the Senate or the chairman of the committee on the part of the House of Delegates.

(b) If any witness subpoenaed to appear at any hearing or meeting pursuant to subsection (a) of this section shall refuse to appear or to answer inquiries there propounded, or shall fail or refuse to produce books, papers, documents or records within his or her control when the same are subpoenaed, the Senate, House of Delegates or a committee thereof, in its discretion may enforce obedience to its subpoena by attachment, fine or imprisonment, or it may
report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and such court shall compel obedience to the subpoena as though such subpoena had been issued by such court in the first instance.

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

(c) The provisions of article one, chapter six-c of this code are expressly applicable to persons testifying pursuant to the provisions of subsection (a) of this section.

CHAPTER 173

(H. B. 4851—By Delegates J. Martin, Varner, Love, Nesbitt, Stalnaker, Osborne and Harrison)

[Passed March 9, 1996; in effect July 1, 1996. Approved by the Governor.]

AN ACT to amend and reenact sections two, five and nine, article two, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three-c, article three of said chapter; and to amend and reenact article ten of said chapter, all relating to the West Virginia sunset law; providing employees conducting full performance evaluations and preliminary performance reviews the same work space allocations as other employees of the office of the legislative auditor; revising terms agency, full performance evaluation and preliminary performance review; deleting references to financial audits; changing termination dates for agencies scheduled for full performance evaluations and preliminary performance reviews; modifying composition of joint committee on government operations; requiring information to be furnished in requested format; deleting prohibition of legislation affecting more than one agency; and making technical corrections.
Be it enacted by the Legislature of West Virginia:

That sections two, five and nine, article two, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section three-c, article three of said chapter be amended and reenacted; and that article ten of said chapter be amended and reenacted, all to read as follows:

Article
2. Legislative Auditor; Powers; Functions; Duties; Compensation.
3. Joint Committee on Government and Finance.
10. The West Virginia Sunset Law.

ARTICLE 2. LEGISLATIVE AUDITOR; POWERS; FUNCTIONS; DUTIES; COMPENSATION.

§4-2-2. Definitions.
§4-2-5. Powers of auditor.
§4-2-9. Offices; working space.

§4-2-2. Definitions.

For the purposes of this article: "Committee" means the joint committee on government and finance of the Senate and House of Delegates.

"Full performance evaluation" means to determine for an agency whether or not the agency is operating in an efficient and effective manner and to determine whether or not there is a demonstrable need for the continuation of the agency, pursuant to the provisions of section ten, article ten of this chapter.

"Post audit" is the audit or review of governmental finances after they have been completed. The scope of a post audit includes audit or review of transactions pertaining to the financial operations of the various agencies of government on the state level, with verification of state revenues at the source and audit of expenditures all the way through the work to the recipient or beneficiary of the service.
"Preliminary performance review" means to determine for an agency whether or not the agency is performing in an efficient and effective manner and to determine whether or not there is a demonstrable need for the continuation of the agency pursuant to the provisions of section eleven, article ten of this chapter.

"Spending unit" means any department, agency, board, commission, officer, authority, subdivision or institution of the state government for or to which an appropriation has been made, or is to be made by the Legislature.

§4-2-5. Powers of auditor.

The legislative auditor shall have the power and authority to examine the revenues, expenditures and performance of every spending unit of the state government and for these purposes shall have the authority, by such means as are necessary, to require any person holding office in the state government or employed by the state, to allow him to inspect the properties, equipment, facilities and records of the various agencies, departments, subdivisions or institutions of the state government for which appropriations are to be made or have been made, either before or after estimates therefor are submitted, and before, during and after the sessions of the Legislature. Refusal of any person to allow such inspection shall be reported by the legislative auditor to the committee.

§4-2-9. Offices; working space.

The office of the legislative auditor shall be located at the state capitol and shall be open at all reasonable times for the transaction of business.

All state departments, institutions or other agencies of the state government shall provide necessary comfortable space for the purpose of occupancy by employees of the office of the legislative auditor conducting post audits, full performance evaluations or preliminary performance reviews in the various departments, institutions or other agencies of the state, located conveniently at the state capi-
to and at the several institutions or other agencies throughout the state.

ARTICLE 3. JOINT COMMITTEE ON GOVERNMENT AND FINANCE.

§4-3-3c. Reorganization of joint legislative agencies.

(a) The joint committee on government and finance has the authority over and direction of joint legislative agencies, personnel and services, including, but not limited to, the following:

(1) The commission on special investigations provided for in article five, chapter four of this code;

(2) The court of claims provided for in article two and crime victims compensation provided for in article two-a, chapter fourteen of this code;

(3) The legislative auditor provided for in article two, chapter four of this code;

(4) The legislative rule-making review committee provided for in article three, chapter twenty-nine-a of this code;

(5) The legislative reference library provided for in section three of this article;

(6) The legislative automated systems division;

(7) Legislative services;

(8) Public information; and

(9) Joint services provided by one or more of the joint agencies set forth in this subsection. The following joint services are included:

(A) Bill drafting;

(B) Budget analysis;
(C) Duplicating;

(D) Financial, payroll, personnel and purchasing for joint agencies and personnel;

(E) Fiscal analysis;

(F) Post audits, full performance evaluations and preliminary performance reviews;

(G) Research; and

(H) Joint services to other joint legislative committees created and authorized by this code, to joint standing committees of the Senate and House of Delegates, to standing committees of the Senate and House of Delegates and to legislative interim committees.

(b) Notwithstanding any other provision of this chapter to the contrary, the joint committee on government and finance has the authority to reorganize and restructure the joint legislative agencies, personnel and services as provided in subsection (a) of this section for the purposes of improving their efficiency and the service they provide to the Legislature and to improve the management thereof by the joint committee. To accomplish these purposes, the joint committee may create divisions as it determines necessary and transfer and assign the joint agencies, personnel and services to the divisions. The divisions, joint agencies, personnel and services shall operate under the direction and policies of the joint committee: Provided, That nothing in this section shall be construed to permit the joint committee to alter or redefine the powers, duties and responsibilities vested in the commission on special investigations pursuant to article five of this chapter.

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-1. Short title.
§4-10-2. Legislative findings.
§4-10-3. Definitions.
§4-10-4. Termination of agencies following full performance evaluations.
§4-10-5. Termination of agencies following preliminary performance reviews.

§4-10-6. Continuation of agency after termination and purpose therefor; continuation of powers and authority after termination; cessation of activities; reestablishment of terminated agency.

§4-10-7. Continuation or reestablishment of agencies scheduled for termination may not exceed six years; acts creating new agencies shall provide termination language.

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

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

§4-10-10. Full performance evaluations of agencies by the committee.

§4-10-11. Preliminary performance reviews of agencies by the committee.

§4-10-12. Annual report by the committee.

§4-10-13. Preservation of rights and claims.

§4-10-14. Article not to be construed as limiting new legislation.

§4-10-1. Short title.

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

§4-10-2. Legislative findings.

The Legislature finds that state governmental actions have produced substantial increases in the number of agencies and programs, proliferation of rules and regulations, and that the agencies and programs often have developed without sufficient legislative oversight, regulatory accountability or an effective system of checks and balances; that agencies and programs have been created without demonstrable evidence that their benefits to the public clearly justify their creation; that once established, agencies and programs tend to acquire permanent status, often without regard for the condition that gave rise to their establishment; that the personnel of such agencies and programs often are beyond the effective control of elected officials, and efforts to encourage modernization
or even to review performance typically have proven
difficult at best; that too often, agencies and programs
acquire a combination of autonomy and authority incon-
sistent with democratic principles and acquire a capacity
for self-perpetuation incompatible with principles of ac-
countability; and that by establishing a system for the
termination, continuation or reestablishment of such agen-
cies and programs following a thorough review of their
operation and performance, the position of the Legislature
to evaluate the need for the continued existence of agen-
cies and programs will be enhanced.

§4-10-3. Definitions.

As used in this article, unless the context clearly indi-
cates a different meaning:

(1) "Agency" means any bureau, department, division,
commission, agency, committee, office, board, authority,
subdivision, program, council, advisory body, cabinet,
panel, system, task force, fund, compact, institution, survey,
position, coalition or other entity, however designated, in
the state of West Virginia.

(2) "Committee" means the joint committee on gov-
ernment operations, hereinafter continued, to perform
duties under this article.

(3) "Full performance evaluation" means to determine
for an agency whether or not the agency is operating in an
efficient and effective manner and to determine whether
or not there is a demonstrable need for the continuation of
the agency, pursuant to the provisions of section ten of
this article. References in this code to performance audit
or full performance audit shall be taken as and shall mean
full performance evaluation.

(4) "Preliminary performance review" means to deter-
mine for an agency whether or not the agency is perform-
ing in an efficient and effective manner and to determine
whether or not there is a demonstrable need for the con-
§4-10-4. Termination of agencies following full performance evaluations.

The following agencies shall be terminated on the date indicated, but no agency may be terminated under this section unless a full performance evaluation has been conducted upon such agency:

1. On the first day of July, one thousand nine hundred ninety-seven: Division of personnel; division of environmental protection; division of rehabilitation services; workers' compensation; office of judges of workers' compensation; department of health and human resources; school building authority; tourism functions within the West Virginia development office; purchasing division within the department of administration; West Virginia parkways, economic development and tourism authority; division of culture and history.

2. On the first day of July, two thousand one: Division of natural resources.

3. On the first day of July, two thousand: Division of corrections.

4. On the first day of July, two thousand two: Division of highways; division of labor.

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

The following agencies shall be terminated on the date indicated, but no agency may be terminated under this section unless a preliminary performance review has been conducted upon such agency:

1. On the first day of July, one thousand nine hundred ninety-six: Juvenile facilities review panel.
(2) On the first day of July, one thousand nine hundred ninety-seven: Board of investments; state building commission; parks section and parks functions of the division of natural resources; emergency medical services advisory council; office of water resources of the division of environmental protection; West Virginia state police; office of environmental advocate of the division of environmental protection; human rights commission; board of examiners in counseling; 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; cable television advisory board; public employees insurance agency advisory board.

(3) On the first day of July, one thousand nine hundred ninety-eight: Women's commission; state lottery commission; meat inspection program of the department of agriculture; soil conservation committee of the department of agriculture; state board of risk and insurance management; board of examiners of land surveyors; commission on uniform state laws; council of finance and administration; West Virginia's membership in the interstate commission on the Potomac River Basin; legislative oversight commission on education accountability; forest management review commission; family law masters system; board of examiners in speech pathology and audiology; board of social work examiners.

(4) On the first day of July, one thousand nine hundred ninety-nine: Public service commission; tree fruit industry self improvement assessment program; capitol building commission; board of banking and financial institutions.

(5) 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
§4-10-6. Continuation of agency after termination and purpose therefor; continuation of powers and authority after termination; cessation of activities; reestablishment of terminated agency.

Upon termination, each agency shall continue in existence until the first day of July of the next succeeding year for the purpose of winding up its affairs. During that year, the impending termination may not reduce nor otherwise limit the powers or authority of that terminated agency. Any funds for the agency shall revert to the fund from which they were appropriated or, if that fund is abolished, to the General Revenue Fund. Upon the expiration of one year after termination, the agency shall cease all activities: Provided, That an agency that has been terminated pursuant to the provisions of this article may be reestablished by the Legislature, and if reestablished by the Legislature during the winding-up period with substantially the same powers, duties or functions, the agency shall be deemed to have been continued.

§4-10-7. Continuation or reestablishment of agencies scheduled for termination may not exceed six years; acts creating new agencies shall provide termination language.
The life of any agency, scheduled for termination under this section may be continued or reestablished by the Legislature for a period of time not to exceed six years.

Any act that creates a new agency and is enacted after the effective date of this article shall provide for termination and review of the newly-created agency pursuant to this article within six years after the effective date of the act that creates the agency.

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

The joint committee on government operations, here- tofore created, is hereby continued. The committee shall be composed of five members of the Senate, to be appoint- ed by the president thereof, no more than three of whom shall be appointed from the same political party; five members of the House of Delegates, to be appointed by the speaker thereof, no more than three of whom shall be appointed from the same political party: Provided, That in the event the membership of a political party is less than fifteen percent in the House of Delegates or Sen- ate, that the membership of that political party from the legislative house with less than fifteen percent membership may be one from that house; and five citizens of this state who are not legislators, public officials or public employ- ees, to be appointed by and to serve at the will and pleasure of the governor, not more than three of whom shall be appointed from the same political party, and at least one of whom shall reside in each congressional district of this state: Provided, That on the thirty-first day of March, one thousand nine hundred ninety-seven, the terms of the five current citizen members of the committee appointed under prior enactment of this section shall terminate, but all of those members shall be eligible for reappointment. On the first day of April, one thousand nine hundred ninety-seven, the governor shall make five new appoint-
ment of this section, four shall be citizens of this state who
are not legislators nor public officials and one shall be an
elected representative of a political subdivision. Not more
than three of those five members may be from the same
political party, and at least one shall reside in each con-
gressional district of this state. The committee shall be
headed by two cochairpersons, one to be selected by the
president of the Senate from the members appointed from
the Senate, and one to be selected by the speaker of the
House of Delegates from the members appointed from the
House of Delegates. All members of the committee shall
serve until their successors shall have been appointed as
heretofore provided. Members of the committee shall
receive such compensation and reimbursement for ex-
penses in connection with performance of interim duties
between regular sessions of the Legislature as may be
authorized by the citizens legislative compensation com-
mission established by section thirty-three, article six of
the constitution of West Virginia. Each member of the
committee who is not a legislative member shall receive
such compensation as the legislative interim members
receive, in addition to reimbursement for necessary ex-
penses incurred in the performance of duties under this
article, such reimbursement to be subject to the same limi-
tations as govern the expenses of the legislative members
of the committee. Compensation and expenses shall be
paid from an appropriation to be made expressly for the
committee, but if no such appropriation be made or the
total amount appropriated has been expended, such ex-
spenses shall be paid from the appropriation under "Ac-
count No. 103 for Joint Expenses," but no expense of any
kind whatever payable under said Account No. 103 for
joint expenses shall be incurred unless first approved by
the joint committee on government and finance. The
committee shall meet upon call of the cochairpersons or
either of them and may meet at any time, both during
sessions of the Legislature and in the interim.

§4-10-9. Powers of the committee; access to records; informa-
tion to be furnished in requested format; failure of
witnesses to appear, testify or produce records;
public hearings; allowance of per diem and mileage for witnesses; hiring of necessary employees; permitting committee to collect costs associated with evaluations or reviews.

To carry out the duties set forth in this article, the committee, any duly authorized employee of the committee, or any employee of the office of the legislative auditor working at the direction of the committee, shall have access to any and all records of every agency in West Virginia. When furnishing information, agencies shall provide information in the format in which it is requested, if the request is specific as to a preferred format.

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

By subpoena, issued over the signature of either cochairpersons of the committee and served in the manner provided by law, the committee may summon and compel the attendance of witnesses and their examination under oath and the production of all books, papers, documents and records necessary or convenient to be examined and used by the committee in the performance of its duties. If any witness subpoenaed to appear at any hearing or meeting shall refuse or fail to appear or to answer questions put to him or her, or shall refuse or fail to produce books, papers, documents, or records within his or her control when the same are demanded, the committee, in its discretion, may enforce obedience to its subpoena by attachment, fine or imprisonment, as provided in section five, article one of this chapter; or it may report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and such court shall compel obedi-
ence to the subpoena as though such subpoena had been issued by such court in the first instance.

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

The joint committee on government operations, subject to the approval of the joint committee on government and finance, may employ such persons, skilled in the field of full performance evaluation, financial audit or preliminary performance review as it may deem necessary to carry out its duties and responsibilities under this article, and may contract for outside expertise in conducting technical or specialized performance evaluations.

The joint committee on government operations may collect, and the agency shall pay, any or all of the costs associated with conducting the full performance evaluations or preliminary performance reviews from the agency being audited or reviewed, when necessary and desirable. The joint committee on government operations shall render to the agency liable for the costs a statement thereof as soon after the same were incurred as practicable, and it shall be the duty of such agency to pay promptly in the manner that other claims and accounts are paid. All money received by the joint committee on government operations from this source shall be expended only for the purpose of covering the costs associated with such services, unless otherwise directed by the Legislature.

§4-10-10. Full performance evaluations of agencies by the committee.

It shall be the duty of the committee to conduct a full performance evaluation in accordance with generally accepted government auditing standards as promulgated by the federal general accounting office of every agency scheduled for termination following full performance evaluations under this article to ascertain if there is a demonstrable need for the continuation of the agency and if the agency should be continued.
In conducting full performance evaluations, the committee may determine the following:

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

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

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

(4) If the agency is operating efficiently and effectively in performing its task.

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

(6) If the conditions that led to the creation of the agency have changed.

(7) The extent to which the agency operates in the public interest.

(8) Whether or not the operation of the agency is impeded or enhanced by existing statutes, rules, procedures, practices or any other circumstances bearing upon the agency's capacity or authority to operate in the public interest, including budgetary, resource and personnel matters.

(9) The extent to which administrative and/or statutory changes are necessary to improve agency operations or to enhance the public interest.

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

(11) Whether or not the activities of the agency duplicate or overlap with those of other agencies, and if so, how these activities could be consolidated.
(12) Whether or not the agency causes an unnecessary burden on any citizen or other agency by its decisions and activities.

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

The committee may direct that the full performance evaluation focus on a specific area of operation within the agency, and may direct further inquiry, when necessary and desirable, into other areas of concern, including, but not limited to:

(1) The economic impact resulting from the functions of the agency.

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

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

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

(5) Whether or not the agency encourages participation by the public in the decision making process.

§4-10-11. Preliminary performance reviews of agencies by the committee.

It shall be the duty of the committee to conduct a preliminary performance review of every agency scheduled for termination following preliminary performance reviews under this article. In conducting such preliminary performance reviews, the committee shall determine the following:

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

(2) If the problem has been solved or the service has been provided.
(3) The extent to which past agency activities and accomplishments, current projects and operations, and planned activities and goals for the future are or have been effective.

(4) The extent to which there would be significant and discernible adverse effects on the public health, safety or welfare if the agency were abolished.

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

(6) Whether or not the conducting of a full performance evaluation on the agency is in the public interest.

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

§4-10-12. Annual report by the committee.

The committee shall complete its deliberations with respect to agencies scheduled for termination and make an annual report thereon to the Legislature not later than ten days after the Legislature convenes in regular session in the year of the scheduled termination for the agency: Provided, That any such annual report required in the year one thousand nine hundred ninety-seven, and every fourth year thereafter, shall be made not later than ten days after the Legislature convenes on the second Wednesday in February. The annual report shall consist of an analysis of the agency including matters as are expressly mandated to be considered by the committee as set forth in this article, together with the recommendations of the committee. The committee shall make one of five recommendations: (1) The agency be terminated as scheduled; (2) the agency be continued and reestablished; (3) the agency be continued and reestablished, but the statutes governing it be amended in specific ways to correct ineffective or discriminatory practices and procedures, burdensome rules and regulations, lack of protection of the public interest, overlapping of jurisdiction with other agencies, unwarranted exercise of authority either in law
or in fact or any other deficiencies; (4) a full performance
evaluation be performed on an agency on which a pre-
liminary review has been completed; or (5) the agency be
continued for a period of time not to exceed one year for
the purpose of completing a full performance evaluation,
preliminary performance review, or for monitoring the
agency's compliance with recommendations contained in
the completed full performance evaluation or preliminary
performance review.

In the event the committee makes recommendations
concerning the continuation or reestablishment of agen-
cies pursuant to this article, the annual report shall include
draft bills effectuating the recommendations.

Copies of the annual reports shall be made available to
all members of the Legislature, to the agency that is the
subject of the report and to the public generally. A copy
of the annual report shall be formally filed immediately
by the committee with the clerk of each house.

§4-10-13. Preservation of rights and claims.

Nothing in this article may be construed as adversely
affecting any right or claim by any person against an
agency or by any agency against any person. Responsi-
bility for prosecuting or defending any such rights or
claims should the Legislature fail to continue and reestab-
lish an agency within one year after its termination shall
be assumed by the attorney general of the state.

§4-10-14. Article not to be construed as limiting new legisla-
tion.

Nothing in this article may be construed as limiting or
interfering with the right of any member of the Legisla-
ture to introduce or of the Legislature to consider any bill
that would create a new agency or to amend the law with
respect to an existing one.
AN ACT to amend and reenact sections one and six, article one, chapter forty-seven-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections six, seven and eight, article three of said chapter; to amend and reenact section one, article four of said chapter; to amend and reenact section three, article seven of said chapter; to amend and reenact sections six and seven, article eight of said chapter; to amend and reenact sections two and three, article nine of said chapter; to amend and reenact article ten of said chapter; and to further amend said chapter by adding thereto a new article, designated article eleven, all relating to registered limited liability partnerships; defining the terms "registered limited liability partnership" and "foreign registered limited liability partnership" and expanding the definitions of other terms; recognizing that a registered limited liability partnership is a general partnership; establishing governing law; providing for the liability of a partner in a registered limited liability partnership; limiting the right to bring an action and to levy execution against only partners who are personally liable for obligations of the partnership; limiting the liability of a purported partner; setting forth the rights and duties of partners in limited liability partnerships; addressing rights and liabilities of partners upon dissociation or dissolution of a registered limited liability partnership; seeking accounts and contributions among partners; conversions and mergers of partnerships; requiring registered limited liability partnerships to register with the secretary of state; establishing registration and annual renewal fee; setting forth required content of such registration; requiring that the names of such partnerships contain the words "registered limited liability partnership" or the abbreviation "L.L.P." or "LLP" as the last words or letters in the partnership's name; requiring that a registered limited liability partnership carry a minimum of one million dollars in liability insurance or create, in lieu thereof, a segregated fund
consisting of an insurance bond or other specified collateral, either of which shall be used to satisfy judgments against the partnership and its partners; requiring foreign registered limited liability partnerships to file notice together with fee with secretary of state; recognizing that foreign registered limited liability partnership shall be governed by the laws of the state of its formation; providing for miscellaneous provisions; and making certain technical revisions.

Be it enacted by the Legislature of West Virginia:

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

Article

3. Relations of Partners to Persons Dealing With Partnership.
4. Relations of Partners to Each Other and to Partnership.
9. Conversions and Mergers.
10. Limited Liability Partnerships.

ARTICLE 1. GENERAL PROVISIONS.

§47B-1-1. Definitions.
§47B-1-6. Law governing internal relations.

§47B-1-1. Definitions.

In this chapter:

1 (1) "Business" includes every trade, occupation and
2 profession.
(2) "Debtor in bankruptcy" means a person who is the subject of:

(i) In order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(ii) A comparable order under federal, state or foreign law governing insolvency.

(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.

(4) "Foreign limited liability partnership" means a partnership or association formed under or pursuant to an agreement governed by the laws of any state or jurisdiction other than this state that is denominated as a registered limited liability partnership or limited liability partnership under the laws of such other jurisdiction.

(5) "Partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under section two, article two of this chapter, predecessor law, or comparable law of another jurisdiction and includes, for all purposes of the laws of this state, a registered limited liability partnership.

(6) "Partnership agreement" means the agreement, whether written, oral or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(7) "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.

(8) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint ven-
ture, government, governmental subdivision, agency or
instrumentality, or any other legal or commercial entity.

(10) "Property" means all property, real, personal or
mixed, tangible or intangible, or any interest therein.

(11) "Registered limited liability partnership" means a
partnership formed pursuant to an agreement governed by
the laws of this state, registered under section one, article
ten of this chapter.

(12) "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 juris-
diction of the United States.

(13) "Statement" means a statement of partnership
authority under section three, article three of this chapter,
a statement of denial under section four of said article, 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, a state-
ment of registration and a statement of withdrawal under
section one, article ten of this chapter, or an amendment or
cancellation of any of the foregoing.

(14) "Transfer" includes an assignment, conveyance,
lease, mortgage, deed and encumbrance.

§47B-1-6. Law governing internal relations.

Except as provided otherwise in section four, article
ten of this chapter, the law of the jurisdiction in which a
partnership has its chief executive office, governs the rela-
tions among the partners and between the partners and the
partnership.

ARTICLE 3. RELATIONS OF PARTNERS TO PERSONS DEALING
WITH PARTNERSHIP.

§47B-3-6. Partner's liability.

§47B-3-7. Actions by and against partnership and partners.

§47B-3-8. Liability of purported partner.

§47B-3-6. Partner's liability.
(a) Except as otherwise provided in subsections (b) and (c) 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, including a registered limited liability partnership, is not personally liable for any partnership obligation incurred before the person's admission as a partner.

(c) Subject to the provisions of subsection (d) of this section, a partner in a registered limited liability partnership is not personally liable directly or indirectly (including by way of indemnification, contribution or otherwise) for debts, obligations and liabilities of or chargeable to the partnership, whether in tort, contract or otherwise, arising from omissions, negligence, wrongful acts, misconduct or malpractice committed while the partnership is a registered limited liability partnership and in the course of partnership business by another partner or by an employee, agent or representative of the partnership.

(d) Subsection (c) of this section does not affect the liability of a partner in a registered limited liability partnership for the partner's own omissions, negligence, wrongful acts, misconduct or malpractice, or that of any person under the partner's direct supervision and control.

§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 who are personally liable for obligations of the partnership under section six of this article 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 a partner who is personally
liable for obligations of the partnership under section six of this article 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 of this article.

§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:

(1) If that person, relying on the representation, enters into a transaction with the actual or purported partnership; and

(2) The purported partner would have been personally liable for obligations of the partnership under section six of this article if the purported partner had actually been a partner.
(b) Subject to subsection (a) of this section, 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.

(c) 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 as if such person had actually been a partner.

(d) A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.

(e) A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

(f) Except as provided in subsections (a), (b) and (c) 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.

(a) Each partner is deemed to have an account that is:

1. Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities as provided in section six, article three of this chapter, the partner contributes to the partnership and the partner's share of the partnership profits; and

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: Provided, That a partner shall be personally liable on account of such charges only as provided in section six, article three and section seven, article eight, both of this chapter.

(b) Each partner: (i) Shall share equally in partnership profits; and (ii) shall share in partnership losses as provided in section seven, article eight of this chapter 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: Provided, That no other partner shall be required to make any payment, except as provided in section seven, article eight of this chapter, including any payments attributable all or in part to partnership liabilities for reimbursement or indemnification.

(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.
A partner may use or possess partnership property only on behalf of the partnership.

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.

A person may become a partner only with the consent of all of the partners.

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.

This section does not affect the obligations of a partnership to other persons under section one, article three of this chapter.

ARTICLE 7. PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP.

§47B-7-3. Dissociated partner's liability to other persons.

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.

A partner who dissociates without resulting in a dissolution and winding up of the partnership business is personally liable as a partner to the other party on account of a partnership obligation incurred in connection with 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:

Reasonably believed that the dissociated partner was then a partner;
17 (2) Did not have notice of the partner's dissociation;
18 (3) Is not deemed to have had knowledge under subsection (e), section three, article three of this chapter or notice under subsection (c), section four of this article; and
19 (4) The obligation is one on account of which the partner would be personally liable under section six, article three of this chapter if the partner had not dissociated from the partnership.
20 (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.
21 (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.

ARTICLE 8. WINDING UP PARTNERSHIP BUSINESS.

§47B-8-6. Partner's liability to other partners after dissolution.

§47B-8-7. Settlement of accounts and contributions among partners.

§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 of this article for which such partner is personally liable under section six, article three of this chapter.

(b) A partner who, with knowledge of the dissolution, incurs a partnership liability under subsection (2), section four of this article 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 business. 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 that is attributable to an obligation for which such partner is personally liable under section six, article three of this chapter.

(c) If a partner fails or is not obligated 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 any partnership obligations for which such partner is personally liable under section six, article three of this chapter. 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, to the extent such contributions are made on account of obligations for which the other partners are liable under said section.

(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 for which such partner is personally liable under section six, article three of this chapter and that were not known at the time of settlement.
(e) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership under subsection (b) of this section.

(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 under subsection (b) of this section.

ARTICLE 9. CONVERSIONS AND Mergers.

§47B-9-2. Conversion of partnership to limited partnership.

§47B-9-3. Conversion of limited partnership to partnership.

§47B-9-2. Conversion of partnership to limited partnership.

(a) A partnership may be converted to a limited partnership pursuant to this section.

(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.

(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:

(1) A statement that the partnership was converted to a limited partnership from a partnership;

(2) Its former name; and

(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.

(d) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

(e) A general partner who becomes a limited partner as a result of the conversion remains liable as a general
partner for an obligation incurred by the partnership before the conversion takes effect for which the partner is personally liable under section six, article three of this chapter. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within ninety days after the conversion takes effect for which a general partner would be personally liable under said section. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in sections one et seq., article nine, chapter forty-seven of this code.

§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 for which the partner is personally liable under section six, article three of this chapter incurred after the conversion takes effect.

ARTICLE 10. LIMITED LIABILITY PARTNERSHIPS.

§47B-10-1. Registered limited liability partnerships.

§47B-10-2. Effect of registration; entity unchanged.
§47B-10-1. Registered limited liability partnerships.

(a) To become a registered limited liability partnership, a partnership shall file with the secretary of state a statement of registration stating the name of the partnership; the address of its principal office; if the partnership's principal office is not located in this state, the address of a registered office and the name and address of a registered agent for service of process in this state, which the partnership will be required to maintain; a brief statement of the business in which the partnership engages; any other matters that the partnership determines to include; and that the partnership thereby registers as a registered limited liability partnership.

(b) The registration shall be executed by one or more partners authorized to execute a registration.

(c) The registration shall be accompanied by a fee of two hundred fifty dollars.

(d) The secretary of state shall register as a registered limited liability partnership any partnership that submits a completed registration with the required fee.

(e) A partnership registered under this section shall pay, in each year following the year in which its registration is filed, on a date specified by the secretary of state, an annual fee of five hundred dollars. The fee must be accompanied by a notice, on a form provided by the secretary of state, of any material changes in the information contained in the partnership's registration.

(f) Registration is effective:

(1) Immediately after the date a registration is filed; or

(2) On a date specified in the statement of registration, which date shall not be more than sixty days after the date of filing.
(g) Registration remains effective until:
(1) It is voluntarily withdrawn by filing with the secretary of state a statement of withdrawal; or
(2) Thirty days after receipt by the partnership of a notice from the secretary of state, which notice shall be sent by certified mail, return receipt requested, that the partnership has failed to make timely payment of the annual fee specified in subsection (e) of this section, unless the fee is paid within such a thirty-day period.

(h) The status of a partnership as a registered limited liability partnership and the liability of the partners thereof shall not be affected by:

(1) Errors in the information contained in a statement of registration under subsection (a) of this section or notice under subsection (e) of this section; or
(2) Changes after the filing of such statement of registration or notice in the information stated in the registration or notice.

(i) The secretary of state shall provide forms for the statement of registration under subsection (a) of this section or a notice under subsection (e) of this section.

§47B-10-2. Effect of registration; entity unchanged.

(a) A partnership that has registered pursuant to this article is for all purposes the same partnership that existed before the registration.

(b) When registration takes effect:
(1) All property owned by the registering partnership remains vested in the registered partnership;
(2) All obligations of the registering partnership continue as obligations of the registered partnership; and
(3) An action or proceeding pending against the registering partnership may be continued as if the registration had not occurred.

§47B-10-3. Name of registered limited liability partnership.
The name of a registered limited liability partnership shall contain the words "Registered Limited Liability Partnership" or the abbreviation "L.L.P." or "LLP" as the last words or letters of its name.

§47B-10-4. Applicability of article to foreign and interstate commerce.

(a) A registered limited liability partnership formed under this article may conduct its business, carry on its operations, and have and exercise the powers granted by this chapter in any state, territory, district or possession of the United States or in any foreign country.

(b) It is the intent of the Legislature that the legal existence of registered limited liability partnerships formed under this article be recognized outside the boundaries of this state and that the laws of this state governing such registered limited liability partnerships doing business outside this state be granted the protection of full faith and credit under the Constitution of the United States.

(c) Notwithstanding section six, article one of this chapter, the internal affairs of registered limited liability partnerships formed under this article, including the liability of partners for debts, obligations and liabilities of or chargeable to the partnership, shall be subject to and governed by the laws of this state.

(d) Before transacting business in this state, a foreign registered limited liability partnership shall:

(i) Comply with any statutory or administrative registration or filing requirements governing the specific type of business in which the partnership is engaged; and

(ii) File a notice with the secretary of state, on such forms as the secretary of state shall provide, stating the name of the partnership; the address of its principal office; if the partnership's principal office is not located in this state, the address of a registered office and the name and address of a registered agent for service of process in this state, which the partnership will be required to maintain; and any other matters that the partnership determines to in-
elude; and a brief statement of the business in which the
partnership engages. Such notice shall be effective for
two years from the date of filing, after which time the
partnership shall file a new notice.

(e) The name of a foreign registered limited liability
partnership doing business in this state shall contain the
words "Registered Limited Liability Partnership" or the
abbreviation "L.L.P." or "LLP" as the last words or letters
of its name.

(f) Notwithstanding section six, article one of this
chapter, the internal affairs of foreign registered limited
liability partnerships, including the liability of partners for
debts, obligations and liabilities of or chargeable to the
partnership, shall be subject to and governed by the laws
of the jurisdiction in which the foreign registered limited
liability partnership is registered.

§47B-10-5. Insurance or financial responsibility of registered
limited liability partnerships.

(a) A registered limited liability partnership, and any
foreign limited liability partnership transacting business in
this state, shall carry at all times at least one million dollars
of liability insurance of a kind that is designed to cover
the kinds of omissions, negligence, wrongful acts, miscon-
duct and malpractice for which liability is limited by sub-
section (c), section six, article three of this chapter and
which insures the partnership and its partners.

(b) If, in any proceeding, compliance by a partnership
with the requirements of subsection (a) of this section is
disputed, that issue shall be determined by the court, and
the burden of proof of compliance shall be on the person
who claims the limitation of liability in subsection (c),
section six, article three of this chapter.

(c) If a registered limited liability partnership is in
compliance with the requirements of subsection (a) of this
section, the requirements of this section shall not be ad-
missible or in any way be made known to a jury in deter-
mining an issue of liability for or extent of the obligation
or damages in question.

(d) A registered limited liability partnership is consid-
ered to be in compliance with subsection (a) of this section
if the partnership provides one million dollars of funds
specifically designated and segregated for the satisfaction
of judgments against the partnership or its partners based
on the kinds of omissions, negligence, wrongful acts, mis-
conduct and malpractice for which liability is limited by
subsection (c), section six, article three of this chapter, by:

(1) Deposit in trust or in bank escrow of cash, bank
certificates of deposit or United States Treasury obliga-
tions; or

(2) A bank letter of credit or insurance company
bond.

(e) Any policy or contract of liability insurance pro-
viding coverage for liability as described in this section
shall be read so as to contain a provision or endorsement
whereby the company issuing such policy waives or agrees
not to assert as a defense on behalf of the policyholder or
any beneficiary thereof, to any claim covered by the terms
of such policy within the policy limits, the immunity from
liability of the insured granted by the provisions of this
chapter.

ARTICLE 11. MISCELLANEOUS PROVISIONS.

§47B-11-1. Uniformity of application and construction.
§47B-11-4. Applicability.
§47B-11-5. Savings clause.

§47B-11-1. Uniformity of application and construction.

This chapter shall be applied and construed to effectu-
ate its general purpose to make uniform the law with re-
spect to the subject of this chapter among states enacting
it.


This chapter may be cited as the Uniform Partnership
Act.


If any provision of this chapter or its application to
any person or circumstance is held invalid, the invalidity
§47B-11-4. 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-11-5. Savings clause.

This chapter does not affect an action or proceeding commenced or right accrued before this chapter takes effect.
CHAPTER 175

(H. B. 4144—By Delegates Staton, Frederick, Linch, Osborne, Ball and Browning)

[Passed January 31, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to magistrate courts; and providing one additional magistrate for Harrison County and allowing Mercer County to retain one magistrate.

Be it enacted by the Legislature of West Virginia:

That section two, 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.

§50-1-2. Number of magistrates.

(a) The number of magistrates to be elected in each county of this state shall be determined in accordance with the provisions of this section.

(b) On or before the thirty-first day of January, one thousand nine hundred ninety-six, and on or before the first day of January in every fourth year thereafter, the supreme court of appeals shall certify to the board of ballot commissioners of each county the number of magistrates to be elected in that county for the term of office commencing on the first day of January of the succeeding year. The number of magistrates so certified shall be determined in accordance with the following:

1. The court shall not provide:

   (1) For the total number of magistrates in the state to exceed one hundred fifty-six in number;

   (2) For the number of magistrates in any one county to exceed ten in number; or

   (3) For the number of magistrates in any one county to be less than two in number.
(2) The court shall determine the number of magistrates that would be apportioned for each county by the application of an equal proportions formula, as follows:

(A) Two magistrates shall be allocated to each county;

(B) The population of the county shall be divided by a mathematical factor, as established by the equal proportion method, to establish each county's priority claim to additional magistrates above the two magistrates provided for by paragraph (A) of this subdivision; and

(C) Additional numbers of magistrates shall be allocated to the several counties in order of priority claims, beginning with the largest claim, until magistrates have been assigned within the limits of this section.

For purposes of this article, a determination made in accordance with the provisions of this subdivision is the "equal proportion number".

(3) The court shall determine the number of magistrates elected in each county at the last general election in which magistrates were regularly elected next prior to the preceding census taken under the authority of the United States government. For purposes of this article, that number shall be referred to as the "election number".

(4) The court shall determine the number of case filings per magistrate in each magistrate court for the most recent fiscal year preceding the date of certification, and shall rank the magistrate courts from one through fifty-five, in the order of their case filings per magistrate, with the court having the most filings per magistrate being ranked number one, and the court with the least filings per magistrate being ranked number fifty-five.

(5) If the court determines that the equal proportion number for a county is the same as the election number for such county, the court shall certify that number as the number of magistrates to be elected in that county at the next election.

(6) If the court determines that the equal proportion number for a county is different from the election number for such county, the court shall apply the ranking established by subdivision (4) of this subsection and determine the number of magistrates for such county, as follows:
(A) If the equal proportion number exceeds the election number, the number of magistrates to be elected in that county at the next election shall be the election number: Provided, That if the county is ranked as one through ten, inclusive, in accordance with subdivision (4) of this subsection, the court shall certify the equal proportion number as the number of magistrates to be elected in that county at the next election.

(B) If the equal proportion number is less than the election number, the number of magistrates to be elected in that county at the next election shall be the equal proportion number: Provided, That if the county is ranked as one through ten, inclusive, in accordance with subdivision (4) of this subsection, the court shall certify the election number as the number of magistrates to be elected in that county at the next election.

(c) Any magistrate in office at the time of the effective date of this section shall continue as a magistrate, unless sooner removed or retired as provided by law, until the first day of January, one thousand nine hundred ninety-three.

CHAPTER 176

(S. B. 261—By Senators Tomblin, Mr. President, Schoonover, Chafin, Jackson, Wooton, Walker, Wagner, Whittow, Bailey, Anderson, Dittmar, Bowman, Plymale, Macnaughtan, Manchin, Sharpe, Minear, Love, Oliverio, Ross, Grubb, Kimble, Yoder, Dugan, Boley, Helmick, Craigo, Scott, Buckalew, Wiedebusch and Blatnik)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the salaries of magistrates.

Be it enacted by the Legislature of West Virginia:
That section three, 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.


(a) The Legislature finds and declares that:

1. The West Virginia supreme court of appeals has held that a salary system for magistrates which is based upon the population that each magistrate serves does not violate the equal protection clause of the Constitution of the United States;

2. The West Virginia supreme court of appeals has held that a salary system for magistrates which is based upon the population that each magistrate serves does not violate article VI, section 39 of the Constitution of West Virginia;

3. The utilization of a two-tiered salary schedule for magistrates is an equitable and rational manner by which magistrates should be compensated for work performed;

4. Organizing the two tiers of the salary schedule into one tier for magistrates serving less than eight thousand five hundred in population and the second tier for magistrates serving eight thousand five hundred or more in population is rational and equitable given current statistical information relating to population and caseload; and

5. That all magistrates who fall under the same tier should be compensated equally.

(b) The salary of each magistrate shall be paid by the state. Magistrates who serve less than ten thousand in population shall be paid annual salaries of twenty thousand six hundred twenty-five dollars and magistrates who serve ten thousand or more in population shall be paid annual salaries of twenty-seven thousand dollars: Provided, That on and after the first day of January, one thousand ninety-two, magistrates who serve less than ten thousand in population shall be paid annual salaries of twenty-one thousand six hundred twenty-five dol-
lars and magistrates who serve ten thousand or more in population shall be paid annual salaries of twenty-eight thousand dollars: Provided, however, That on and after the first day of January, one thousand nine hundred ninety-three, magistrates who serve less than eight thousand five hundred in population shall be paid annual salaries of twenty-three thousand six hundred twenty-five dollars and magistrates who serve eight thousand five hundred or more in population shall be paid annual salaries of thirty thousand dollars: Provided further, That on and after the first day of January, one thousand nine hundred ninety-seven, magistrates who serve less than eight thousand five hundred in population shall be paid annual salaries of twenty-six thousand six hundred twenty-five dollars and magistrates who serve eight thousand five hundred or more in population shall be paid annual salaries of thirty-three thousand dollars.

(c) For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population of each county. For the purpose of this article, the population of each county is the population as determined by the last preceding decennial census taken under the authority of the United States government.

CHAPTER 177

(Com. Sub. for S. B. 255—By Senators Miller, Sharpe, Ross and Helmick)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]
that legislative rules be promulgated relating notification of impending blasting activities.

Be it enacted by the Legislature of West Virginia:

That section eleven, article four, 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 4. SURFACE MINING AND RECLAMATION OF MINERALS OTHER THAN COAL.

§22-4-11. Blasting restriction; formula; filing preplan; penalties; notice.

Where blasting of overburden or mineral is necessary, the blasting shall be done in accordance with established principles for preventing injury to persons and damage to residences, buildings and communities. The blasting is in compliance with provisions of this article if the following measures are adhered to:

(1) The weight in pounds of explosives to be detonated in any period less than an eight millisecond period without seismic monitoring shall conform to the following scaled distance formula: \[ W = \left( \frac{D}{50} \right)^2 \] Where \( W \) equals weight in pounds of explosives detonated at any one instant time, then \( D \) equals distance in feet from nearest point of blast to nearest residence, building or structure, other than operation facilities of the mine: Provided, That the scaled distance formulas need not be used if a seismograph measurement at or between the blast site and the nearest protected structure (residence, building or structure) is recorded and maintained for every blast. The peak particle velocity in inches per second in any one of the three mutually perpendicular directions shall not exceed the following values at any protected structure:

<table>
<thead>
<tr>
<th>Seismograph Measurement</th>
<th>Distance to the Nearest Protected Structure</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.25</td>
<td>0 - 300 feet</td>
</tr>
<tr>
<td>1.00</td>
<td>301 - 5,000 feet</td>
</tr>
<tr>
<td>0.75</td>
<td>5,001 feet or greater</td>
</tr>
</tbody>
</table>
The maximum ground vibration standards do not apply to the structures owned by the permittee and not leased to another person and structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the director before blasting.

(2) Airblast shall not exceed the maximum limits listed below at the location of any dwelling, public buildings, school or community or institutional building outside the permit area:

<table>
<thead>
<tr>
<th>Lower frequency limit of measuring system in Hz(+3dB)</th>
<th>Maximum level in db</th>
</tr>
</thead>
<tbody>
<tr>
<td>1Hz or lower-flat response*</td>
<td>134 peak</td>
</tr>
<tr>
<td>2Hz or lower-flat response</td>
<td>133 peak</td>
</tr>
<tr>
<td>6Hz or lower-flat response</td>
<td>129 peak</td>
</tr>
<tr>
<td>c-weighted-slow response*</td>
<td>105 peak dBC</td>
</tr>
</tbody>
</table>

* only when approved by the director.

(3) Access to the blast area shall be controlled against the entrance of unauthorized personnel during blasting for a period thereafter until an authorized person has reasonably determined that:

(A) No unusual circumstances exist such as imminent slides or undetonated charges, etc.; and

(B) Access to and travel in or through the area can be safely resumed.

(4) A plan of each operation's methods for compliance with this section (blast delay design) for typical blasts which shall be adhered to in all blasting at each operation, shall be submitted to the division of environmental protection with the application for a permit. It shall be accepted if it meets the scaled distance formula established in subdivision (1) of this section.

(5) Records of each blast shall be kept in a log to be maintained for at least three years, which will show for each blast the following information:
(A) Date and time of blast;
(B) Number of holes;
(C) Typical explosive weight per delay period;
(D) Total explosives in blast at any one time;
(E) Number of delays used;
(F) Weather conditions;
(G) Signature of operator employee in charge of the blast;
(H) Seismograph data; and
(I) Date of seismograph calibration.

(6) Where inspection by the division of environmental protection establishes that the scaled distance formula or the seismograph results or the approved preplan are not being adhered to, the following penalties shall be imposed:

(A) For the first offense in any one permit year under this section, the permit holder shall be assessed not less than five hundred dollars nor more than one thousand dollars;

(B) For the second offense in any one permit year under this section, the permit holder shall be assessed not less than one thousand dollars nor more than five thousand dollars;

(C) For the third offense in any one permit year under this section or for the failure to pay any assessment hereinabove set forth within a reasonable time established by the commissioner, the permit shall be revoked.

All assessments as set forth in this section shall be assessed by the director, collected by the director and deposited with the treasurer of the state of West Virginia, to the credit of the operating permit fees fund.

The director shall propose legislative rules pursuant to article three, chapter twenty-nine-a of this code which shall provide for a warning of impending blasting to the owners, residents or other persons who may be present on property adjacent to the blasting area.
AN ACT to amend and reenact section two, article one, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to miners' health, safety and training; and providing that persons qualified as mine electricians in any state that recognizes certified electricians licensed in West Virginia are to be recognized in this state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.


1. Unless the context in which used clearly requires a different meaning, the following definitions apply to this chapter:

   (a) General.

   (1) Accident: The term "accident" means any mine explosion, mine ignition, mine fire, or mine inundation, or injury to, or death of any person.

   (2) Agent: The term "agent" means any person charged with responsibility for the operation of all or a part of a mine or the supervision of the miners in a mine.

   (3) Approved: The term "approved" means in strict compliance with mining law, or, in the absence of law, accepted by a recognized standardizing body or organiza-
tion whose approval is generally recognized as authorita-
tive on the subject.

(4) Face equipment: The term "face equipment" means mobile or portable mining machinery having electric motors or accessory equipment normally installed or operated in the last open crosscut in an entry or room.

(5) Imminent danger: The term "imminent danger" means the existence of any condition or practice in a coal mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.

(6) Mine: The term "mine" includes the shafts, slopes, drifts or inclines connected with, or intended in the future to be connected with, excavations penetrating coal seams or strata, which excavations are ventilated by one general air current or divisions thereof, and connected by one general system of mine haulage over which coal may be delivered to one or more points outside the mine, and the surface structures or equipment connected or associated therewith which contribute directly or indirectly to the mining, preparation or handling of coal, or construction thereof.

(7) Miner: The term "miner" means any individual working in a coal mine.

(8) Operator: The term "operator" means any firm, corporation, partnership or individual operating any coal mine, or part thereof, or engaged in the construction of any facility associated with a coal mine.

(9) Permissible: The term "permissible" means any equipment, device or explosive that has been approved as permissible by the federal mine safety and health administration and/or the United States bureau of mines and meets all requirements, restrictions, exceptions, limitations and conditions attached to such classification by that agency or the bureau.

(10) Person: The term "person" means any individual, partnership, association, corporation, firm, subsidiary of a corporation or other organization.
(11) Work of preparing the coal: The term "work of preparing the coal" means the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing and loading of bituminous coal or lignite and such other work of preparing such coal as is usually done by the operator of the coal mine.

(b) Office of miners' health, safety and training.

(1) Board of appeals: The term "board of appeals" means as provided for in article five of this chapter.

(2) Director: The term "director" means the director of the office of miners' health, safety and training provided for in section three of this article.

(3) Mine inspector: The term "mine inspector" means a state mine inspector provided for in section eight of this article.

(4) Mine inspectors' examining board: The term "mine inspectors' examining board" shall mean the mine inspectors' examining board provided for in article nine of this chapter.

(5) Office: The term "office" means, when referring to a specific office, the office of miners' health, safety and training provided for in this article. The term "office", when used generically, includes any office, board, agency, unit, organizational entity or component thereof.

(c) Mine areas.

(1) Abandoned workings: The term "abandoned workings" means excavation, either caved or sealed, that is deserted and in which further mining is not intended, or open workings which are ventilated and not inspected regularly.

(2) Active workings: The term "active workings" means all places in a mine that are ventilated and inspected regularly.

(3) Drift: The term "drift" means a horizontal or approximately horizontal opening through the strata or in a coal seam and used for the same purposes as a shaft.
(4) Excavations and workings: The term "excavations and workings" means any or all parts of a mine excavated or being excavated, including shafts, slopes, drifts, tunnels, entries, rooms and working places, whether abandoned or in use.

(5) Inactive workings: The term "inactive workings" includes all portions of a mine in which operations have been suspended for an indefinite period, but have not been abandoned.

(6) Mechanical working section: The term "mechanical working section" means an area of a mine: (A) In which coal is loaded mechanically; (B) which is comprised of a number of working places that are generally contiguous; and (C) which is of such size to permit necessary supervision during shift operation, including pre-shift and on-shift examinations and tests required by law.

(7) Panel: The term "panel" means workings that are or have been developed off of submain entries which do not exceed three thousand feet in length.

(8) Return air: The term "return air" means a volume of air that has passed through and ventilated all the working places in a mine section.

(9) Shaft: The term "shaft" means a vertical opening through the strata that is or may be used for the purpose of ventilation, drainage, and the hoisting and transportation of individuals and material, in connection with the mining of coal.

(10) Slope: The term "slope" means a plane or incline roadway, usually driven to a coal seam from the surface and used for the same purposes as a shaft.

(11) Working face: The term "working face" means any place in a coal mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle.

(12) Working place: The term "working place" means the area of a coal mine inby the last open crosscut.
(13) Working section: The term "working section" means all areas of the coal mine from the loading point of the section to and including the working faces.

(14) Working unit: The term "working unit" means an area of a mine in which coal is mined with a set of production equipment; a conventional mining unit by a single loading machine; a continuous mining unit by a single continuous mining machine, which is comprised of a number of working places.

(d) Mine personnel.

(1) Assistant mine foreman: The term "assistant mine foreman" means a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein.

(2) Certified electrician: The term "certified electrician" means any person who is qualified as a mine electrician and who has passed an examination given by the office, or has at least three years of experience in performing electrical work underground in a coal mine, in the surface work areas of an underground coal mine, in a surface coal mine, in a noncoal mine, in the mine equipment manufacturing industry or in any other industry using or manufacturing similar equipment, and has satisfactorily completed a coal mine electrical training program approved by the office or any person who is qualified as a mine electrician in any state that recognizes certified electricians licensed in West Virginia.

(3) Certified person: The term "certified person", when used to designate the kind of person to whom the performance of a duty in connection with the operation of a mine shall be assigned, means a person who is qualified under the provisions of this law to perform such duty.

(4) Interested persons: The term "interested persons" includes the operator, members of any mine safety committee at the mine affected and other duly authorized representatives of the mine workers and the office.

(5) Mine foreman: The term "mine foreman" means the certified person whom the operator or superintendent
shall place in charge of the inside workings of the mine
and of the persons employed therein.

(6) Qualified person: The term "qualified person"
means a person who has completed an examination and is
considered qualified on record by the office.

(7) Shot firer: The term "shot firer" means any per­
son having had at least two years of practical experience in
coal mines, who has a knowledge of ventilation, mine roof
and timbering, and who has demonstrated his or her
knowledge of mine gases, the use of a flame safety lamp,
and other approved detecting devices by examination and
certification given him or her by the office.

(8) Superintendent: The term "superintendent" means
the person who has, on behalf of the operator, immediate
supervision of one or more mines.

(9) Supervisor: The term "supervisor" means a super­
intendent, mine foreman, assistant mine foreman or any
person specifically designated by the superintendent or
mine foreman to supervise work or employees and who is
acting pursuant to such specific designation and instruc­
tions.

(e) Electrical.

(1) Armored cable: The term "armored cable" means
a cable provided with a wrapping of metal, usually steel
wires or tapes, primarily for the purpose of mechanical
protection.

(2) Borehole cable: The term "borehole cable" means
a cable designed for vertical suspension in a borehole or
shaft and used for power circuits in the mine.

(3) Branch circuit: The term "branch circuit" means
any circuit, alternating current or direct current, connected
to and leading from the main power lines.

(4) Cable: The term "cable" means a standard con­
ductor (single conductor cable) or a combination of con­
ductors insulated from one another (multiple conductor
cable).
198 (5) Circuit breaker: The term "circuit breaker" means a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

201 (6) Delta connected: The term "delta connected" means a power system in which the windings or transformers or a.c. generators are connected to form a triangular phase relationship, and with phase conductors connected to each point of the triangle.

206 (7) Effectively grounded: The term "effectively grounded" is an expression which means grounded through a grounding connection of sufficiently low impedance (inherent or intentionally added or both) so that fault grounds which may occur cannot build up voltages in excess of limits established for apparatus, circuits or systems so grounded.

213 (8) Flame-resistant cable, portable: The term "flame-resistant cable, portable" means a portable flame-resistant cable that has passed the flame tests of the federal mine safety and health administration.

217 (9) Ground or grounding conductor (mining): The term "ground or grounding conductor (mining)", also referred to as a safety ground conductor, safety ground and frame ground, means a metallic conductor used to connect the metal frame or enclosure of any equipment, device or wiring system with a mine track or other effective grounding medium.

224 (10) Grounded (earthed): The term "grounded (earthed)" means that the system, circuit or apparatus referred to is provided with a ground.

227 (11) High voltage: The term "high voltage" means voltages of more than one thousand volts.

229 (12) Lightning arrestor: The term "lightning arrestor" means a protective device for limiting surge voltage on equipment by discharging or by passing surge current; it prevents continued flow of follow current to ground and is capable of repeating these functions as specified.
(13) Low voltage: The term "low voltage" means up to and including six hundred sixty volts.

(14) Medium voltage: The term "medium voltage" means voltages from six hundred sixty-one to one thousand volts.

(15) Mine power center or distribution center: The term "mine power center or distribution center" means a combined transformer or distribution unit, complete within a metal enclosure from which one or more low-voltage power circuits are taken.

(16) Neutral (derived): The term "neutral (derived)" means a neutral point or connection established by the addition of a "zig-zag" or grounding transformer to a normally underground power system.

(17) Neutral point: The term "neutral point" means the connection point of transformer or generator windings from which the voltage to ground is nominally zero, and is the point generally used for system groundings in wye-connected a.c. power system.

(18) Portable (trailing) cable: The term "portable (trailing) cable" means a flexible cable or cord used for connecting mobile, portable or stationary equipment in mines to a trolley system or other external source of electric energy where permanent mine wiring is prohibited or is impracticable.

(19) Wye-connected: The term "wye-connected" means a power system connection in which one end of each phase windings or transformers or a.c. generators are connected together to form a neutral point, and a neutral conductor may or may not be connected to the neutral point, and the neutral point may or may not be grounded.

(20) Zig-zag transformer (grounding transformer): The term "zig-zag transformer (grounding transformer)" means a transformer intended primarily to provide a neutral point for grounding purposes.
CHAPTER 179

(Com. Sub. for H. B. 4795—By Delegates Browning and Staton)

Clerk's Note: It has been determined that Com. Sub. for H. B. 4795, originally styled as Chapter 179, occupying pages 1540 through 1550, was not properly enacted and that the purported bill as presented to the Governor was not passed by both houses in identical form. Therefore, the text of the document has been omitted to avoid confusion on the part of the user of these Acts.
AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-four, relating to establishing reverse mortgages; and promulgating rules for reverse mortgages.

Be it enacted by the Legislature of West Virginia:

That chapter forty-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 twenty-four, to read as follows:

ARTICLE 24. THE REVERSE MORTGAGE ENABLING ACT.

§47-24-1. Short title.
§47-24-3. Definition.
§47-24-5. Inapplicability of related statutes and law.
§47-24-6. Treatment of reverse mortgage loan proceeds by public benefit programs.
§47-24-7. Consumer information and counseling.
§47-24-8. Regulatory authority and exemptions.
§47-24-1. Short title.

The article may be cited as the "Reverse Mortgage Enabling Act."


It is the intent of this legislation that elderly homeowners be permitted to meet their financial needs by accessing the equity in their homes through a reverse mortgage.

The Legislature recognizes that many restrictions and requirements that exist to govern traditional mortgage transactions are inapplicable in the context of reverse mortgages.

In order to foster reverse mortgage transactions and better serve the elderly citizens of this state, the Legislature authorizes the making of reverse mortgages, and expressly relieves reverse mortgage lenders and borrowers from compliance with inappropriate requirements.

§47-24-3. Definition.

"Reverse mortgage" means a nonrecourse loan secured by real property which:

(1) Provides cash advances to a borrower based on the equity in a borrower's owner-occupied principal residence;

(2) Requires no payment of principal or interest until the entire loan becomes due and payable; and

(3) Is made by any lender authorized to engage in business as a bank, savings institution, or credit union under the laws of this state or any other lender, other than an industrial loan company, affiliated with a federally-insured depository institution in this state, and licensed as a financial institution pursuant to chapter thirty-one-a of this code.

Reverse mortgage loans shall be governed by the following rules, without regard to the requirements set out elsewhere for other types of mortgage transactions:

(a) Interest. A reverse mortgage may provide for an interest rate which is fixed or adjustable, and may also provide for interest that is contingent on the value of the property, including appreciation or shared equity.

(b) Intervening liens. All advances made under a reverse mortgage and all interest on such advances shall have priority over any lien filed after the closing of a reverse mortgage.

(c) Lender default. Lenders failing to make loan advances as required in the loan documents, and failing to cure such default as required in the loan documents, shall forfeit any right to collect interest. Lenders may also be subject to the penalty provisions set forth in chapter thirty-one-a of this code.

(d) Mortgage recordation tax. The recordation tax on reverse mortgages shall not exceed the actual cost of recording the mortgage.

(e) Periodic advances. If a reverse mortgage provides for periodic advances to a borrower, such advances shall not be reduced in amount or number based on any adjustment in the interest rate.

(f) Prepayment. Payment, in whole or in part, shall be permitted without penalty at any time during the period of the loan.

(g) Repayment.

(1) The mortgage may become due and payable upon the occurrence of any one of the following events:

(A) The title to the home securing the loan is sold or otherwise transferred;

(B) All borrowers cease occupying the home as a principal residence, subject to the additional conditions set
forth in paragraph (A) and (B), subdivision (2), subsection (g) of this section;

(C) Any fixed maturity date agreed to by the lender and the borrower is reached; or

(D) An event occurs which is specified in the loan documents and which jeopardizes the lender's security.

(2) The repayment requirement is also expressly subject to the following additional conditions:

(A) Temporary absences from the home not exceeding sixty consecutive days shall not cause the mortgage to become due and payable;

(B) Temporary absences from the home exceeding sixty consecutive days but less than one year shall not cause the mortgage to become due and payable so long as the borrower has taken prior action which secures the home in a manner satisfactory to the lender;

(C) The lender's right to collect reverse mortgage proceeds shall be subject to the applicable statute of limitations for loan contracts in section six, article two, chapter fifty-five. Notwithstanding section six, the statute of limitations shall commence on the date that the mortgage becomes due and payable;

(D) The lender must prominently disclose in the loan document any interest or other fees to be charged during the period that commences on the date that the mortgage becomes due and payable, and ends when repayment in full is made.

§47-24-5. Inapplicability of related statutes and law.

Reverse mortgage loans may be made or acquired without regard to the following statutory provisions or relevant interpretation of law:

(a) Limitations on the purpose and use of future advances or any other mortgage proceeds;
(b) Limitations on future advances to a term of years, or limitations on the term of credit line advances;
(c) Limitations on the term during which future advances take priority over intervening advances;
(d) Requirements that a maximum mortgage amount be stated in the mortgage;
(e) Limitations on loan-to-value ratios;
(f) Prohibitions on balloon payments;
(g) Prohibitions on compounded interest and interest on interest;
(h) Interest rate limits under the usury statutes;
(i) Requirements that a percentage of the loan proceeds must be advanced prior to loan assignment; and
(j) Limitations on ongoing administrative and servicing fees.

§47-24-6. Treatment of reverse mortgage loan proceeds by public benefit programs.

Notwithstanding any law relating to payments, allowances, benefits or service provided on a means-tested basis, including, but not limited to, supplemental security income, low-income energy assistance, property tax relief, medical assistance and general assistance:

(a) Reverse mortgage loan payments made to a borrower shall be treated as proceeds from a loan and not as income for the purpose of determining eligibility and benefits under means tested programs of aid to individuals.

(b) Undisbursed funds shall be treated as equity in a borrower's home and not as proceeds from a loan for the purpose of determining eligibility and benefits under means-tested programs of aid to individuals.

§47-24-7. Consumer information and counseling.
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(a) No reverse mortgage commitment shall be made by a lender unless the loan applicant attests, in writing that the applicant received from the lender at time of initial inquiry a statement prepared by the commissioner of banking, in consultation with the board of the West Virginia housing development fund, regarding the advisability and availability of independent information and counseling services on reverse mortgages.

(b) The commissioner of banking, in conjunction with the West Virginia housing development fund, shall be responsible for:

1. Providing independent consumer information on reverse mortgages and alternatives; and
2. Referring consumers to independent counseling services with expertise in reverse mortgages.

§47-24-8. Regulatory authority and exemptions.

(a) All reverse mortgage loans subject to this article shall be under the jurisdiction and supervision of the commissioner of banking and subject to the regulatory authority and penalties set forth in chapter thirty-one-a of this code.

(b) The commissioner of banking shall have the authority to promulgate rules in order to affect compliance with the provisions of this article.

(c) Persons making reverse mortgage loans through a program authorized by and under the supervision of a federal governmental agency or through a federally sponsored mortgage enterprise are exempt from the provisions of this article, and may make reverse mortgages notwithstanding any provisions to the contrary in this code: Provided, That such loans are sold to those agencies or enterprises within forty-five days of loan closing and that the commissioner of banking certifies that the program provides consumers with protections against abusive practices.
CHAPTER 181

(H. B. 4078—By Delegates Pino, Johnson, Whitman, Faircloth and Smirl)

[Passed January 25, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and five, article six-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the special method for appraising dealer vehicle inventory; making technical revisions to clarify appropriate code reference; and extending date by which the tax commissioner reports to the joint committee on government and finance.

Be it enacted by the Legislature of West Virginia:

That sections one and five, article six-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follow:

ARTICLE 6C. SPECIAL METHOD FOR APPRAISING DEALER VEHICLE INVENTORY.

§11-6C-1. Inventory included within scope of article.

§11-6C-5. Intent of this article; tax commissioner to promulgate rules.

§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, 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 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".

§11-6C-5. Intent of this article; tax commissioner to promulgate rules.

(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 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 March for the next two fiscal years a report detailing the results of the administration of this article.

CHAPTER 182

(Com. Sub. for S. B. 381—By Senator Miller)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]
designated article two-a; to amend and reenact section twenty-two, article three of said chapter; to amend and reenact section two, article two, chapter seventeen-d of said code; and to amend and reenact section seventeen, article one, chapter seventeen-e of said code, all relating to disclosure of information contained in motor vehicle records; implementation of the federal Drivers Privacy Protection Act of 1994; prohibitions on disclosure and use of personal information from state motor vehicle records except in accordance with the provisions of the act; provisions regarding resale or redisclosure; fees associated with disclosures; penalties for false representation; and authorizing division of motor vehicles to promulgate rules.

Be it enacted by the Legislature of West Virginia:

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

Chapter

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

17D. Motor Vehicle Safety Responsibility Law.

17E. Uniform Commercial Driver's License Act.

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

Article

2. Department of Motor Vehicles.


3. Original and Renewal of Registration; Issuance of Certificates of Titles.

ARTICLE 2. DEPARTMENT OF MOTOR VEHICLES.
§17A-2-13. Authority to administer oaths and certify copies of records; information as to registration.

(a) Officers and employees of the division designated by the commissioner are, for the purpose of administering the motor vehicle laws, authorized to administer oaths and acknowledge signatures, and shall do so without fee.

(b) The commissioner and such officers of the division as he or she may designate are hereby authorized to prepare under the seal of the division and deliver upon request in conformance with article two-a of this chapter a certified copy of any record of the division, charging a fee of one dollar for each document so authenticated, and every such certified copy is admissible in any proceeding in any court in like manner as the original thereof.

(c) Subject to the provisions of article two-a of this chapter, the commissioner and such officers of the division as he or she may designate may furnish the requested information to any person making a written request for information regarding the registration of any vehicle at a fee of one dollar for each registration about which information is furnished.


The commissioner may destroy any records of the division which have been maintained on file for three years which he or she deems obsolete and of no further service in carrying out the powers and duties of the division: Provided, That where it is shown that both parties to an accident have filed valid evidence of insurance, the records relating thereto may be destroyed after a period of six months.

ARTICLE 2A. UNIFORM MOTOR VEHICLE RECORDS DISCLOSURE ACT.


The purpose of this article is to implement the federal Driver's Protection Act of 1994 (Title XXX of Public Law 103-322) in order to protect the interest of individuals in their personal privacy by prohibiting the disclosure and use of personal information contained in their motor vehicle record, except as authorized by the individual or by law.


As used in this article:

(a) "Division" means the division of motor vehicles;

(b) "Disclose" means to make available or make known information contained in a motor vehicle record to any person, organization or entity;

(c) "Individual record" is a motor vehicle record which contains personal information about a designated person who is the subject of the record as identified in a request;
§17 A-2A-4. Prohibition on disclosure and use of personal information from motor vehicles records.

Notwithstanding any other provision of law to the contrary, and except as provided in sections five through eight, both inclusive, of this article, the division, and any officer, employee, agent or contractor thereof may not disclose any personal information obtained by the division in connection with a motor vehicle record. Notwithstanding the provisions of this article or any other provision of law to the contrary, finger images obtained and stored by the division of motor vehicles as part of the driver's licensing process may not be disclosed to any person or used for any purpose other than the processing and issuance of driver's licenses and associated legal action unless the disclosure or other use is expressly authorized by this code.


Personal information as defined in section three of this article shall be disclosed upon request if the person making the request demonstrates in such form and manner as the department prescribes that he or she has obtained the written consent of the person who is the subject of the information.


The division or its designee shall disclose personal information as defined in section three of this article to any person who requests the information if the person: (a) Has proof of his or her identity; and (b) verifies that the use of the personal information will be strictly limited to one or more of the following:

(1) For use by any governmental agency, including any court or law-enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a governmental agency in carrying out its functions;
(2) For use in connection with matters of motor vehicle or driver safety and theft, motor vehicle product alterations, recalls or advisories, performance monitoring of motor vehicles, motor vehicle parts and dealers, motor vehicle market research activities including survey research and removal of nonowner records from the original owner records of motor vehicle manufacturers;

(3) For use in the normal course of business by a legitimate business or its agents, employees or contractors:

(A) For the purpose of verifying the accuracy of personal information submitted by the individual to the business or its agents, employees or contractors; and

(B) If the information as submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against or recovering on a debt or security interest against the individual;

(4) For use in conjunction with any civil, criminal, administrative or arbitral proceeding in any court or governmental agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, the execution or enforcement of judgments and orders or pursuant to an order of any court;

(5) For use in research and producing statistical reports, so long as the personal information is not published, disclosed or used to contact individuals;

(6) For use by any insurer or insurance support organization or by a self-insured entity, its agents, employees or contractors in connection with claim investigation activities, antifraud activities, rating or underwriting;

(7) For use in providing notice to the owners of towed or impounded vehicles;

(8) For use by any licensed private investigator agency or licensed security service for any purpose permitted under this section;
(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. App. 2710 et seq.);

(10) For use in connection with the operation of private toll transportation facilities;

(11) For bulk distribution for surveys, marketing or solicitations after the division has implemented methods and procedures to ensure that:

(A) Persons are provided an opportunity, in a clear and conspicuous manner, to prohibit such uses; and

(B) The information will be used, rented or sold solely for bulk distribution for surveys, marketing and solicitations, and that surveys, marketing and solicitations will not be directed at those individuals who have requested in a timely fashion that the material not be directed at them;

(12) For any other use specifically authorized by law that is related to the operation of a motor vehicle or public safety.


Personal information as defined in section three of this article that is contained in an individual record may be disclosed to any person making a request, without regard to intended use, after the division has provided in a clear and conspicuous manner on forms for issuance or renewal of operator or driver licenses, registrations, titles or identification documents, notice that personal information collected by the division may be disclosed to any person making a request for an individual record, and has provided in a clear and conspicuous manner on the forms an opportunity for each person who is the subject of a record to prohibit such disclosure.

Any person making a request for disclosure of personal information required or permitted under sections five through eight of this article, both inclusive, shall pay to the division all reasonable fees related to providing the information: Provided, That all fees under this section shall be set by legislative rule pursuant to article three, chapter twenty-nine-a of this code.

§17A-2A-10. Additional conditions.

Prior to disclosing personal information the division may require the person making the request to: (a) Verify his or her identity; (b) verify that the information will be used only as authorized, or that the consent of the person who is the subject of the information has been obtained; and (c) make and file a written application in such form and containing certification requirements as the division may prescribe.


(a) An authorized recipient of personal information, except a recipient under subsection (11), section seven of this article or section eight of this article, may resell or redisclose the information for any use permitted under section seven of this article except the use for bulk distribution for surveys, marketing or solicitations as provided in subsection (11), section seven of this article.

(b) An authorized recipient of an individual record under section eight of this article may resell or redisclose personal information for any purpose.

(c) An authorized recipient of personal information for bulk distribution for surveys, marketing or solicitations, under subsection (11), section seven of this article may resell or redisclose personal information only in accordance with the terms of said subsection concerning the right of individuals who have requested in a timely manner, not to have the surveys, marketing or solicitations directed at them.
(d) Any authorized recipient who resells or rediscloses personal information shall: (1) Maintain for a period of not less than five years, records as to the person or entity receiving information, and the permitted use for which it was obtained; and (2) make the records available for inspection by the division, upon request.


The division may promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to carry out the purposes of this article.


Any person who requests the disclosure of personal information from division records and misrepresents his or her identity or makes a false statement on any application required by the division pursuant to this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in jail for not more than one year, or both fined and confined.


This article shall take effect the first day of September, one thousand nine hundred ninety-seven.

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

§17A-3-22. Issuance and distribution of registration bulletins.

The commissioner shall annually, following a renewal of registration, compile and publish in books or bulletins a list of all registered vehicles and shall thereafter compile and publish monthly supplements thereto. The list of registered vehicles shall be arranged serially according to the registration numbers assigned to registered vehicles and shall contain in addition the names and addresses of registered owners and a brief description of each vehicle.

Law-enforcement officers may be furnished with copies of the lists, and copies may also be furnished to other interested parties as may be authorized by the gover-
The commissioner may also furnish copies of the lists to similar officers in adjoining states. Subject to the provisions of article two-a of this chapter, copies may be furnished to any person upon application, at a price to be fixed by the commissioner.

CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

ARTICLE 2. ADMINISTRATION OF LAW.

§17D-2-2. Commissioner to furnish abstract of operating record; fee for abstract.

The commissioner shall upon request and subject to the provisions of article two-a, chapter seventeen-a of this code, furnish any person a certified abstract of the operating record of any person subject to the provisions of this chapter, and if there is no record of any conviction of the person of a violation of any law relating to the operation of a motor vehicle or of any injury or damage caused by the person, the commissioner shall so certify. The commissioner shall collect five dollars for each abstract.

CHAPTER 17E. UNIFORM COMMERCIAL DRIVER'S LICENSE ACT.

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-17. Driving record information to be furnished.

Subject to the provisions of article two-a, chapter seventeen-a of this code, the commissioner shall furnish full information regarding the driving record of any person:

(a) To the driver license administrator of any other state or province or territory of Canada requesting that information;

(b) To any employer or prospective employer;

(c) To insurers upon request;

(d) To credit reporting organizations and for other legitimate business transactions; and

(e) To the driver.
CHAPTER 183

(Com. Sub. for H. B. 4490—By Delegates Talbott, Gallagher, Clements, Trump, Preece, Kelley and Kallai)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section seven, article nine of said chapter; to amend and reenact section nine, article three, chapter seventeen-b of said code; to amend and reenact section six, article two-a, chapter seventeen-d of said code; and to amend and reenact section one, article six-a, chapter thirty-three of said code, all relating to surrender of registration plate or notification upon cancelling insurance coverage; establishing a verification process; changing random sample methods; misdemeanor penalties; suspension of motor vehicle registration; judicial review of suspension; reinstatement fees; providing that courts require current documentation of insurance; and requiring notice of insurance cancellation by registered or certified mail.

Be it enacted by the Legislature of West Virginia:

That section three, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section seven, article nine of said chapter be amended and reenacted; that section nine, article three, chapter seventeen-b of said code be amended and reenacted; that section six, article two-a, chapter seventeen-d of said code be amended and reenacted; and that section one, article six-a, chapter thirty-three of said code be amended and reenacted, all to read as follows:

Chapter

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

17B. Motor Vehicle Driver’s Licenses.

17D. Motor Vehicle Safety.

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

§17A-3-3. Application for registration; statement of insurance or other proof of security to accompany application; criminal penalties; fees; special revolving fund.

Every owner of a vehicle subject to registration under this article shall make application to the division for the registration of the vehicle upon the appropriate form or forms furnished by the division and every such application shall bear the signature of the owner or his or her authorized agent, written with pen and ink, and the application shall contain:

(a) The name, bona fide residence and mailing address of the owner, the county in which he or she resides, or business address of the owner if a firm, association or corporation.

(b) A description of the vehicle including, insofar as the data specified in this section may exist with respect to a given vehicle, the make, model, type of body, the manufacturer's serial or identification number or other number as determined by the commissioner.

(c) In the event a motor vehicle is designed, constructed, converted or rebuilt for the transportation of property, the application shall include a statement of its declared gross weight if the motor vehicle is to be used alone, or if the motor vehicle is to be used in combination with other vehicles, the application for registration of the motor vehicle shall include a statement of the combined declared gross weight of the motor vehicle and the vehicles to be drawn by the motor vehicle; declared gross weight being
the weight declared by the owner to be the actual combined weight of the vehicle or combination of vehicles and load when carrying the maximum load which the owner intends to place on the vehicle; and the application for registration of each vehicle shall also include a statement of the distance between the first and last axles of that vehicle or combination of vehicles.

The declared gross weight stated in the application shall not exceed the permissible gross weight for the axle spacing listed in the application as determined by the table of permissible gross weights contained in chapter seventeen-c of this code; and any vehicle registered for a declared gross weight as stated in the application is subject to the single-axle load limit set forth in chapter seventeen-c of this code.

(d) Each applicant shall state whether the vehicle is or is not to be used in the public transportation of passengers or property, or both, for compensation, and if used for compensation, or to be used, the applicants shall certify that the vehicle is used for compensation, and shall, as a condition precedent to the registration of such vehicle, obtain a certificate of convenience, or permit from the public service commission.

(e) A statement under penalty of false swearing that liability insurance is in effect and will continue to be in effect through the entire term of the vehicle registration period within limits which shall be no less than the requirement of section two, article four, chapter seventeen-d of this code, which shall contain the name of the applicant's insurer, the name of the agent or agency which issued the policy and the effective date of the policy, and such other information as may be required by the commissioner of motor vehicles, or that the applicant has qualified as a self-insurer meeting the requirements of section two, article six, chapter seventeen-d of the code and that as a self-insurer he or she has complied with the minimum security requirements as established in section two, article four, chapter seventeen-d, or that the applicant has submitted bond or other security approved by the commissioner of motor vehicles which shall provide the equivalent of the
policy of insurance specified in this section, or that the applicant has submitted the required cash or other securities with the state treasurer as set forth in the provisions of section sixteen, article four, chapter seventeen-d of this code.

(1) Intentional lapses of insurance coverage.

(A) In the case of a periodic use or seasonal vehicle, as defined in section three, article two-a, chapter seventeen-d of this code, the owner may provide, in lieu of other statements required by this section, a statement, under penalty of false swearing, that liability insurance is in effect during the portion of the year the vehicle is in actual use, within limits which shall be no less than the requirements of section two, article four, chapter seventeen-d of this code, and other information relating to the seasonal use, on a form designed and provided by the division.

(B) Any registrant who prior to expiration of his or her vehicle registration drops or cancels insurance coverage for any reason other than periodic or seasonal use shall either surrender the registration plate or shall, by certified mail, notify the division of the cancellation. The notice shall contain a statement under penalty of false swearing that the vehicle will not be operated on the roads or highways of this state.

(C) The registration of any vehicle upon which insurance coverage has been dropped or canceled under paragraph (B) shall be reinstated upon submission of current proof of insurance and payment of the duplicate plate fee prescribed by this chapter.

(2) Verification process.

The division shall select no fewer than one percent of the total number of motor vehicles registered annually for a random sample verification of current insurance coverage. The division may also select an owner's statement of insurance submitted at the time of registration or registration renewal for verification.

Random sample verification of current insurance coverage shall be conducted on a monthly basis. The basis
for each sample shall be the entire registered motor vehicle base. The selection of a registration for random sample verification shall not preclude the registration from being selected again in any subsequent month.

The division shall notify the registrant by regular mail that he or she has twenty days to provide the division with proof of insurance indicating current insurance coverage on the indicated vehicle as of the date of the notice. The information shall be verified with the indicated insurance company as provided in this section or in the case of a verification of the original owner's statement of insurance, proof of insurance as of the date of submission of the owner's statement.

When a statement or registration is selected for verification, the division shall forward the information provided by the registrant to the listed insurer. The insurer shall notify the division, on a form required by the commissioner, within twenty calendar days if the liability insurance is or is not in effect, as required by this section.

The division may select for verification any statement of liability insurance submitted by a person who has previously been convicted or whose registration or driver's license has been suspended for violating the provisions of section three, article two-a, chapter seventeen-d of this code, or whose statements of liability insurance have previously been found to be incorrect. The division may also determine the correctness of information relating to proof of other security satisfying the requirements of this section.

Following the twenty-day period, if the registrant has not responded, or the division determines through the verification process with the insurance company that there is or was no liability insurance in effect, and the registrant has not complied with the provisions of intentional lapse of insurance, then the commissioner shall send a notice of pending suspension of the motor vehicle registration and the suspension of the owner or owner's driver's license to the registrant by certified mail. The notice of pending suspension shall grant the registrant an additional twenty days from the date of the mailing to provide current proof
of insurance as of the original notice date or other re-
quested information to the commissioner. Following this
additional twenty-day period, if the registrant fails to pro-
vide proof of current insurance coverage as of the date of
the original notice, an order of suspension shall be direct-
ed to the superintendent by the commissioner as provided
in section seven, article nine of this chapter.

The commissioner shall suspend the motor vehicle
registration until current proof of insurance is received
and shall suspend the driver's license of the owner or own-
ers of the motor vehicle for a period of ninety days: Pro-
vided, That whenever the commissioner determines that
the vehicle was actually insured despite the receipt of a
notice from the insurer, or the license plate was surren-
dered to the division upon cancellation of coverage or that
the registrant complied with the intentional lapse of cover-
age notice provisions, the suspension shall be withdrawn
and any fees collected by the state shall be returned.

Upon the timely written request of a person whose
vehicle registration or driver's license is suspended under
the provisions of this section, the commissioner shall stay
the suspension, and afford the person an opportunity to be
heard. The written request must be filed with the commis-
sioner in person or by registered or certified mail, return
receipt requested, within ten days after receipt of a copy of
the order of suspension.

If the commissioner finds that the person whose vehi-
cle registration or driver's license was suspended was not in
violation of the provisions of this section, the commissi-
er shall rescind his or her earlier order of suspension.

A copy of the commissioner's order made and entered
following the hearing shall be served on the person by
registered or certified mail, return receipt requested. Dur-
ing the pendency of any hearing, the revocation of the
person's license to operate a motor vehicle in this state
shall be stayed. If the commissioner shall, after hearing,
make and enter an order affirming the commissioner's
earlier order of revocation, the person shall be entitled to
judicial review as set forth in chapter twenty-nine-a of this
code. The commissioner shall not stay enforcement of the
order during the appeal. Pending the appeal, the court may grant a stay or supersedeas of the order only upon motion and hearing, and a finding by the court upon the evidence presented, that there is a substantial probability that the appellant shall prevail upon the merits, and the appellant will suffer irreparable harm if the order is not stayed: Provided, That in no event shall the stay or supersedeas of the order exceed thirty days.

(3) If any person making an application required under the provisions of this section, in the application knowingly provides false information, false proof of security or a false statement of insurance, or if any person, including an applicant's insurance agent, knowingly counsels, advises, aids or abets another in providing false information, false proof of security, or a false statement of insurance in the application, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars, or be imprisoned in the county or regional jail for a period not to exceed fifteen days, or both fined and imprisoned, and in addition to the fine or imprisonment shall have his or her operator's or chauffeur's license and vehicle registration suspended for a period of six months.

(f) Any further information as may reasonably be required by the division to enable it to determine whether the vehicle is lawfully entitled to registration.

(g) Each such application for registration shall be accompanied by the fees provided in this article, and an additional fee of fifty cents for each motor vehicle for which the applicant seeks registration, the fee to be deposited in a special revolving fund for the operation by the division of its functions established by the provisions of article two-a, chapter seventeen-d of this code.

ARTICLE 9. OFFENSES AGAINST REGISTRATION LAWS AND SUSPENSION OR REVOCATION OF REGISTRATION.

§17A-9-7. Surrender of evidences of registration, etc., upon cancellation, suspension or revocation; willful failure or refusal to surrender; fee for reinstatement.
Whenever the registration of a vehicle, a certificate of title, a registration card, registration plate or plates, a temporary registration plate or marker, the right to issue temporary registration plates or markers, any nonresident or other permit, or any license certificate or dealer special plates issued under the provisions of article six of this chapter, is canceled, suspended or revoked as authorized in this chapter, the owner, holder or other person in possession of the evidences of the registration, title, permit or license or any special dealer plates shall, except as otherwise provided in article six of this chapter, immediately return the evidences of the registration, title, permit or license that was canceled, suspended or revoked, together with any dealer special plates relating to any license certificate, or any dealer special plate or plates if only the dealer special plate is suspended, to the division: Provided, That the owner or holder shall, before reinstatement, pay a fee of ten dollars in addition to all other fees, which shall be collected by the division and credited to a special revolving fund in the state treasury to be appropriated to the division for use in enforcement of the provisions of this code.

If any person willfully fails or refuses to return to the division the evidences of the registration, title, permit or license that have been canceled, suspended or revoked, or any dealer special plates, when obligated so to do as provided in this section, the commissioner shall immediately notify the superintendent of the state police who shall, as soon as possible, secure possession of the evidence of registration, title, permit or license or any special dealer plates and return it to the division. The superintendent of the state police shall make a report in writing to the commissioner, within two weeks after being notified by the commissioner, as to the result of his or her efforts to secure the possession and return of the evidences of registration, title, permit or license, or any dealer special plates.

For each registration, certificate of title, registration card, registration plate or plates, temporary registration plate or marker, permit, license certificate or dealer special plate, which the owner, holder or other person in possession of the registration, title, permit or license or any spe-
cial dealer plates shall have willfully failed or refused, as
provided in this section, to return to the division within ten
days from the time that the cancellation, suspension or
revocation becomes effective, and which has been certified
to the superintendent of the state police as specified in this
section, the owner or holder shall, before the registration,
title, permit or license or any special dealer plates may be
reinstated, if reinstatement is permitted, in addition to all
other fees and charges, pay a fee of fifteen dollars, which
shall be collected by the division of motor vehicles, paid
into the state treasury and credited to the general fund to
be appropriated to the state police for application in the
enforcement of the road laws.

A total of twenty-five dollars may be collected on each
reinstatement for each vehicle to which any cancellation,
suspension or revocation relates: Provided, That when
any motor vehicle registration is suspended for failure to
maintain motor vehicle liability insurance the reinstatement
fee is one hundred dollars, and if the vehicle owner
fails to surrender the vehicle registration and the orders go
to the state police, an additional fee of fifty dollars shall be
required before the motor vehicle registration may be
reinstated. A total of one hundred fifty dollars may be
collected on each reinstatement of any motor vehicle reg-
istration canceled, suspended or revoked for failure to
maintain motor vehicle liability insurance.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION
OF LICENSES.

§17B-3-9. Surrender and return of license not required.

The division, upon suspending or revoking a license,
shall not require that the license be surrendered to and be
retained by the division. The surrender of a license shall
not be a precondition to the commencement and tolling of
any applicable period of suspension or revocation: Pro-
vided, That before the license may be reinstated, the li-
censee shall pay a fee of fifteen dollars, in addition to all
other fees and charges, which shall be collected by the
division and deposited in a special revolving fund to be
10 appropriated to the division for use in the enforcement of
11 the provisions of this section: Provided, however, That
12 when any license is suspended for failure to maintain
13 motor vehicle liability insurance, the reinstatement fee is
14 fifty dollars.

CHAPTER 17D. MOTOR VEHICLE SAFETY
RESPONSIBILITY LAW.

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

§17D-2A-6. Investigation by duly authorized law-enforcement
officer to include inquiry regarding required
security; notice to division of motor vehicles.

At the time of investigation of a motor vehicle offense
or accident in this state by the state police or other
law-enforcement agency or when a vehicle is stopped by a
law-enforcement officer for reasonable cause, the officer
of the agency making the investigation shall inquire of
the operator of any motor vehicle involved as to the exis-
tence upon the vehicle of the proof of insurance or other
security required by the provisions of this code. Upon a
finding by the investigating law-enforcement agency,
officer or agent of the motor vehicle offense or accident
that the security required by the provisions of this article is
not in effect, as to any vehicle, he or she shall notify the
division of motor vehicles of his or her finding within five
days, if no citation requiring a court appearance is issued:
Provided, That the law-enforcement officer or agent shall
not stop vehicles solely to inquire as to the certificate of
insurance.

A defendant, who is charged with a traffic offense that
requires an appearance in court, shall present the court at
the time of his or her appearance or subsequent appear-
ance with proof that the defendant had security in effect at
the time of the traffic offense as required by this article.
The court shall not base its decision solely on the presen-
tation of a certificate of insurance as defined in section
four, article two-a of this chapter. The court shall require
current documentation from the defendant's insurance
company or agent that the defendant in fact was insured at
the time of the offense. If, as a result of the defendant's
failure to show proof, the court determines that the defen-
§33-6A-1. Cancellation prohibited except for specified reasons; notice.

No insurer once having issued or delivered a policy providing automobile liability insurance in this state insuring a private passenger automobile shall, after the policy has been in effect for sixty days, or in case of renewal effective immediately, issue or cause to issue a notice of cancellation during the term of the policy except for one or more of the reasons specified in this section:

(a) The named insured fails to discharge when due any of his or her obligations in connection with the payment of premium for the policy or any installment of the premium;

(b) The policy was obtained through material misrepresentation;

(c) The insured violates any of the material terms and conditions of the policy;

(d) The named insured or any other operator, either resident in the same household or who customarily operates an automobile insured under the policy:

(1) Has had his or her operator's license suspended or revoked during the policy period including suspension or revocation for failure to comply with the provisions of article five-a, chapter seventeen-c of this code, regarding consent for a chemical test for intoxication: *Provided,* that when a license is suspended for sixty days by the commissioner of motor vehicles because a person did drive 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, pursuant to subsection (1), section two, article five-a, chapter seventeen-c of this code, the suspension shall not be
grounds for cancellation; or

(2) Is or becomes subject to epilepsy or heart attacks, and the individual cannot produce a certificate from a physician testifying to his or her ability to operate a motor vehicle.

(e) The named insured or any other operator, either resident in the same household or who customarily operates an automobile insured under such policy is convicted of or forfeits bail during the policy period for any of the following:

(1) Any felony or assault involving the use of a motor vehicle;

(2) Negligent homicide arising out of the operation of a motor vehicle;

(3) Operating a motor vehicle while under the influence of alcohol or of any controlled substance or while having an alcohol concentration in his blood of ten hundredths of one percent or more, by weight;

(4) Leaving the scene of a motor vehicle accident in which the insured is involved without reporting as required by law;

(5) Theft of a motor vehicle or the unlawful taking of a motor vehicle;

(6) Making false statements in an application for a motor vehicle operator's license;

(7) A third violation, committed within a period of twelve months, of any moving traffic violation which constitutes a misdemeanor, whether or not the violations were repetitious of the same offense or were different offenses. Notwithstanding any of the provisions of this section to the contrary, no insurance company may cancel a policy of automobile liability insurance without first giving the insured thirty days' notice, by registered or certified mail, of its intention to cancel: Provided, That cancellation of the insurance policy by the insurance carrier for failure of consideration to be paid by the insured upon initial issuance of the insurance policy is effective upon the expiration of ten days' notice of cancellation to the insured.
CHAPTER 184

(Com. Sub. for S. B. 144—By Senators Miller and Love)

[Passed March 8, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three-a and sixteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article ten of said chapter, all relating to registration of motor vehicles; payment of personal property taxes prerequisite to registration or renewal; duties of assessors; a schedule of automobile values; expiration of registrations and certifications of title; establishing an optional two-year renewal cycle for Class A motor vehicles; and combining the five different registration fees for Class A motor vehicles into one fee.

Be it enacted by the Legislature of West Virginia:

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

Article 3. Original and Renewal of Registration; Issuance of Certificates of Title.

10. Fees for Registration, Licensing, Etc.

ARTICLE 8. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-3a. Payment of personal property taxes prerequisite to registration or renewal; duties of assessors; schedule of automobile values.

§17A-3-16. Expiration of registration and certificates of title.

§17A-3-3a. Payment of personal property taxes prerequisite to registration or renewal; duties of assessors; schedule of automobile values.

1 Certificates of registration and renewal of registration of any vehicle or registration plates for any vehicle shall
not be issued or furnished by the division of motor vehicles, or any other officer charged with such duty, unless the applicant for the certificate or registration plate, except an applicant exempt from payment of registration fees under section eight, article ten of this chapter, has furnished the receipt provided for in this section 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 vehicles which were registered with the division of motor vehicles in the applicant's name on the tax day for the former calendar year: Provided, That after the first day of July, one thousand nine hundred ninety-seven, a certificate or registration plate shall not be issued to an applicant who has chosen the optional two-year registration system provided for in section sixteen of this article, unless the applicant has provided the receipts provided for in this section to show full payment of the personal property taxes for the two calendar years immediately preceding the calendar year in which application is made on all vehicles which were registered 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 registered vehicle 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 vehicle subject to the registration provisions of this chapter. When the property taxes on any vehicle have been paid, the officer to whom the payment was made shall deliver to the person paying the taxes a written or printed receipt for the payment, and shall retain for his or her records a duplicate of the receipt. It is the duty of the assessor and sheriff, respectively, to see that the assessment records and the receipts contain information adequately identifying the vehicle as registered under the provisions of this chapter. The officer receiving payment shall sign each receipt in his or her own handwriting.
The state tax commissioner shall annually compile a schedule of automobile values, based on the lowest values shown in a nationally accepted used car guide. The state tax commissioner shall furnish the schedule to each assessor and shall be used by him as a guide in placing the assessed values on all automobiles in his county.

§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 under this chapter expires at midnight on the last day of the month designated by the commissioner: Provided, That the commissioner may extend the period during which the registration plates may be used.

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

(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 is for a period of twelve consecutive calendar months, the expiration dates of the registrations to be staggered throughout the year: Provided, That on or after the first day of July, one thousand nine hundred ninety-seven, the commissioner shall also offer an optional two-year registration system, whereby the registration of all vehicles shall be for a period of twenty-four consecutive calendar months, the expiration dates of the registrations to be staggered throughout the year. Under this option, all annual fees due at the time of registration shall be multiplied by two.

(1) On or after the first day of July, one thousand nine hundred ninety-seven, all Class A motor vehicles as defined in section one, article ten of this chapter, shall be registered for a period of twelve or twenty-four 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 is
designated the first period; that ending on the twenty-eighth (twenty-ninth) day of February is designated the second; that ending on the thirty-first day of March is designated the third; that ending on the thirtieth day of April is designated the fourth; that ending on the thirty-first day of May is designated the fifth; that ending on the thirtieth day of June is designated the sixth; that ending on the thirty-first day of July is designated the seventh; that ending on the thirty-first day of August is designated the eighth; that ending on the thirtieth day of September is designated the ninth; that ending on the thirty-first day of October is designated the tenth; that ending on the thirtieth day of November is designated the eleventh; and that ending on the thirty-first day of December is 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 are subject to registration and payment of the fee for the twelve- or twenty-four-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 are subject to registration and payment of fee for the twelve- or twenty-four-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.

The following registration fees for the classes indicated shall be paid to the division for the registration of vehicles subject to registration under this chapter 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 twenty-eight dollars and fifty cents: Provided, That the registration fees and any other fees required by this chapter for Class A vehicles under the optional biennial staggered registration system shall be multiplied by two and paid biennially to the division.

No license fee shall be charged for vehicles owned by churches, or by trustees for churches, which are regularly used for transporting parishioners to and from church services. Notwithstanding the 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 the 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 gross weight of the 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 the 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 the vehicles operated in states other than West Virginia bears to the total mileage operated by the 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 special fees set forth in this section.

(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 multi-year 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.

CHAPTER 185

(Com. Sub. for S. B. 113—By Senators Miller, Love, Grubb, Oliverio, Schoonover, Sharpe, Deem, Dugan, Whitlow, Ross, Yoder, Kimble, Manchin, Bowman, Helmick, Anderson, Blatnik, Wiedebusch, Plymale, Dittmar and Macnaughtan)

[Passed February 22, 1996; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

That section twelve-a, 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-3-12a. Disclosure of odometer information; exceptions; penalties.

(a) In accordance with the provisions of sections four hundred eight-a and four hundred eight-e of the Motor Vehicle Information and Cost Savings Act, Public Law 92-513, the transferor of a motor vehicle must complete the odometer disclosure form on the certificate of title or a separate written odometer disclosure statement, before executing any transfer of ownership document and before a new certificate of title may be issued for a transfer of ownership of a vehicle. The odometer disclosure form on the certificate of title and the separate written odometer disclosure statement shall contain the following information:

1. The odometer reading at the time of transfer (not to include tenths of miles);
2. The date of transfer;
3. The transferor's name and current address;
4. The transferee's name and current address;
5. The transferor's printed name and signature acknowledging the disclosure;
6. The identity of the vehicle, including its make, model, year, body type and identification number;
7. Certification by the transferor that to the best of his or her knowledge the odometer reading reflects:
   A. The actual mileage the vehicle has been driven;
(B) The amount of mileage in excess of the designated mechanical odometer limit; or

(C) A difference from the number of miles the vehicle has actually been driven and that the difference is greater than that caused by odometer calibration error, and that the odometer reading is not the actual mileage. This certification shall state that the odometer reading does not reflect the actual mileage and should not be relied upon, and shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage; and

(8) A warning statement referring to state and federal law and the statement: "That failure to complete or providing false information may result in fines and/or imprisonment."

Upon issuance of a new title, the division shall mark the new title with an appropriate brand which reflects certification of the prior owner.

(b) Before executing any transfer of ownership document, the lessor of a leased motor vehicle must notify a lessee in writing that the lessee is required to provide a written odometer disclosure statement to the lessor. The odometer disclosure statement shall contain the following information:

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of statement;

(3) The lessee's name and current address;

(4) The lessor's name and current address;

(5) The lessee's printed name and signature acknowledging the disclosure;

(6) The identity of the vehicle, including its make, model, year, body type and identification number;

(7) The date that the lessor notified the lessee of the disclosure requirements;
60 (8) The date that the completed disclosure statement was received by the lessor;

61 (9) The signature of the lessor;

62 (10) Certification by the lessee that to the best of his or her knowledge the odometer reading reflects:

63 (A) The actual mileage the vehicle has been driven;

64 (B) The amount of mileage in excess of the designated mechanical odometer limit; or

65 (C) A difference from the number of miles the vehicle has actually been driven and that the difference is greater than that caused by odometer calibration error, and that the odometer reading is not the actual mileage. This certification shall state that the odometer reading does not reflect the actual mileage and should not be relied upon; and

66 (11) A warning statement referring to state and federal law and the statement: "That failure to complete or providing false information may result in fines and/or imprisonment."

67 If a lessor transfers the leased vehicle without obtaining possession of it, the lessor may indicate on the title the mileage disclosed by the lessee, unless the lessor has reason to believe the disclosure does not state the actual mileage.

68 (c) Notwithstanding the provisions of this section, the form for odometer disclosure on the certificate of title or a separate written odometer disclosure statement need not be completed for any of the following motor vehicles:

69 (1) A vehicle having a gross weight of more than sixteen thousand pounds;

70 (2) A vehicle that is not self-propelled;

71 (3) A vehicle that is ten years old or older;
(4) A vehicle sold directly by the manufacturer to any agency of the United States in conformity with contracted specifications; or

(5) A new motor vehicle prior to its first transfer for purposes other than resale.

(d) Dealers and distributors of motor vehicles who are required by law to execute an odometer disclosure statement shall retain for five years a photostat, carbon or other facsimile copy of each odometer mileage statement which they issue and receive, at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

(e) Lessors shall retain for five years following the date they transfer ownership of the leased vehicle each odometer disclosure statement which they receive from a lessee, at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

(f) Auction companies shall retain for five years following the date of sale of each motor vehicle, at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval, the following records:

(1) The name of the most recent owner (other than the auction company);

(2) The name of the buyer;

(3) The vehicle identification number; and

(4) The odometer reading on the date the auction company took possession of the motor vehicle.

(g) A transfer of a motor vehicle which has not been previously titled in this state or which has a certificate of title issued prior to the first day of January, one thousand nine hundred ninety-one, must include the execution of
the transfer by the owner and the purchaser on a form
prescribed by the commissioner signed by each of the two
parties, which form contains substantially the same infor-
mation as is required in this section and with the provi-
sions of the odometer mileage statement form pursuant to
the Motor Vehicle Information and Cost Savings Act.

(h) The commissioner shall promulgate rules for the
administration of this section in accordance with chapter
twenty-nine-a of this code.

(i) Any person who violates any of the provisions of
this section with intent to defraud shall be guilty of a mis-
demeanor and, upon conviction thereof, shall be fined not
less than two hundred dollars nor more than one thousand
dollars, or imprisoned in the county jail for not more than
six months, or both fined and imprisoned.

CHAPTER 186

(Com. Sub. for S. B. 30—By Senators Oliverio, Wiedebusch, Love, Buckalew,
Kimble, Manchin, Anderson, Whitlow, Bailey, Wagner, Sharpe, Ross,
Schoonover, Bowman, Walker, Deem, Yoder, Tomblin, Mr. President, Blatnik,
Dittmar and Minear)

[Passed March 6, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article three,
chapter seventeen-a of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to regis-
tration plates generally; renewal of registration plates; allow-
ing a surviving spouse to continue to use his or her deceased
spouse's military related license plate until the surviving
spouse dies, remarries or fails to renew; providing a special-
ized license plate for marine corps league members; and
one-time fee of ten dollars for specialized plate.

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 Con-
gress 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 spe-
cial 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 offi-
cial.

(B) Each plate issued pursuant to this subdivision shall
bear any combination of letters and numbers not to ex-
ceed 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 subdivi-
sion, 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 pre-
scribed 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 com-
manding 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.

(C) A surviving spouse may continue to use his or her deceased spouse's national guard forces license plate until the surviving spouse dies, remarries or does not renew the license plate.

(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 accordance 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) A surviving spouse may continue to use his or her deceased spouse's honorably discharged veterans license plate until the surviving spouse dies, remarries or does not renew the license 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) A surviving spouse may continue to use his or her deceased spouse's disabled veterans license plate until the surviving spouse dies, remarries or does not renew the license 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 regis-
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) A surviving spouse may continue to use his or her deceased spouse's purple heart medal license plate until the surviving spouse dies, remarries or does not renew the license 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.

(B) 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) A surviving spouse may continue to use his or her deceased spouse's survivors of the attack on Pearl Harbor license plate until the surviving spouse dies, remarries or does not renew the license 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 pas-
enger 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 organiza-
tions 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. Up-
on 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 together with a special annual fee of fifteen dol-
ars, which is in addition to all other fees required by this
chapter. The applications and fees shall be submitted to
the division of motor vehicles with the request that the
division issue a registration plate bearing a combination of
letters or numbers with the organizations' logo or emblem,
with the maximum number of letters or numbers to be
determined by the commissioner.

(C) The commissioner shall promulgate rules in accon-
dance with the provisions of chapter twenty-nine-a of this
code regarding the procedures for and approval of special
registration plates issued pursuant to this subdivision.

(D) The commissioner shall set an appropriate fee to
defray the administrative costs associated with designing
and manufacturing special registration plates for a non-
profit charitable or educational organization. The non-
profit charitable or educational organization shall collect
this fee and forward it to the division for deposit in a spe-
cial revolving fund to pay the administrative costs. The
nonprofit charitable or educational organization may also
collect a fee for marketing the special registration plates.
(10) Specified emergency or volunteer registration plates may be issued as follows:

(A) Any owner of a motor vehicle who is a resident of the state of West Virginia and who is a certified paramedic or emergency medical technician, a member of a volunteer fire company or a paid fire department, a member of the state fire commission, the state fire marshal, the state fire marshal's assistants, the state fire administrator and voluntary rescue squad members may apply for a special license plate for any number of Class A vehicles titled in the name of the qualified applicant which bears the insignia of the profession, group or commission. Any insignia shall be designed by the commissioner. License plates issued pursuant to this subdivision shall bear the requested insignia in addition to the registration number issued to the applicant pursuant to the provisions of this article.

(B) Each application submitted pursuant to this subdivision 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 subdivision shall be accompanied by payment of a special initial application fee of ten dollars, which is in addition to any other registration or license fee required by this chapter. 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 January, 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.

(12) Honorably discharged marine corps league mem- bers may be issued special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any honorably discharged marine corps league mem- ber, a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insig- nia designed by the commissioner of the division of motor vehicles.

(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. 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 provi- sion of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's honorably discharged marine corps league license plate until the surviving spouse dies, remar- ries or does not renew the license plate.

(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 a surviving spouse may continue to use his or
her deceased spouse's prisoner of war or congressional medal of honor license plate until the surviving spouse dies, remarries or does not renew the license 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.

(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
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, three plates per elected office of the board of public works, 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 commissioner, 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 background 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.
AN ACT to amend and reenact section eighteen, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections eighteen-a and twenty-five-a, all relating to motor vehicle dealers, license services and automobile auctions; investigation of licensees; disclosure of information to the motor vehicle dealers advisory board; revocation and suspension of licenses and plates; adding new offense to the grounds for suspending or revoking a license certificate; creating a motor vehicle dealers advisory board; composition of board; terms of board members; requiring commissioner to consult with the board; adding provisions for civil penalties for violations by vehicle dealers, license services and automobile auctions; providing for coviolator penalties; providing for hearings on civil penalties; and providing for judicial review.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article six, chapter seventeen-a 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 two new sections, designated sections eighteen-a and twenty-five-a, all to read as follows:

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS, ETC.

§17A-6-18. Investigation; matters confidential; grounds for suspending or revoking license or imposing fine; suspension and revocation generally.

§17A-6-18a. Motor vehicle dealers advisory board.

§17A-6-25a. Civil penalties.

§17A-6-18. Investigation; matters confidential; grounds for suspending or revoking license or imposing fine; suspension and revocation generally.
(a) The commissioner may conduct an investigation to determine whether any provisions of this chapter have been or are about to be violated by a licensee. Any investigation shall be kept in strictest confidence by the commissioner, the division, the licensee, any complainant and all other persons, unless and until the commissioner suspends or revokes the license certificate of the licensee involved or fines the licensee: Provided, That the commissioner may advise the motor vehicle dealers advisory board of pending actions and may disclose to the motor vehicle dealers advisory board such information as may enable it to perform its advisory function in imposing penalties. The commissioner may suspend or revoke a license certificate, suspend a special dealer plate or plates, impose a fine or take any combination of these actions, if the commissioner finds that the licensee:

1. Has failed or refused to comply with the laws of this state relating to the registration and titling of vehicles and the giving of notices of transfers, the provisions and requirements of this article, or any reasonable rules authorized in section nine, article two of this chapter and promulgated to implement the provisions of this article by the commissioner in accordance with the provisions of article three, chapter twenty-nine-a of this code;

2. Has given any check in the payment of any fee required under the provisions of this chapter which is dishonored;

3. In the case of a dealer, has knowingly made or permitted any unlawful use of any dealer special plate or plates issued to him or her;

4. In the case of a dealer, has a dealer special plate or plates to which he or she is not lawfully entitled;

5. Has knowingly made false statement of a material fact in his or her application for the license certificate then issued and outstanding;

6. Has habitually defaulted on financial obligations;
(7) Does not have and maintain at each place of business (subject to the qualification contained in subdivision (17), subsection (a), section one of this article with respect to a new motor vehicle dealer) an established place of business as defined for the business in question in section one of this article;

(8) Has been guilty of any fraudulent act in connection with the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, motorcycle dealer, used parts dealer, or wrecker or dismantler;

(9) Has defrauded or is attempting to defraud any buyer or any other person, to the damage of the buyer or such other person, in the conduct of the licensee's business;

(10) Has defrauded or is attempting to defraud the state or any political subdivision of the state of any taxes or fees in connection with the sale or transfer of any vehicle;

(11) Has committed fraud in the registration of a vehicle;

(12) Has knowingly purchased, sold or otherwise dealt in a stolen vehicle or vehicles;

(13) Has advertised by any means, with intent to defraud, any material representation or statement of fact which is untrue, misleading or deceptive in any particular relating to the conduct of the licensed business;

(14) Has willfully failed or refused to perform any legally binding written agreement with any buyer;

(15) Has made a fraudulent sale or purchase;

(16) Has failed or refused to assign, reassign or transfer a proper certificate of title;

(17) Has a license certificate to which he or she is not lawfully entitled; or
(18) Has misrepresented a customer's credit or financial status to obtain financing.

The commissioner shall also suspend or revoke the license certificate of a licensee if he or she finds the existence of any ground upon which the license certificate could have been refused, or any ground which would be cause for refusing a license certificate to the licensee were he or she then applying for the license certificate.

(b) Whenever a licensee fails or refuses to keep the bond or liability insurance required by section four of this article in full force and effect, the commissioner shall automatically suspend the license certificate of the licensee unless and until a bond or certificate of insurance as required by section four of this article is furnished to the commissioner. When the licensee furnishes the bond or certificate of insurance to the commissioner, the commissioner shall vacate the suspension.

(c) Suspensions under this section shall continue until the cause for the suspension has been eliminated or corrected. Revocation of a license certificate shall not preclude application for a new license certificate. The commissioner shall process the application for a new license certificate in the same manner and issue or refuse to issue the license certificate on the same grounds as any other application for a license certificate is processed, considered and passed upon, except that the commissioner may give any previous suspension and the revocation such weight in deciding whether to issue or refuse the license certificate as is correct and proper under all of the circumstances.

§17A-6-18a. Motor vehicle dealers advisory board.

(a) There is created a motor vehicle dealers advisory board to assist and to advise the commissioner on the administration of laws regulating the motor vehicle industry; to work with the commissioner in developing new laws, rules or policies regarding the motor vehicle industry; and to give the commissioner such further advice and assistance as he or she may from time to time require.
The board shall consist of nine members and the commissioner of motor vehicles, or his or her representative, who shall be an ex officio member. Two members shall represent new motor vehicle dealers, with one of these two members representing dealers that sell less than one hundred new vehicles per year; one member shall represent used motor vehicle dealers; one member shall represent wrecker/dismantler/rebuilders; one member shall represent automobile auctions; one member shall represent recreational dealers; one member shall represent the West Virginia attorney general's office; and two members shall represent consumers. All of the representatives, except the attorney general representative who shall be designated by the attorney general, shall be appointed by the governor with the advice and consent of the Senate, with no more than five representatives being from the same political party. The appointed members shall serve without compensation.

The terms of the board members shall be for three years commencing the first day of July, one thousand nine hundred ninety-six. Two members shall be appointed to serve one year, two members shall be appointed to serve two years and five members shall be appointed to serve three years. Successive appointments shall be for the full three years. The attorney general representative shall serve continuously.

The board shall meet at least four times annually and at the call of the commissioner.

Notwithstanding the provisions of article ten, chapter four of this code, the motor vehicle dealers advisory board shall continue until the first day of July, two thousand one.

(b) The commissioner shall consult with the board before he or she takes any disciplinary action against a dealer, an automobile auction or a license service to revoke, or suspend a license, place the licensee on probation or levy a civil penalty, unless the commissioner determines that the consultation would endanger a criminal investigation.
(c) The commissioner may consult with the board by mail, by facsimile, by telephone or at a meeting of the board, but the commissioner is not bound by the recommendations of the board. The commissioner shall give members seven days from the date of a mailing or other notification to respond to proposed actions, except in those instances when the commissioner determines that the delay in acting creates a serious danger to the public’s health or safety or would unduly compromise the effectiveness of the action.

(d) No action taken by the commissioner shall be subject to challenge or rendered invalid on account of his or her failure to consult with the board.

§17A-6-25a. Civil penalties.

(a) In addition to any other remedy or penalty provided by law, the commissioner may levy and collect a civil fine, in an amount not to exceed one thousand dollars for each first violation, against any person who violates the provisions of this article, article six-b or article six-c of this chapter, any of the rules or policies implemented to enforce those articles, or any lawful order of the commissioner pursuant to authority set forth in those articles. Every transaction which violates this article, article six-b or article six-c of this chapter shall be considered a separate violation. For a second violation, being any violation occurring within three years following any previous violation for which the violator has been disciplined pursuant to section eighteen, article six of this chapter, the commissioner may levy and collect a fine in an amount not to exceed twenty-five hundred dollars, and for a third and subsequent violation occurring within the three-year period following the first violation the commissioner may levy and collect a fine in an amount not to exceed five thousand dollars.

(b) A fine assessed under this section shall not take effect until the commissioner sends to the person against whom the penalty is assessed by certified mail, return receipt requested, a notice of violation finding that the
25 person has committed an offense. The notice shall contain:
26 (1) A statement of the offense the person committed;
27 (2) A summary of the facts on which the finding of a
28 violation was made;
29 (3) The amount of the fine which is being levied; and
30 (4) An order that the person:
31 (A) Cease and desist from all future violations and
32 pay the fine; or
33 (B) Protest in writing the findings of the commissio-
34 ner or the amount of the assessed fine and request a hear-
35 ing.

Any request for a hearing must be received by the
37 commissioner within thirty days after the mailing date of
38 the notice of violation. The notice of violation may be
39 sent to any address which the person has used on any title
40 or license application, or other filing or record which the
41 commissioner believes is current. Failure of any person to
42 receive a notice of violation does not preclude the fine
43 from taking effect. However, the commissioner shall ac-
44 cept as timely a request for hearing from any person who,
45 within one year of the date the notice of violation was sent,
46 provides satisfactory proof that he or she did not receive
47 the notice of violation and that good cause exists to excuse
48 his or her failure to receive the notice of violation and that
49 he or she wishes in good faith to assert a protest to the
50 notice of violation. The pendency of the one-year period
51 shall not keep any penalty from taking effect, but the
52 commissioner shall stay enforcement of the fine upon his
53 or her acceptance of any notice filed after the thirty-day
54 period pending the outcome of the appeal.

(c) Upon receipt of a timely request the commissioner
56 shall afford the person a hearing in accordance with the
57 rules of the division of motor vehicles. The commissioner,
58 in addition to considering the evidence relied upon to
59 prove or defend against a finding of a violation, shall also
60 evaluate the appropriateness of the amount of the civil
penalty. In making such evaluation, the commissioner shall consider:

(1) The severity of the violation and its impact on the public;

(2) The number of similar or related violations;

(3) Whether the violations were willful or intentional; and

(4) Any other facts considered appropriate.

(d) In addition to any other findings of fact or conclusions of law, the commissioner may reduce the civil penalty to a stated amount. The appellant may, at any time during the pendency of the appeal, enter into a settlement agreement with the commissioner. The settlement agreement may provide for a reduction in the penalty and may provide that the appellant does not admit a violation. The entry into a settlement agreement or the payment of any fine pursuant to a settlement agreement which states that the appellant does not admit a violation shall not amount to an admission of guilt for purposes of any criminal prosecution.

(e) Upon the expiration of all periods for protest or appeal of a notice of violation, including judicial review pursuant to section four, article five, chapter twenty-nine-a of this code, the notice of violation shall have the same force and effect and be enforceable as a judgment entered by any court of law of this state.

(f) If a corporation is found to have committed a violation against which a penalty may be assessed under this section, any officer of the corporation who is found to have knowingly and intentionally committed the violation, to have knowingly and intentionally directed another to commit the violation or to have knowingly and intentionally failed to take reasonable steps to prevent another from committing the violation, may be individually found to be a coviolator and assessed a civil penalty as provided by this section.
CHAPTER 189

(H. B. 2615—By Delegates Love, Linch, Williams and Given)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and seven, article one-d, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section five, article two of said chapter; to amend and reenact section forty-four, article fifteen, chapter seventeen-c of said code; and to amend and reenact section three, article six, chapter eighteen of said code, all relating to motorcycle safety education; requiring motorcycle courses to be conducted; extending motorcycle instruction permits; creation of motorcycle safety and education committee; powers and duties of the committee; authorizing the committee to make recommendations to the division of motor vehicles on the expenditure of funds; and motorcycle safety awareness in driver education courses.

Be it enacted by the Legislature of West Virginia:

That sections two and seven, article one-d, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section five, article two of said chapter be amended and reenacted; that section forty-four, article fifteen, chapter seventeen-c of said code be amended and reenacted; and that section three, article six, chapter eighteen of said code, be amended and reenacted, all to read as follows:

Chapter
17B. Motor Vehicle Driver’s Licenses.
17C. Traffic Regulations and Laws of the Road.
18. Education.

CHAPTER 17B. MOTOR VEHICLE DRIVER’S LICENSES.

Article
1D. Motorcycle Safety Education.
2. Issuance of License, Expiration and Renewal.
ARTICLE 1D. MOTORCYCLE SAFETY EDUCATION.

§17B-1D-2. Program established.

§17B-1D-7. Motorcycle safety account.

§17B-1D-2. Program established.

(a) The West Virginia motorcycle safety education program is hereby established within the division to be administered by the commissioner. The program shall include rider training courses and instructor training courses. It may also include efforts to enhance public motorcycle safety awareness, alcohol and drug effects awareness for motorcyclists, driver improvement efforts, licensing improvement efforts, program promotion and other efforts to enhance motorcycle safety through education.

(b) The commissioner shall appoint a program coordinator who shall oversee and direct the program, and conduct an annual evaluation. Rider training courses shall be conducted annually in no fewer than four sites throughout the state, commencing no later than the first day of July, one thousand nine hundred ninety-six.

§17B-1D-7. Motorcycle safety account.

(a) There is hereby created a special fund in the state treasury which shall be designated the "motorcycle safety fund". The fund shall consist of all moneys received from motorcycle driver licensing fees except instruction permit fees, one half of the moneys received from the motorcycle safety fee assessed with each motorcycle registration under section three-b, article ten, chapter seventeen-a of this code and any other moneys specifically allocated to the fund. The fund shall not be treated by the auditor and treasurer as part of the general revenue of the state. The fund shall be a special revolving fund to be used and paid out upon order of the commissioner of motor vehicles, based upon the recommendations of the motorcycle safety and education committee created under section forty-four, article fifteen, chapter seventeen-c of this code, solely for the purposes specified in this chapter.

(b) The fund shall be used by the division of motor
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18 vehicles to defray the cost of implementing and adminis-
19 tering the motorcycle safety education program estab-
20 lished in section two of this article. Moneys in the special
21 revolving fund may also be used to defray the cost of
22 implementing and administering the motorcycle driver
23 licensing program.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RE-
NEWAL.

§17B-2-5. Qualifications, issuance and fee for instruction per-
mits.

1 (a) Any person who is at least fifteen years of age may
2 apply to the division for an instruction permit. The divi-
3 sion may, in its discretion, after the applicant has appeared
4 before the department of public safety and successfully
5 passed all parts of the examination other than the driving
6 test and presented documentation of compliance with the
7 provisions of section eleven, article eight, chapter eighteen
8 of this code, issue to the applicant an instruction permit
9 which shall entitle the applicant while having such permit
10 in such person's immediate possession to drive a motor
11 vehicle upon the public highways when accompanied by a
12 licensed driver of at least twenty-one years of age or a
13 driver's education or driving school instructor that is act-
14 ing in an official capacity as an instructor, who is occupy-
15 ing a seat beside the driver, except in the event the permit-
16 tee is operating a motorcycle, but in no event shall the
17 permittee be allowed to operate a motorcycle upon a pub-
18 lic highway until reaching sixteen years of age.

19 Any such instruction permit issued to a person under
20 the age of sixteen years shall expire sixty days after the
21 permittee reaches sixteen years of age: Provided, That
22 only permittees who have reached their sixteenth birthday
23 are eligible to take the driving examination as provided in
24 section six of this article. The instruction permit may be
25 renewed for one additional period of sixty days. Any such
26 permit issued to a person who has reached the age of six-
27 teen years shall be valid for a period of sixty days and
28 may be renewed for an additional period of sixty days or
29 a new permit issued. The fee for such instruction permit
30 shall be four dollars, one dollar of which shall be paid into
the state treasury and credited to the state road fund, and
the other three dollars of which shall be paid into the state
treasury and credited to the general fund to be appropriat-
ed to the department of public safety for application in the
enforcement of the road law.

(b) Any person sixteen years of age or older may
apply to the division for a motorcycle instruction permit.
The division of motor vehicles may, in its discretion, after
the applicant has appeared before the division of public
safety and successfully passed all parts of the motorcycle
examination other than the driving test, and presented
documentation of compliance with the provisions of sec-
tion eleven, article eight, chapter eighteen of this code,
issue to the applicant an instruction permit which entitles
the applicant while having such permit in such person's
immediate possession to drive a motorcycle upon the
public streets or highways for a period of ninety days,
during the daylight hours between sunrise and sunset
only. No holder of a motorcycle instruction permit shall
operate a motorcycle while carrying any passenger on the
vehicle.

A motorcycle instruction permit is not renewable, but
a qualified applicant may apply for a new permit. The fee
for a motorcycle instruction permit shall be five dollars,
which shall be paid into a special fund in the state treasury
known as the motorcycle license examination fund as
established in section seven-c, article two of this chapter.

CHAPTER 17C. TRAFFIC REGULATIONS
AND LAWS OF THE ROAD.

ARTICLE 15. EQUIPMENT.

§17C-15-44. Safety equipment and requirements for motor-
cyclists, motorcycles, motor-driven cycles and
mopeds; motorcycle safety standards and
education committee.

(a) No person shall operate or be a passenger on any
motorcycle or motor-driven cycle unless the person is
wearing securely fastened on his or her head by either a
neck or chin strap a protective helmet designed to deflect
blows, resist penetration and spread impact forces. Any
helmet worn by an operator or passenger shall meet the
current performance specifications established by the American National Standards Institute Standard, Z 90.1, the United States Department of Transportation Federal Motor Vehicle Safety Standard No. 218 or Snell Safety Standards for Protective Headgear for Vehicle Users.

(b) No person shall operate or be a passenger on any motorcycle or motor-driven cycle unless the person is wearing safety, shatter-resistant eyeglasses (excluding contact lenses), or eyegoggles or face shield that complies with the performance specifications established by the American National Standards Institute for Head, Eye and Respiratory Protection, Z 2.1. In addition, if any motorcycle, motor-driven cycle or moped is equipped with a windshield or windscreen, the windshield or windscreen shall be constructed of safety, shatter-resistant material that complies with the performance specifications established by Department of Transportation Federal Motor Vehicle Safety Standard No. 205 and American National Standards Institute, Safety Glazing Materials for Glazing Motor Vehicles Operated on Land Highways, Standard Z 26.1.

(c) No person shall operate a motorcycle, motor-driven cycle or moped on which the handlebars or grips are more than fifteen inches higher than the uppermost part of the operator's seat when the seat is not depressed in any manner.

(d) A person operating a motorcycle, motor-driven cycle or moped shall ride in a seated position facing forward and only upon a permanent operator's seat attached to the vehicle. No operator shall carry any other person nor shall any other person ride on the vehicle unless the vehicle is designed to carry more than one person, in which event a passenger may ride behind the operator upon the permanent operator's seat if it is designed for two persons, or upon another seat firmly attached to the vehicle to the rear of the operator's seat and equipped with footrests designed and located for use by the passenger or in a sidecar firmly attached to the vehicle. No person shall ride side saddle on a seat. An operator may carry as many passengers as there are seats and footrests to accommodate those passengers. Additional passengers may be carried in a factory produced sidecar provided that there is one pas-
senger per seat. Passengers riding in a sidecar shall be
restrained by safety belts.

(e) Every motorcycle, motor-driven cycle and moped
shall be equipped with a rearview mirror affixed to the
handlebars or fairings and adjusted so that the operator
shall have a clear view of the road and condition of traffic
behind him for a distance of at least two hundred feet.

(f) There is hereby created a six member motorcycle
safety and education committee consisting of: The super­
intendent of the state police or a designee; the commis­
sioner of motor vehicles or a designee; the director of the
West Virginia safety council or a designee; a licensed
motorcycle operator; an owner of a motorcycle dealer­
ship; and a supplier of aftermarket nonfranchised motor­
cycle supplies. The nongovernmental representatives shall
be appointed by the governor with the advice and consent
of the Senate, shall serve without compensation, and the
terms shall be for three years, except that as to the mem­
bers first appointed, one shall be appointed for a term of
one year, one shall be appointed for a term of two years
and one shall be appointed for a term of three years.
Members may be reappointed to the committee.

The committee shall continue to exist pursuant to the
provisions of article ten, chapter four of this code until the
first day of July, one thousand nine hundred ninety-nine,
to allow for the completion of a preliminary performance
review by the joint committee on government operations.

The committee is hereby authorized to recommend to
the superintendent of public safety types and makes of
protective helmets, eye protection devices and equipment
offered for sale, purchased or used by any person. The
committee is authorized to make recommendations to the
commissioner of motor vehicles regarding the use of the
moneys in the motorcycle safety fund created under sec­
tion seven, article one-d, chapter seventeen-b of this code.

CHAPTER 18. EDUCATION.

ARTICLE 6. DRIVER EDUCATION.

§18-6-3. State board to establish minimum course standards;
students with mental or physical defects; minimum
standards specified.
(a) The state board of education shall establish minimum standards for all driver education courses offered and made available to persons within the state, regardless of whether the courses are offered by public, private, parochial, denominational or commercial schools, but no person shall be permitted to enroll in any driver education course who has a known mental or physical defect that would prevent the person from qualifying for an operator's license, unless the mental or physical defect is controlled or corrected so the person could so qualify.

(b) The minimum standards shall provide at least that:

(1) All driver education courses offered within the state are taught by instructors certified by the state board as qualified for these purposes.

(2) Each person enrolled in a driver education course shall receive practice driving and observation in a dual control automobile and instruction in at least the following:

(A) Basic and advanced driving techniques, including techniques for handling emergencies.

(B) Traffic regulations and laws of the road as provided in chapter seventeen-c of this code, and other applicable state and local laws and ordinances.

(C) Critical mechanical parts of vehicles requiring preventive maintenance for safety.

(D) The vehicle, highway and community features that aid the driver in avoiding crashes; protect him and his passengers in crashes; and maximize the salvage of the injured.

(E) Signs, signals, highway markings and highway design features which require understanding for safe operation of motor vehicles.

(F) Differences in characteristics of urban and rural driving, including safe use of modern expressways.

(G) Pedestrian safety.

(H) Motorcycle safety awareness.

(c) In addition, in driver education courses participating students shall be encouraged to acquire first aid skills.
AN ACT to amend article one, 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 sixty-three; and to amend and reenact section five, article seventeen of said chapter, all relating to traffic regulations, laws of the road; size, weight and load limits; authorizing the transporting of loads on digger/derrick line trucks from sunrise to sunset except in an emergency; and providing a definition of a digger/derrick line truck.

Be it enacted by the Legislature of West Virginia:

That article one, 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 sixty-three; and that section five, article seventeen of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17C-1-63. Digger/derrick line truck.

"Digger/derrick line truck" means a truck which is specifically designed and used for transporting and setting utility poles.

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-5. Special load limits.

(a) Subject to the foregoing provisions of this article limiting the length of vehicles and loads, the load upon any vehicle operated alone or the load upon the front vehicle of a combination of vehicles shall not extend more than three feet beyond the foremost part of the vehicle,
and the load upon any vehicle operated alone or the load upon the rear vehicle of a combination of vehicles shall not extend more than six feet beyond the rear of the bed or body of such vehicle: Provided, That a digger/derrick line truck may be operated with a load of no more than forty feet in length, with the load extending no more than six feet beyond the foremost part of the truck and no more than nine feet beyond the rear of the bed of the body of the truck, between sunrise and sunset except in an emergency, and the operation of the truck shall comply with the provisions of section fourteen, article fifteen of this chapter.

(b) The limitations as to length of vehicles and loads heretofore stated in section four of this article and subsection (a) of this section shall not apply to any load upon a pole trailer when transporting poles or pipes or structural material which cannot be dismembered: Provided, That no pole or pipe or other material exceeding eighty feet in length shall be so transported unless a permit has first been obtained as authorized in section eleven of this article.

CHAPTER 191

(S. B. 143—By Senators Miller and Love)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to speed limitations generally; penalties for violation of speed limits; exemption from driver record point assessment for speeding on out-of-state controlled access highways and interstate highways; and exempting commercial driver license holders from point assessment exemptions while operating a commercial vehicle.

Be it enacted by the Legislature of West Virginia:
ARTICLE 6. SPEED RESTRICTIONS.

§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 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. The 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.

(g) 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 department of motor vehicles, or, if transmitted, shall not be recorded by the department, unless within a reasonable time after conviction, the person convicted has failed to pay all fines and costs imposed by the other state: Provided, That the provisions of this subsection do not apply to conviction of owners or drivers who have been issued a commercial driver's license as defined in chapter seventeen-e of this code, if the offense was committed while operating a commercial vehicle.
CHAPTER 192
(S. B. 249—By Senators Anderson, Wagner, Sharpe, Yoder, Dittmar,
Deem, Love, Dugan, Manchin, Whitlow, Miller, Helmick,
Buckalew, Ross, Schoonover, Bailey and Oliverio)
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[Passed March 5, 1996; in effect ninety days from passage. Approved by the Governor.]
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AN ACT to amend and reenact section three, article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the stopping of certain vehicles at all railroad grade crossings; and removing exceptions.

Be it enacted by the Legislature of West Virginia:

That section 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-12-3. 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) Any person driving a vehicle that requires a com-
mercial driver's license who fails to comply with the re-
quirements of this section is guilty of a misdemeanor and,
upon conviction thereof, shall be fined one hundred dol-
ars or imprisoned for not more than ten days. The com-
missioner 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 malfun-
c tioning, this subsection shall not apply.

CHAPTER 193
(S. B. 501—By Senator Boley)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article thirteen, chap-
ter seventeen-c of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to motor vehi-
cles; stopping, standing and parking privileges for persons
with mobility impairments; qualification; issuance of special
registration plates and removable windshield placards bear-
ing the international symbol of access; expiration dates;
specifications for registration plates, windshield placards,
handicapped parking spaces and signs; definitions; applica-
tion; transitional provisions; violations; and penalties.

Be it enacted by the Legislature of West Virginia:

That section six, article thirteen, 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 13. STOPPING, STANDING AND PARKING.

§17C-13-6. Stopping, standing or parking privileges for persons with a mobility impairment; definitions; qualification; special registration plates and removable windshield placards; expiration; application; violation; penalties.

(a) Any owner of a Class A motor vehicle subject to registration under the provisions of article three, chapter seventeen-a of this code, who is:

(1) A person with a mobility impairment;
(2) A relative of a person with a mobility impairment;
(3) A person who regularly resides with a person with a mobility impairment; or
(4) A person who regularly transports a person who has a mobility impairment, may submit an application for a special registration plate or a removable windshield placard.

(b) Any person with a mobility impairment, any relative of a person with a mobility impairment, any person who regularly resides with a person with a mobility impairment or any person who regularly transports a person who has a mobility impairment may submit an application for a removable windshield placard for a Class A vehicle by submitting to the commissioner:

(1) An application on a form prescribed and furnished by the commissioner, specifying whether the applicant desires a special registration plate, a removable windshield placard, or both; and

(2) A certificate issued by a licensed physician stating that the applicant or the applicant's relative is a person with a mobility impairment, or that the person regularly residing with the applicant or regularly transported by the applicant is a person with a mobility impairment, as defined in this section, and furthermore, the physician shall specify whether the disability is temporary (not to exceed six months) or permanent (one to five years or more in expected duration).
Upon receipt of the completed application, the physician's certificate and the regular registration fee for the applicant's vehicle class, if the commissioner finds that the applicant qualifies for the special registration plate or a removable windshield placard as provided in this section, he or she shall issue to the applicant a special registration plate (upon remittance of the regular registration fee), or a removable windshield placard (red for temporary and blue for permanent), or both. Upon request, the commissioner shall also issue to any otherwise qualified applicant one additional placard having the same expiration date as the applicant's original placard. The placard shall be displayed by hanging it from the interior rear view mirror of the motor vehicle so that it is conspicuously visible from outside the vehicle when parked in a designated handicapped parking space. The placard may be removed from the rear view mirror whenever the vehicle is being operated to ensure clear vision and safe driving. Only in the event that there is no rear view mirror in the vehicle may the placard be displayed on the dashboard of the vehicle.

(c) As used in this section, the following terms have the meanings ascribed to them in this subsection:

(1) A person with a "mobility impairment" means a person who, as determined by a licensed physician:

(A) Cannot walk two hundred feet without stopping to rest;

(B) Cannot walk without the use of or assistance from a brace, cane, crutch, prosthetic device, wheelchair, other assistive device or another person;

(C) Is restricted by lung disease to such an extent that the person's force (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter or the arterial oxygen tension is less than sixty mm/hg on room air at rest;

(D) Uses portable oxygen;

(E) Has a cardiac condition to such an extent that the person's functional limitations are classified in severity as
Class III or Class IV according to standards established by the American heart association; or

(F) Is severely limited in his or her ability to walk because of an arthritic, neurological, orthopedic or other physical condition.

(2) "Special registration plate" means a registration plate that displays the international symbol of access in a color that contrasts with the background, in letters and numbers the same size as those on the plate, and which may be used in lieu of a regular registration plate.

(3) "Removable windshield placard" (permanent or temporary) means a two-sided, hanger style placard measuring three inches by nine and one-half inches, with all of the following on each side:

(A) The international symbol of access, measuring at least three inches in height, centered on the placard, in white on a blue background;

(B) An identification number measuring one inch in height;

(C) An expiration date in numbers measuring one inch in height; and

(D) The seal or other identifying symbol of the issuing authority.

(4) "Regular registration fee" means the standard registration fee for a vehicle of the same class as the applicant's.

(5) "Public entity" means state or local government or any department, agency, special purpose district or other instrumentality of a state or local government.

(6) "Public facility" means all or any part of any buildings, structures, sites, complexes, roads, parking lots or other real or personal property, including the site where the facility is located.

(7) "Place(s) of public accommodation" means a facility or facilities operated by a private entity whose opera-
tions affect commerce and fall within at least one of the following categories:

(A) Inns, hotels, motels and other places of lodging;

(B) Restaurants, bars or other establishments serving food or drink;

(C) Motion picture houses, theaters, concert halls, stadiums or other places of exhibition or entertainment;

(D) Auditoriums, convention centers, lecture halls or other places of public gatherings;

(E) Bakeries, grocery stores, clothing stores, hardware stores, shopping centers or other sales or rental establishments;

(F) Laundromats, dry cleaners, banks, barber and beauty shops, travel agencies, shoe repair shops, funeral parlors, gas or service stations, offices of accountants and attorneys, pharmacies, insurance offices, offices of professional health care providers, hospitals or other service establishments;

(G) Terminals, depots or other stations used for public transportation;

(H) Museums, libraries, galleries or other places of public display or collection;

(I) Parks, zoos, amusement parks or other places of recreation;

(J) Public or private nursery, elementary, secondary, undergraduate or post-graduate schools or other places of learning and day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies or other social services establishments; and

(K) Gymnasiums, health spas, bowling alleys, golf courses or other places of exercise or recreation.

(8) "Commercial facility" means a facility whose operations affect commerce and which are intended for non-residential use by a private entity.
Any person who falsely or fraudulently obtains or seeks to obtain the special plate or the removable windshield placard provided for in this section, and any person who falsely certifies that a person is mobility impaired in order that an applicant may be issued the special registration plate or windshield placard hereunder, is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined one hundred dollars.

(d) The commissioner shall set the expiration date for special registration plates and permanent removable windshield placards on the last day of a given month and year, to be valid for a minimum of one year but not more than five years, after which time a new application must be submitted to the commissioner. After the commissioner receives the new application, signed by a certified physician, the commissioner shall issue: (i) A new special registration plate or new permanent removable windshield placard; or (ii) official labels imprinted with the new expiration date and designed so as to be placed over the old dates on the original registration plate or windshield placard.

(e) The commissioner shall set the expiration date of temporary removable windshield placards to be valid for a period of approximately six months after the application was received and approved by the commissioner.

(f) The commissioner shall issue to each applicant who is granted a special registration plate or windshield placard an identification card bearing the applicant's name, assigned identification number and expiration date. The applicant must thereafter carry this identification card on his or her person whenever parking in a handicapped parking space.

(g) A handicapped parking space should comply with the provisions of the Americans with Disabilities Act Guidelines, contained in 28 C.F.R. 36, Appendix A, Section 4.6. In particular, the parking space should be a minimum of eight feet wide with an adjacent access aisle for vans having side mounted handicap lifts. Access aisles should be marked using diagonal stripes or other appro-
motor vehicle does not mean that the vehicle may park in any zone where stopping, standing or parking is prohibited or which creates parking zones for special types of vehicles or which prohibits parking during heavy traffic periods during specified rush hours or where parking would clearly present a traffic hazard. To the extent any provision of any ordinance of any political subdivision of this state is contrary to the provisions of this section, the provisions of this section take precedence and apply.

The privileges provided for in this subsection apply only during those times when the vehicle is being used for the transportation of a person with a mobility impairment. Any person who knowingly exercises, or attempts to exercise, these privileges at a time when the vehicle is not being used for the transportation of a person with a mobility impairment.
impairment is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined one hundred dollars.

(k) No person may stop, stand or park a motor vehicle in an area designated, zoned or marked for handicapped parking with signs or instructions displaying the international symbol of access, either by itself or with explanatory text. Such signs may be mounted on a post or a wall in front of the handicapped parking space and instructions may appear on the ground or pavement, but use of both methods is preferred. Handicapped parking spaces for vans having an eight-foot adjacent access aisle should be designated as "van accessible" but may be used by any vehicle displaying a valid special registration plate or removable windshield placard. These spaces are intended solely for persons with a mobility impairment, as defined in this section. If at any time, a person is not mobility impaired and does not display upon his or her vehicle a special registration plate or removable windshield placard issued by the commissioner, he or she may not lawfully park in a handicapped parking space: Provided, That any person in the act of transporting a person with a mobility impairment as defined in this section, may stop, stand or park a motor vehicle not displaying a special registration plate or removable windshield placard in the area designated for handicapped parking by the international symbol of access for the limited purposes of loading or unloading a passenger with a mobility impairment: Provided, however, That the vehicle shall be promptly moved after the completion of this limited purpose.

Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined one hundred dollars.

(l) Signs erected in the future that designate areas as "handicapped parking" or that display the international symbol of access shall also include the words "$100 fine".

(m) No person may stop, stand or park a motor vehicle in an area designated or marked off as an access aisle adjacent to a van-accessible parking space or regular handicapped parking space. Any person, including a
driver of a vehicle displaying a valid removable windshield placard or special registration plate, who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined one hundred dollars.

(n) The commissioner shall establish a grace period for individuals who, on the effective date of the amendment adding this subsection, hold special registration plates or removable windshield placards bearing no expiration date to submit their applications for newly issued special registration plates and windshield placards, after which time any undated registration plate or windshield placard is invalid and subject to confiscation by any duly appointed law-enforcement officer.

(o) The commissioner shall adopt and promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to effectuate the provisions of this section and provide for an orderly transition to provisions enacted by the Legislature in its regular session in the year one thousand nine hundred ninety-six.

CHAPTER 194

(S. B. 118—By Senators Wledebusch, Yoder, Minear, Wagner and Bowman)

[Passed March 5, 1996; in effect ninety days from passage. 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 parks section and parks functions of the division of natural resources until the first day of July, one thousand nine hundred ninety-seven.

Be it enacted by the Legislature of West Virginia:

That section three, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-3. Division of natural resources, office of director and commission established; termination date 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-seven, 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 195

(H. B. 4481—By Delegates Love, Ellis, Tomblin; Dempsey, Preece and Whitman)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to unlawful methods of hunting and providing an exception for carrying certain uncased firearms.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.

Except as authorized by the director, it is unlawful at any time for any person to:

1. (1) Shoot at or to shoot any wild bird or animal unless it is plainly visible to him;

2. (2) Dig out, cut out or smoke out, or in any manner take or attempt to take, any live wild animal or wild bird out of its den or place of refuge, except as may be authorized by regulations promulgated by the director or by law;

3. (3) Make use of, or take advantage of, any artificial light in hunting, locating, attracting, taking, trapping or killing any wild bird or wild animal, or to attempt to do so, while having in his possession or subject to his control, or for any person accompanying him to have in his possession or subject to his control, any firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or animal: Provided, That it shall not be unlawful to hunt or take raccoon, opossum or skunk by the use of artificial lights. No person shall be guilty of a violation of this subdivision merely because he looks for, looks at, attracts or makes motionless a wild bird or wild animal with or by the use of an artificial light, unless at such time he has in his possession a firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or wild animal, or unless such artificial light (other than the head lamps of an automobile or other land conveyance) is attached to, a part of, or used from within or upon an automobile or other land conveyance.
Any person violating the provisions of this subdivision shall be guilty of a misdemeanor, and, upon conviction thereof, shall for each offense be fined not less than one hundred dollars nor more than five hundred dollars and shall be imprisoned in the county jail for not less than ten days nor more than one hundred days;

(4) Hunt for, take, kill, wound or shoot at wild animals or wild birds from an airplane, or other airborne conveyance, an automobile, or other land conveyance, or from a motor-driven water conveyance, except as may be authorized by regulations promulgated by the director;

(5) Take any beaver or muskrat by any means other than by trap;

(6) Catch, capture, take or kill by seine, net, bait, trap or snare or like device of any kind, any wild turkey, ruffed grouse, pheasant or quail;

(7) Destroy or attempt to destroy needlessly or willfully the nest or eggs of any wild bird or have in his possession such nest or eggs unless authorized to do so under regulations or under a permit by the director;

(8) Except as provided in section six of this article, carry an uncased or loaded gun in any of the woods of this state except during the open firearms hunting season for wild animals and nonmigratory wild birds within any county of the state, unless he has in his possession a permit in writing issued to him by the director: Provided, That this section shall not prohibit hunting or taking of unprotected species of wild animals and wild birds and migratory wild birds, during the open season, in the open fields, open water and open marshes of the state;

(9) Except as provided in subdivision (11) below or in section six of this article, carry an uncased or loaded gun after the hour of five o'clock antemeridian on Sunday in any woods or on any highway, railroad right-of-way, public road, field or stream of this state, except at a regularly used rifle, pistol, skeet, target or trapshooting ground or range;

(10) Have in his possession a loaded firearm or a
firearm from the magazine of which all shells and cartridges have not been removed, in or on any vehicle or conveyance, or its attachments, within the state, except as may otherwise be provided by law or regulation. Except as hereinafter provided, between five o'clock postmeridian of one day and seven o'clock antemeridian, eastern standard time of the day following, any unloaded firearm, being lawfully carried in accordance with the foregoing provisions, shall be so carried only when in a case or taken apart and securely wrapped. During the period from the first day of July to the thirtieth day of September, inclusive, of each year, the foregoing requirements relative to carrying certain unloaded firearms shall be permissible only from eight-thirty o'clock postmeridian to five o'clock antemeridian, eastern standard time: Provided, That the time periods for carrying unloaded and uncased firearms are extended for one hour after the postmeridian times and one hour before the antemeridian times established above if a hunter is preparing to or in the process of transporting or transferring the firearms to or from a hunting site, campsite, home or other place of abode;

(11) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which wildlife may be taken after the hour of five o'clock antemeridian on Sunday any wild animals or wild birds: Provided, That traps previously and legally set may be tended after the hour of five o'clock antemeridian on Sunday, and the person so doing may carry only a twenty-two caliber firearm for the purpose of humanely dispatching trapped animals;

(12) Hunt with firearms or long bow while under the influence of intoxicating liquor;

(13) Hunt, catch, take, kill, injure or pursue a wild animal or bird with the use of a ferret;

(14) Buy raw furs, pelts or skins of fur-bearing animals unless licensed to do so;

(15) Catch, take, kill or attempt to catch, take or kill any fish at any time by any means other than by rod, line and hooks with natural or artificial lures unless otherwise authorized by law or regulation issued by the director:
Provided, That snaring of any species of suckers, carp, fallfish and creek chubs shall at all times be lawful;

(16) Employ or hire, or induce or persuade, by the use of money or other things of value, or by any means, any person to hunt, take, catch or kill any wild animal or wild bird except those species on which there is no closed season, or to fish for, catch, take or kill any fish, amphibian or aquatic life which is protected by the provisions of this chapter or regulations of the director, or the sale of which is prohibited;

(17) Hunt, catch, take, kill, capture, pursue, transport, possess or use any migratory game or nongame birds included in the terms of conventions between the United States and Great Britain and between the United States and United Mexican States for the protection of migratory birds and wild mammals concluded, respectively, the sixteenth day of August, one thousand nine hundred sixteen, and the seventh day of February, one thousand nine hundred thirty-six, except during the time and in the manner and numbers prescribed by the Federal Migratory Bird Treaty Act and regulations made thereunder;

(18) Kill, take, catch or have in his possession, living or dead, any wild bird, other than a game bird; or expose for sale, or transport within or without the state any such bird, except as aforesaid. No part of the plumage, skin or body of any protected bird shall be sold or had in possession for sale, except mounted or stuffed plumage, skin, bodies or heads of such birds legally taken and stuffed or mounted, irrespective of whether such bird was captured within or without this state, except the English or European sparrow (Passer domesticus), starling (Sturnus vulgaris), crow (Corvus brachyrhynchos) and cowbird (Molothrus ater), which shall not be protected and the killing thereof at any time is lawful;

(19) Use dynamite or any like explosive or poisonous mixture placed in any waters of the state for the purpose of killing or taking fish. Any person violating the provisions of this subdivision shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than five hundred dollars or imprisoned for not less than six
months nor more than three years, or both fined and im-
prisoned;

(20) Have a bow and gun, or have a gun and any
arrow or arrows, in the fields or woods at the same time;

(21) Have a crossbow in the woods or fields or use a
crossbow to hunt for, take or attempt to take any wildlife;

(22) Take or attempt to take turkey, bear, elk or deer
with any arrow unless the same is equipped with a point
having at least two sharp cutting edges measuring in ex-
cess of three fourths of an inch wide;

(23) Take or attempt to take any wildlife with an
arrow having an explosive head or shaft, a poisoned arrow
or an arrow which would affect wildlife by any chemical
action;

(24) Shoot an arrow across any public highway or
from aircraft, motor-driven watercraft, motor vehicle or
other land conveyance;

(25) Permit any dog owned by him or under his
control to chase, pursue or follow upon the track of any
wild animal or wild bird, either day or night, between the
first day of May and the fifteenth day of August next
following: Provided, That dogs may be trained on wild
animals and wild birds, except deer and wild turkeys, and
field trials may be held or conducted on the grounds or
lands of the owner or by his bona fide tenant or tenants or
upon the grounds or lands of another person with his
written permission or on public lands, at any time: Pro-
vided, however, That notwithstanding any of the above
provisions, no person may train a dog in any county, or
portion thereof, in which a legal bear hunting season has
been established prior to the first day of July, one thou-
sand nine hundred eighty-eight, except that residents may
train dogs in such counties after the twenty-fourth day of
August through the end of the legal small game hunting
season: Provided further, That nonresidents shall not train
dogs in this state at any time except during the legal small
game hunting season: And provided further, That the
person training said dogs does not have firearms or other
implies in his possession during the closed season on such wild animals and wild birds, whereby wild animals or wild birds could be taken or killed;

(26) Conduct or participate in a field trial, shoot-to-retrieve field trial, water race or wild hunt hereafter referred to as trial: Provided, That any person, group of persons, club or organization may hold such trial at any time of the year upon obtaining such permit as is provided for in section fifty-six of this article. The person responsible for obtaining said permit shall prepare and keep an accurate record of the names and addresses of all persons participating in said trial, and make same readily available for inspection by any conservation officer upon request; and

(27) Except as provided in section four of this article, hunt, catch, take, kill or attempt to hunt, catch, take or kill any wild animal, wild bird or wild fowl except during the open season established by regulation of the director as authorized by subdivision (6), section seven, article one of this chapter.

CHAPTER 196

(S. B. 389—By Senator Dittmar)

[Passed March 6, 1996; in effect ninety days 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 five-d, relating to prohibiting certain fertility control in wildlife; 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 five-d, to read as follows:
ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5d. Use of chemicals, biological compounds or devices on free roaming wildlife populations for fertility control.

1 Notwithstanding any other provisions of this code and except as specifically authorized by the director in consultation with the wildlife resources section of the division, it is unlawful for anyone to administer any chemical, biological compound or device to free roaming or noncaptive wildlife for the purpose of fertility control. The director shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code whereby the director may issue such authorization.

CHAPTER 197

(H. B. 4515—By Delegates Love and Riggs)

[Passed March 9, 1996; in effect ninety days 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 twenty-three-e, relating to implementation of allocation methodology regarding whitewater rafting.

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 twenty-three-e, to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-23e. Implementation of allocation methodology.

1 Other provisions of this article notwithstanding, the implementation of an allocation methodology, based upon
criteria identified in the three-year study of carrying capacity for the New, Gauley, Cheat, Shenandoah and Tygart rivers, the overall economic impact on the state and the safety of the general public as identified in section twenty-three-a of this article, shall be made not later than the thirty-first day of December, one thousand nine hundred ninety-seven, by rules promulgated pursuant to chapter twenty-nine-a of this code.

CHAPTER 198

(Com. Sub. for H. B. 4420—By Delegates Mezzatesta, Osborne, Ball and Williams)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to conservation officers; selection, appointment, powers and duties of emergency and special conservation officers; revocation of appointments; designation of conservation officer's primary residence; providing a monthly subsistence allowance for regularly appointed conservation officers and establishing that sum at one hundred thirty dollars per month.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

PART I. LAW ENFORCEMENT, PROCEDURES AND PENALTIES.

§20-7-1. Chief conservation officer; conservation officers; special and emergency conservation officers; subsistence allowance; expenses.

The division's law-enforcement policies, practices and
programs shall be under the immediate supervision and
direction of the division law-enforcement officer selected
by the director and designated as chief conservation offi-
cer as provided in section thirteen, article one of this chap-
ter.

Under the supervision of the director, the chief con-
servation officer shall organize, develop and maintain law-
enforcement practices, means and methods geared, timed
and adjustable to seasonal, emergency and other needs
and requirements of the division's comprehensive natural
resources program. All division personnel detailed and
assigned to law-enforcement duties and services under this
section shall be known and designated as conservation
officers and shall be under the immediate supervision and
direction of the chief conservation officer. All conserva-
tion officers shall be trained, equipped and conditioned
for duty and services wherever and whenever required by
division law-enforcement needs.

The chief conservation officer, acting under supervi-
sion of the director, is authorized to select and appoint
emergency conservation officers for a limited period of
time for effective enforcement of the provisions of this
chapter when considered necessary because of emergency
or other unusual circumstances. The emergency conserv-
ation officers shall be selected from qualified civil service
personnel of the division, except in emergency situations
and circumstances when the director may designate offi-
cers, without regard to civil service requirements and qual-
ifications, to meet law-enforcement needs. Emergency
conservation officers shall exercise all powers and duties
prescribed in section four of this article for full-time sala-
ried conservation officers except the provisions of subdivi-
sion (8) of said section.

The chief conservation officer, acting under supervi-
sion of the director, is also authorized to select and ap-
point as special conservation officers any full-time civil
service employee who is assigned to, and has direct re-
ponsibility for management of, an area owned, leased or
under the control of the division and who has satisfactorily
completed a course of training established and adminis-
tered by the chief conservation officer, when such action is
considered necessary because of law-enforcement needs.
The powers and duties of a special conservation officer, appointed under this provision, is the same within his or her assigned area as prescribed for full-time salaried conservation officers. The jurisdiction of the person appointed as a special conservation officer, under this provision, shall be limited to the division area or areas to which he or she is assigned and directly manages.

The chief conservation officer, acting under supervision of the director, is also authorized to appoint as special conservation officers any full-time civil service forest fire control personnel who have satisfactorily completed a course of training established and administered by the chief conservation officer. The jurisdiction of forest fire control personnel appointed as special conservation officers is limited to the enforcement of the provisions of article three of this chapter.

The chief conservation officer, with the approval of the director, has the power and authority to revoke any appointment of an emergency conservation officer or of a special conservation officer at any time.

Conservation officers are subject to seasonal or other assignment and detail to duty whenever and wherever required by the functions, services and needs of the division.

The chief conservation officer shall designate the area of primary residence of each conservation officer, including himself or herself. Since the area of business activity of the division is actually anywhere within the territorial confines of the state of West Virginia, actual expenses incurred shall be paid whenever the duties are performed outside the area of primary assignment and still within the state.

Conservation officers shall receive, in addition to their base pay salary, a minimum monthly subsistence allowance for their required telephone service, dry cleaning of required uniforms, and meal expenses while performing their regular duties in their area of primary assignment in the amount of one hundred thirty dollars each month. This subsistence allowance does not apply to special or emergency conservation officers appointed under this section.
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 thirteen, relating to creating the West Virginia stream partners program; setting forth legislative findings and purpose; creating the West Virginia stream partners program fund; identifying an executive committee; coordinating the West Virginia stream partners program; funding the stream partners program; limiting grants; requiring matching moneys or services; stating grant qualifications; and providing for support of administering agencies.

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 thirteen, to read as follows:

ARTICLE 13. WEST VIRGINIA STREAM PARTNERS PROGRAM.

§20-13-2. Legislative findings and purpose.
§20-13-3. West Virginia stream partners program created; executive committee identified; program coordination.
§20-13-5. Grant qualifications.
§20-13-6. Administering agency support.


This article shall be known and cited as the "West Virginia Stream Partners Program Act."

§20-13-2. Legislative findings and purpose.
The Legislature finds that efforts to restore, protect and utilize West Virginia's rivers and streams for public health, recreation, commercial and habitat uses are most successful when citizens work in partnership with state agencies to manage the state's rivers and streams by combining community resources, local initiative and state agency support.

It is the purpose of the Legislature, therefore, to establish a program to encourage citizens to work in partnership with appropriate state agencies so that the state's rivers and streams: (a) Are safe for swimming, fishing and other forms of recreation; (b) can support appropriate public and commercial purposes; and (c) can provide habitat for plant and animal life.

§20-13-3. West Virginia stream partners program created; executive committee identified; program coordination.

There is hereby created the West Virginia stream partners program and within the division of natural resources there is hereby created the West Virginia stream partners program fund. Subject to annual appropriation of the Legislature into the West Virginia stream partners program fund, the program shall be jointly administered by the division of natural resources, the division of environmental protection, the division of forestry and the West Virginia state soil conservation agency. The director or commissioner of each of these administering agencies or his or her designee shall collectively constitute an executive committee to oversee the program. The governor shall designate a member of the executive committee to serve as chair. The committee may designate a staff member from the existing staff of one of the administering agencies to coordinate the program on behalf of the executive committee. Pursuant to the provisions of article ten, chapter four of this code, the stream partners program and stream partners program fund shall continue to exist until the first day of July, one thousand nine hundred ninety-nine, to allow for the completion of a preliminary performance review and to
allow for further review by the joint committee on government operations.


Money from the general revenue may be annually appropriated into the West Virginia stream partners program fund. The West Virginia stream partners program fund shall be used solely to provide grants to groups comprised of representatives located in the immediate area of the stream or streams being addressed that are dedicated to achieving the purpose stated in section two of this article. The grants shall be awarded by consensus of the executive committee in accordance with legislative rules promulgated by the division of environmental protection pursuant to article three, chapter twenty-nine-a of this code. Each grant shall be matched by the group of representatives with cash or in-kind services in, at least, an amount equal to twenty percent of the grant: Provided, That no grant shall exceed the amount of five thousand dollars.

§20-13-5. Grant qualifications.

In order to qualify for grants from the West Virginia stream partners program fund, a group of representatives located in the immediate area of a stream or streams which qualify under section two of this article shall apply to the executive committee in accordance with the following requirements and in accordance with any other provision of this article or any applicable rule. The application shall:

(a) Identify the stream or streams to be restored, protected, utilized or enhanced;

(b) Identify the representatives of groups applying for funds and the financially responsible entity to receive funds, all from the geographic area immediately surrounding the stream or streams. These identified individuals shall represent the general public, industry, environmental groups, sportsmen, forestry, agriculture, local government, tourism, recreation and affected landowners, all located in the geographic area immediately surrounding the stream or streams;
(c) Demonstrate an ability to achieve within the grant year a specific improvement project that enhances the identified stream or streams; and

(d) Evidence a commitment to educate the citizens in the area of the identified stream or streams about the benefits of restoring, protecting and enhancing the stream or streams in a responsible manner.

§20-13-6. Administering agency support.

The administering agencies may provide staff and other resources as necessary to address the technical assistance and administrative needs of the West Virginia stream partners program and West Virginia stream partners program fund. This support may include the utilization of resources and formulation of policies to achieve the purpose set forth in section two of this article.

CHAPTER 200

(H. B. 4737—By Mr. Speaker, Mr. Chambers, and Delegates Manuel, Kuhn, Jenkins, Johnson, Yeager and Smirl)

(Passed March 8, 1996; 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 fourteen; and to amend and reenact section one, article twenty-nine, chapter thirty of said code, all relating to establishing the Hatfield-McCoy regional recreation authority and the powers, goals and duties associated therewith; providing a statement of legislative purpose and findings; providing definitions; establishing the Hatfield-McCoy regional recreation authority; providing for a method of appointment to the board of the authority; prescribing the terms of appointment; required surety bonds; setting forth the powers and duties of the authority; providing for meetings of the board and payments
of expenses; appointment of an executive director; authorizing rangers and describing the duties, powers and limitations of rangers and prescribing certain law-enforcement authority; limiting the liability of the state; and providing criminal penalties for a violation of the rules promulgated by the board.

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 fourteen; and that section one, article twenty-nine, chapter thirty of said code be amended and reenacted, all to read as follows:

Chapter
20. Natural Resources.
30. Professions and Occupations.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 14. HATFIELD-MCCOY REGIONAL RECREATION AUTHORITY.

§20-14-1. Legislative findings.
§20-14-2. Definitions.
§20-14-3. Creation; appointment of board; terms.
§20-14-4. Board; quorum; executive director; expenses.
§20-14-5. Powers of authority.
§20-14-6. Hatfield-McCoy recreation area rangers.
§20-14-7. Bonds not a debt of the state.

§20-14-1. Legislative findings.

The West Virginia Legislature finds that there is a significant need within the state and throughout the eastern United States for well-managed facilities for trail-oriented recreation for off-highway vehicle enthusiasts, mountain bicyclists and others. The Legislature further finds that under an appropriate contractual and management scheme, well-managed, trail-oriented, recreation facilities could exist on private property without diminish-
ing the landowner's interest, control or profitability in the land.

The Legislature further finds that, with the cooperation of private landowners who hold large tracts of land, there is an opportunity to provide trail-oriented recreation facilities primarily on private property in the mountainous terrain of southern West Virginia and that the facilities will provide significant benefit to the state and to the communities in southern West Virginia through increased tourism in the same manner as whitewater rafting and snow skiing benefit the state and communities surrounding those activities.

The Legislature further finds that the creation and empowering of a statutory corporation to work with the landowners, county officials and community leaders, state and federal government agencies, recreational user groups and other interested parties to enable and facilitate the implementation of the facilities will greatly assist in the realization of these potential benefits.

§20-14-2. Definitions.

Unless the context clearly requires a different meaning, the terms used in this section have the following meanings:

(a) "Authority" means the Hatfield-McCoy regional recreational authority;

(b) "Board" means the board of the Hatfield-McCoy regional recreation authority;

(c) "Hatfield-McCoy recreation area" means a system of recreational trails and appurtenant facilities, including trail head centers, parking areas, camping facilities, picnic areas, recreational areas, historic or cultural interpretive sites and other facilities that are a part of the system; and

(d) "Participating county" means the counties of Boone, Lincoln, Logan, McDowell, Mingo, Wayne and Wyoming, and, with the approval of the board, any other
county or counties where trails and other recreational facilities relating to the Hatfield-McCoy recreation area are developed in the future with the cooperation of the county commission.

§20-14-3. Creation; appointment of board; terms.

(a) There is hereby created the "Hatfield-McCoy regional recreation authority" which is a public corporation and a government instrumentality existing for the purpose of enabling and facilitating the development and operation of a system of trail-oriented recreation facilities for use by off-highway vehicle enthusiasts, equestrians, mountain bicyclists and others. This recreational trail system shall be located in southern West Virginia with significant portions of the recreational trail system being located on private property made available for use through lease, license, easement or other appropriate legal form by a willing landowner.

(b) The authority shall be governed by a board of at least seventeen members who shall be representative of the various interests involved in the Hatfield-McCoy recreation area project in the southern region of the state and who shall be appointed as follows:

(1) The county commission of each participating county, as defined in section two of this article, shall appoint two members of the board as follows:

(A) One member who represents and is associated with a corporation or individual landowner whose land is being used or is expected to be used in the future as part of the Hatfield-McCoy recreation area project. This member shall be appointed to a four-year term.

(B) One member who represents and is associated with travel and tourism or economic development efforts within the county. The initial appointment shall be for a two-year term, but all subsequent appointments shall be for a four-year term.

(2) The members of the board appointed under subdivision (1), subsection (b) of this section by the county commissions shall appoint three additional board mem-
bers, at least two of whom represent and are associated
with recreational users of the Hatfield-McCoy recreation
area project. These members shall serve three-year terms.

(3) The following three persons shall serve as nonvot-
ing members representing the state: The director of the
division of travel and tourism, the director of the division
of natural resources, and the director of the division of
forestry, or their respective designees.

Any appointed member whose term has expired shall
serve until his or her successor has been duly appointed
and qualified. Any person appointed to fill a vacancy shall
serve only for the unexpired term. Any appointed mem-
ber is eligible for reappointment. Members of the board
are not entitled to compensation for services performed as
members but are entitled to reimbursement for all reason-
able and necessary expenses actually incurred in the per-
formance of their duties.

(c) Before the authority issues any revenue bonds or
revenue refunding bonds under the authority of this arti-
cle, each appointed voting member of the board shall
execute a surety bond in the penal sum of twenty-five
thousand dollars and the officers and executive director of
the board shall each execute a surety bond in the penal
sum of fifty thousand dollars. Each surety bond shall be
conditioned upon the faithful performance of the duties
of the member, officer or director, shall be executed by a
surety company authorized to transact business in this
state as surety and shall be approved by the governor and
filed in the office of the secretary of state. The authority
shall pay premiums on the surety bonds from funds ac-
cruing to the authority.

§20-14-4. Board; quorum; executive director; expenses.

The board is the governing body of the authority and
the board shall exercise all the powers given the authority
in this article.

The board shall meet quarterly, unless a special meet-
ing is called by its chairman: Provided, That on the sec-
ond Monday of July of each even-numbered year, or as
soon thereafter as feasible, the board shall meet to elect a
A majority of the members of the board constitutes a quorum, and a quorum shall be present for the board to conduct business. Unless the bylaws require a larger number, action may be taken by majority vote of the members present.

The board shall prescribe, amend, and repeal bylaws and rules governing the manner in which the business of the authority is conducted and shall review and approve an annual budget.

The board shall appoint an executive director to act as its chief executive officer, to serve at the will and pleasure of the board. The board, acting through its executive director, may employ any other personnel considered necessary and may appoint counsel and legal staff for the authority and retain such temporary engineering, financial and other consultants or technicians as may be required for any special study or survey consistent with the provisions of this article. The executive director shall carry out plans to implement the provisions of this article and to exercise those powers enumerated in the bylaws. The executive director shall prepare annually a budget to be submitted to the board for its review and approval.

All costs incidental to the administration of the authority, including office expenses, personal services expense and current expense, shall be paid in accordance with guidelines issued by the board from funds accruing to the authority.

All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article and no liability or obligation may be incurred by the authority under this article beyond the extent to which moneys have been provided under the authority of this article.

§20-14-5. Powers of authority.

The authority, as a public corporation and governmental instrumentality exercising public powers of the state, may exercise all powers necessary or appropriate to
carry out the purposes of this article, including, but not limited to, the power:

(1) To acquire, own, hold and dispose of property, real and personal, tangible and intangible;

(2) To lease property, whether as lessee or lessor, and to acquire or grant through easement, license, or other appropriate legal form, the right to develop and use property and open it to the use of the public;

(3) To mortgage or otherwise grant security interests in its property;

(4) To procure insurance against any losses in connection with its property, license or easements, contracts, including hold-harmless agreements, operations or assets in such amounts and from such insurers as the authority considers desirable;

(5) To maintain such sinking funds and reserves as the board determines appropriate for the purposes of meeting future monetary obligations and needs of the authority;

(6) To sue and be sued, implead and be impleaded, and complain and defend in any court;

(7) To contract for the provision of legal services by private counsel, and notwithstanding the provisions of article three, chapter five of this code, the counsel may, in addition to the provisions of other legal services, represent the authority in court, negotiate contracts and other agreements on behalf of the authority, render advice to the authority on any matter relating to the authority, prepare contracts and other agreements, and provide such other legal services as may be requested by the authority;

(8) To adopt, use and alter at will a corporate seal;

(9) To make, amend, repeal and adopt bylaws for the management and regulation of its affairs;

(10) To appoint officers, agents and employees, and to contract for and engage the services of consultants;

(11) To make contracts of every kind and nature and to execute all instruments necessary or convenient for carrying on its business, including contracts with any other
governmental agency of this state or of the federal government or with any person, individual, partnership or corporation to effect any or all of the purposes of this article;

(12) Without in any way limiting any other subdivision of this section, to accept grants and loans from and enter into contracts and other transactions with any federal agency;

(13) To maintain an office at such places within the state as it may designate;

(14) To borrow money and to issue its bonds, security interests or notes and to provide for and secure the payment of the bonds, security interests or notes, and to provide for the rights of the holders of the bonds, security interests or notes, and to purchase, hold and dispose of any of its bonds, security interests or notes;

(15) To sell, at public or private sale, any bond or other negotiable instrument, security interest, or obligation of the authority in such manner and upon such terms as the authority considers would best serve the purposes of this article;

(16) To issue its bonds, security interests and notes payable solely from the revenues or other funds available to the authority, and the authority may issue its bonds, security interests or notes in such principal amounts as it considers necessary to provide funds for any purpose under this article, including:

(A) 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;

(B) The establishment or increase of reserves to secure or to pay bonds, security interests, notes or the interest on the bonds, security interest or notes, and all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate 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 authority from any source whatsoever;

(17) To issue renewal notes or security interests, to issue bonds to pay notes or security interests and, whenever it considers 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 renewal notes may be issued to mature more than ten years from the date of issuance of the notes renewed and no refunding bonds may be issued to mature more than twenty-five years from the date of issuance;

(18) To apply the proceeds from the sale of renewal notes, security interests of refunding bonds to the purchase, redemption or payment of the notes, security interests or bonds to be refunded;

(19) To accept gifts or grants of property, funds, security interests, money, materials, labor, supplies or services from the federal government 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 disposition of gifts or grants;

(20) To the extent permitted under its contracts with the holders of bonds, security interests or notes of the authority, to consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other term of any bond, security interest, note, contract or agreement of any kind to which the authority is a party;

(21) To sell security interests in the loan portfolio of the authority. The security interests shall be evidenced by instruments issued by the authority. Proceeds from the sale of security interests may be issued in the same manner and for the same purposes as bond and note venues;

(22) To promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code, as necessary to implement and make effective
the powers, duties and responsibilities invested in the au-
 thority by the provisions of this article and otherwise by law, including regulation of the conduct of persons using the Hatfield-McCoy recreation area;

(23) To construct, reconstruct, improve, maintain, repair, operate and manage the Hatfield-McCoy recreation area at the locations within the state as may be determined by the authority;

(24) To exercise all power and authority provided in this article necessary and convenient to plan, finance, construct, renovate, maintain and operate or oversee the operation of the Hatfield-McCoy recreation area at such locations within the state as may be determined by the authority;

(25) To exercise such other and additional powers as may be necessary or appropriate for the exercise of the powers conferred in this section;

(26) To exercise all of the powers which a corporation may lawfully exercise under the laws of this state;

(27) To provide for law enforcement within the Hatfield-McCoy recreational area by appointing rangers as provided in section six of this article;

(28) To develop, maintain and operate or to contract for the development, maintenance and operation of the Hatfield-McCoy recreation area;

(29) To enter into contract with landowners and other persons holding an interest in the land being used for its recreational facilities to hold those landowners and other persons harmless with respect to any claim in tort growing out of the use of the land for public recreation or growing out of the recreational activities operated or managed by the authority from any claim except a claim for damages proximately caused by the willful or malicious conduct of the landowner or other person or any of his or her agents or employees;

(30) To assess and collect a reasonable fee from those persons who use the trails, parking facilities, visitor centers or other facilities which are part of the Hatfield-McCoy
recreation area, and to retain and utilize that revenue for any purposes consistent with this article;

(31) To cooperate with the states of Kentucky and Virginia and appropriate state and local officials and community leaders in those states to connect the trails of the West Virginia portion of the Hatfield-McCoy recreation area with similar recreation facilities in those states;

(32) To enter into contracts or other appropriate legal arrangements with landowners under which their land is made available for use as part of the Hatfield-McCoy recreation area; and

(33) To directly operate and manage recreation activities and facilities within the Hatfield-McCoy recreation area.

§20-14-6. Hatfield-McCoy recreation area rangers.

The board is hereby authorized to appoint bona fide residents of this state to act as Hatfield-McCoy recreation area rangers upon any premises which are part of the Hatfield-McCoy recreation area, subject to the conditions and restrictions imposed by this section. Before performing the duties of ranger, each appointed person shall qualify for the position of ranger in the same manner as is required of county officers by the taking and filing of an oath of office as required by section one, article one, chapter six of this code and by posting an official bond as required by section one, article two, chapter six of this code. No ranger may carry a gun or other dangerous weapon.

It is the duty of any person appointed and qualified to preserve law and order on any premises which are part of the Hatfield-McCoy recreation area, the immediately adjacent property of landowners who are making land available for public use under agreement with the authority, and on streets, highways or other public lands utilized by the trails, parking areas or related recreational facilities, and other immediately adjacent public lands. For this purpose, the ranger shall be considered to be a law-enforcement officer in accordance with the provisions of section one, article twenty-nine, chapter thirty of this...
code, and, as to offenses committed within those areas, have and may exercise all the powers and authority and are subject to all the requirements and responsibilities of a law-enforcement officer. The assignment of rangers to the duties authorized by this section may not supersede in any way the authority or duty of other peace officers to preserve law and order on those premises.

The salary of all rangers shall be paid by the board. The board shall furnish each ranger with an official uniform to be worn while on duty and shall furnish and require each ranger while on duty to wear a shield with an appropriate inscription and to carry credentials certifying the person's identity and authority as a ranger.

The board may at its pleasure revoke the authority of any ranger. The executive director shall report the termination of employment of a ranger by filing a notice to that effect in the office of the clerk of each county in which the rangers' oath of office was filed, and in the case of a ranger licensed to carry a gun or other dangerous weapon, by notifying the clerk of the circuit court of the county in which the license for the gun or other dangerous weapon was granted.

§20-14-7. Bonds not a debt of the state.

Revenue bonds and revenue refunding bonds of the Hatfield-McCoy regional recreation authority issued under the provisions of this article do not constitute a debt of the state or of any political subdivision of the state or a pledge of the faith and credit of the state or of any political subdivision, but the bonds shall be payable solely from the funds provided for in this article from revenues resulting from the issuance of bonds. All bonds shall contain on the face of the bond a statement to the effect that neither the state nor any political subdivision of the state is obligated to pay the bond or the interest on the bond except from revenues of the recreational project or projects for which they are issued and that neither the faith or credit nor the taxing power of the state or any political subdivi-
sion of the state is pledged to the payment of the principal
or the interest on the bonds.


Any person who violates any of the rules promulgated
by the board under authority of this article is guilty of a
misdemeanor and, upon conviction thereof, shall for each
offense be fined not more than five hundred dollars.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-1. Definitions.

For the purposes of this article, unless a different
meaning clearly appears in the context:

"Approved law-enforcement training academy" means
any training facility which is approved and authorized to
conduct law-enforcement training as provided in this arti-

"Chief executive" means the superintendent of the state
police; the chief conservation officer of the division of
natural resources; the sheriff of any West Virginia county;
or the chief of any West Virginia municipal law-enforce-
ment agency;

"County" means the fifty-five major political subdivi-
sions of the state;

"Exempt rank" means any noncommissioned or com-
missioned rank of sergeant or above;

"Governor's committee on crime, delinquency and
correction" or "governor's committee" means the gover-
nor's committee on crime, delinquency and correction
established as a state planning agency pursuant to section
one, article nine, chapter fifteen of this code;
"Law-enforcement officer" means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality thereof, other than parking ordinances, and shall include those persons employed as security officers at state institutions of higher education in accordance with the provisions of section five, article four, chapter eighteen-b of this code, although those institutions may not be considered law-enforcement agencies. The term also includes those persons employed as rangers by the Hatfield-McCoy regional recreation authority in accordance with the provisions of section six, article fourteen, chapter twenty of this code, although the authority may not be considered a law-enforcement agency: Provided, That the subject rangers shall pay the tuition and costs of training. As used in this article, the term "law-enforcement officer" does not apply to the chief executive of any West Virginia law-enforcement agency or any watchman or special conservation officer;

"Law-enforcement official" means the duly appointed chief administrator of a designated law-enforcement agency or a duly authorized designee;

"Municipality" means any incorporated town or city whose boundaries lie within the geographic boundaries of the state;

"Subcommittee" or "law-enforcement training subcommittee" means the subcommittee of the governor's committee on crime, delinquency and correction created by section two of this article; and

"West Virginia law-enforcement agency" means any duly authorized state, county or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof: Provided, That neither the Hatfield-McCoy regional recreation authority nor any state institution of higher education may be deemed a law-enforcement agency.
AN ACT to amend article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen; and to amend and reenact sections four, five, six and seven, article twenty-five, chapter thirty of said code, all relating to nursing homes, personal care homes and residential board and care homes; authorizing the department to promulgate legislative rules to comply with federal law and regulations; and authorizing the nursing home administrators licensing board to propose by legislative rule the amounts of licensing fees for nursing home administrators.

Be it enacted by the Legislature of West Virginia:

That article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section nineteen; and that sections four, five, six and seven, article twenty-five, chapter thirty of said code be amended and reenacted, all to read as follows:

Chapter
30. Professions and Occupations.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5C. NURSING AND PERSONAL CARE HOMES AND RESIDENTIAL BOARD AND CARE HOMES.

§16-5C-19. Federal law; legislative rules.

1 Notwithstanding any provision in this code to the contrary, the department shall promulgate legislative rules, in compliance with the provisions of article three, chapter twenty-nine-a of this code, pertaining to nursing homes,
when those rules are required for compliance with federal law or regulations. The rules may be filed as emergency rules.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 25. NURSING HOME ADMINISTRATORS.

§30-25-4. Qualifications for license; exceptions; application, fees.

(a) To be eligible for a license as a nursing home administrator a person must:

(1) Be of good moral character;

(2) Possess the qualifications and meet any reasonable standards as the board may prescribe pursuant to subsection (a), section seven of this article;

(3) Pass the examination prescribed by the board in the subject of nursing home administration; and

(4) Have sufficient knowledge and soundness of judgment to be able to adequately discharge the functions of a nursing home administrator.

(b) Any person who holds a license or certificate as a nursing home administrator issued by any other state, the requirements for which are found by the board to be at least as great as those provided in this article may be granted a license without examination if he or she meets all of the other requirements for licensing in this state.

(c) Any applicant for any license shall submit an application for the license at the time, in the manner, on the forms and containing the information as the board may, from time to time, by reasonable legislative rules prescribe and pay to the board the prescribed license fee, which fee shall be returned to the applicant if he or she is denied a license.
§30-25-5. Issuance of license; renewal of license; renewal fee; display of license.

Whenever the board finds that an applicant meets all of the requirements of this article for a license as a nursing home administrator, it shall immediately issue the license to the applicant; otherwise the board shall deny the applicant a license. The license is valid for a period ending on the thirtieth day of June next ensuing and may be renewed without examination upon application for renewal on a form prescribed by the board and payment to the board of the prescribed renewal fee: Provided, That the board may deny an application for renewal for any reason that would justify the denial of the original application for a license. The board shall prescribe the form of licenses and each license shall be conspicuously displayed by the licensee at the nursing home that he or she administers.


If a licensed nursing home administrator dies or is unable to continue due to an unexpected cause, the owner, governing body or other appropriate authority in charge of the nursing home involved may designate an acting administrator to whom the board may immediately issue an emergency permit if it finds the appointment will not endanger the safety of the occupants of the nursing home. An emergency permit is valid for a period determined by the board not to exceed six months and shall not be renewed. The prescribed fee for an emergency permit shall be paid to the board.


(a) The board shall:

(1) Examine applicants and determine their eligibility for a license or emergency permit as a nursing home administrator;

(2) Prepare, conduct and grade an apt and proper examination of applicants for a license and determine the satisfactory passing score on the examination;
(3) Promulgate reasonable legislative rules in accordance with and subject to the provisions of article three, chapter twenty-nine-a of this code, for the proper performance of its duties and shall establish fees for examinations, permits, licenses and renewals sufficient to cover the costs of administration of this article;

(4) Issue, renew, deny, suspend or revoke licenses and emergency permits in accordance with the provisions of this article and, in accordance with the administrative procedures provided in this article, may review, affirm, reverse, vacate or modify its order with respect to any denial, suspension or revocation;

(5) Develop, impose and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator. The standards shall be designed to ensure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;

(6) Employ, direct, discharge and define the duties of personnel necessary to effectuate the provisions of this article;

(7) Keep accurate and complete records of its proceedings, certify the records as may be appropriate, and prepare, from time to time, a list showing the names and addresses of all licensees;

(8) Approve courses of study or training in the field of nursing home administration which sufficiently meet education and training requirements for nursing home administrators established by this article;

(9) Conduct a course of study or training of the type referred to in subdivision (8) of this subsection if the courses are not otherwise reasonably available to residents of this state; and

(10) Take other action as may be reasonably necessary or appropriate to effectuate the provisions of this article.
(b) All moneys paid to the board shall be accepted by a person designated by the board and deposited by him or her with the treasurer of the state and credited to an account to be known as the "West Virginia nursing home administrators licensing board fund." Reimbursement of all reasonable and necessary costs and expenses actually incurred by members, and by the board in the administration of this article shall be paid from the fund.

CHAPTER 202

(Com. Sub. for H. B. 4523—By Delegates Kiss, Staton, Collins, Preece, J. Martin, Kuhn and Whitman)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter twenty-two 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 requiring legislative approval prior to the execution of an agreement related to the transport of ozone; and requiring certain hearings and reports concerning the energy use, tax, economic development, utility costs and rates, competitiveness and employment impacts of any proposed interstate agreement related to the transport of ozone.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-17. Interstate ozone transport.
(a) This section of the Air Pollution Control Act may be referred to as the Interstate Ozone Transport Oversight Act.

(b) The Legislature hereby finds that:

(1) The federal Clean Air Act, as amended, contains a comprehensive regulatory scheme for the control of emissions from mobile and stationary sources, which will improve ambient air quality and health and welfare in all parts of the nation.

(2) The number of areas unable to meet national ambient air quality standards for ozone has been declining steadily and will continue to decline with air quality improvements resulting from implementation of the federal Clean Air Act amendments of 1990, and the mobile and stationary source emission controls specified therein.

(3) Scientific research on the transport of atmospheric ozone across state boundaries is proceeding under the auspices of the United States environmental protection agency (U.S. EPA), state agencies, and private entities, which research will lead to improved scientific understanding of the causes and nature of ozone transport, and emission control strategies potentially applicable thereto.

(4) The northeast ozone transport commission established by the federal Clean Air Act amendments of 1990 has proposed emission control requirements for stationary and mobile sources in certain northeastern states and the District of Columbia in addition to those specified by the federal Clean Air Act Amendments of 1990.

(5) Membership of the northeast ozone transport commission includes, by statute, representatives of state environmental agencies and governors' offices; similar representation is required in the case of other ozone transport commissions established by the Administrator of the United States environmental protection agency pursuant to Section 176A of the federal Clean Air Act, as amended.

(6) The northeast ozone transport commission neither sought nor obtained state legislative oversight or ap-
proval prior to reaching its decisions on mobile and station-ary source requirements for states included within the northeast ozone transport region.

(7) The Commonwealth of Virginia and other parties have challenged the constitutionality of the northeast ozone transport commission and its regulatory proposals under the guarantee, compact, and joinder clauses of the United States Constitution.

(8) The United States environmental protection agency, acting outside of the aforementioned statutory requirements for the establishment of new interstate transport commissions, is encouraging the state of West Virginia and twenty-four other states outside of the northeast to participate in multistate negotiations through the ozone transport assessment group; such negotiations are intended to provide the basis for an interstate memorandum of understanding or other agreement on ozone transport requiring reductions of emissions of nitrogen oxides or volatile organic compounds in addition to those specified by the federal Clean Air Act amendments of 1990, membership of the ozone transport assessment group consists of state and federal air quality officials, without state legislative representation or participation by the governor.

(9) Emission control requirements exceeding those specified by federal law can adversely affect state economic development, competitiveness, employment, and income without corresponding environmental benefits; in the case of electric utility emissions of nitrogen oxides, it is estimated that control costs in addition to those specified by the federal Clean Air Act could exceed five billion dollars annually in a thirty-seven state region of the eastern United States, including the state of West Virginia.

(10) Requiring certain eastern states to meet emission control requirements more stringent than those otherwise applicable to other states and unnecessary for environmental protection would unfairly affect interstate competition for new industrial development and employment opportunities.
(c) It is therefore directed that:

(1) Not later than ten days subsequent to the receipt by the director of the division of environmental protection of any proposed memorandum of understanding or other agreement by the ozone transport assessment group, or similar group, potentially requiring the state of West Virginia to undertake emission reductions in addition to those specified by the federal Clean Air Act, the director of the division of environmental protection shall submit such proposed memorandum or other agreement to the president of the Senate and the speaker of the House of Delegates for consideration.

(2) Upon receipt of the aforesaid memorandum of understanding or agreement, the President and the Speaker shall refer the understanding or agreement to one or more appropriate legislative committees with a request that such committees convene one or more public hearings to receive comments from agencies of government and other interested parties on its prospective economic and environmental impacts on the state of West Virginia and its citizens, including impacts on energy use, taxes, economic development, utility costs and rates, competitiveness and employment.

(3) Upon completion of the public hearings required by the preceding subdivision, the committees(s) shall forward to the president and the speaker a report containing its findings and recommendations concerning any proposed memorandum of understanding or other agreement related to the interstate transport of ozone. The report shall make findings with respect to the economic, health, safety and welfare and environmental impacts on the state of West Virginia and its citizens, including impacts on energy use, taxes, economic development, utility costs and rates, competitiveness and employment.

(4) Upon receipt of the report required by the preceding subdivision, the president and speaker shall thereafter transmit the report to the governor for such further consideration or action as may be warranted.
AN ACT to amend and reenact section one, article eleven, chapter twenty-two-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the Interstate Commission on the Potomac River Basin.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN.

§22C-11-1. Creation of commission; members; terms; compact with other political units.

There is hereby created a commission consisting of three members, to act jointly with commissioners appointed for like purposes by the commonwealths of Pennsylvania and Virginia, the state of Maryland, and the District of Columbia, and an additional three members to be appointed by the president of the United States, and which, together with the other commissioners appointed as
The said commission of the state of West Virginia shall consist of three members. The governor, by and with the advice and consent of the Senate, shall appoint two persons as two of such commissioners, each of whom shall be a resident and citizen of this state. The terms of one of the said two commissioners first appointed shall be three years and of the other shall be six years; and their successors shall be appointed by the governor, by and with the advice and consent of the Senate, for terms of six years each. Each commissioner shall hold office until his successor shall be appointed and qualified. Vacancies occurring in the office of any such commissioner for any reason or cause shall be filled by appointment by the governor, by and with the advice and consent of the Senate, for the unexpired term. The third commissioner from this state is the director of the division of environmental protection, and the term of the ex officio commissioner terminates at the time he ceases to hold said office. Said ex officio commissioner may delegate, from time to time, to any deputy or other subordinate in his division or office, the power to be present and participate, including voting, as his representative or substitute at any meeting of or hearing by or other proceeding of the commission. The term of each of the initial three members shall begin at the date of the appointment of the two appointive commissioners: Provided, That the compact hereinafter referred to shall then have gone into effect, in accordance with article six thereof, otherwise to begin upon the date said compact shall become effective, in accordance with said article six.

Any commissioner may be removed from office by the governor.

The governor of the state of West Virginia is hereby authorized and directed to execute a compact on behalf of the state of West Virginia, with the other states and the district hereinabove referred to, who may by their legislative bodies so authorize a compact in form substantially as follows:
A COMPACT

Whereas, It is recognized that abatement of existing pollution and the control of future pollution of interstate streams can best be promoted through a joint agency representing the several states located wholly or in part within the area drained by any such interstate streams; and

Whereas, The Congress of the United States has given its consent to the states of Maryland and West Virginia, the commonwealths of Pennsylvania and Virginia, and the District of Columbia to enter into a compact providing for the creation of a conservancy district to consist of the drainage basin of the Potomac River and the main and tributary streams therein, for "the purpose of regulating, controlling, preventing, or otherwise rendering unobjectionable and harmless the pollution of the waters of said Potomac drainage area by sewage and industrial and other wastes"; and

Whereas, The regulation, control and prevention of pollution is directly affected by the quantities of water in said streams and the uses to which such water may be put, thereby requiring integration and coordination of the planning for the development and use of the water and associated land resources through cooperation with, and support and coordination of, the activities of federal, state, local and private agencies, groups, and interests concerned with the development, utilization and conservation of the water and associated land resources of the said conservancy district; now, therefore,

The states of Maryland and West Virginia, the commonwealths of Pennsylvania and Virginia, and the District of Columbia, hereinafter designated signatory bodies, do hereby create the Potomac Valley conservancy district, hereinafter designated the conservancy district, comprising all of the area drained by the Potomac River and its tributaries; and also, do hereby create, as an agency of each signatory body, the interstate commission on the Potomac River basin, hereinafter designated the commission, under the articles of organization as set forth below.
Article I

The interstate commission on the Potomac River basin shall consist of three members from each signatory body and three members appointed by the president of the United States. Said commissioners, other than those appointed by the president, shall be chosen in a manner and for the terms provided by law of the signatory body from which they are appointed, and shall serve without compensation from the commission but shall be paid by the commission their actual expenses incurred and incident to the performance of their duties.

(A) The commission shall meet and organize within thirty days after the effective date of this compact, shall elect from its number a chairman and vice chairman, shall adopt suitable bylaws, shall make, adopt and promulgate such rules and regulations as are necessary for its management and control, and shall adopt a seal.

(B) The commission shall appoint, and at its pleasure, remove or discharge such officers and legal, engineering, clerical, expert and other assistants as may be required to carry the provisions of this compact into effect, and shall determine their qualifications and fix their duties and compensation. Such personnel as may be employed shall be employed without regard to any civil service or other similar requirements for employees of any of the signatory bodies. The commission may maintain one or more offices for the transaction of its business and may meet at any time within the area of the signatory bodies.

(C) The commission shall keep accurate accounts of all receipts and disbursements and shall make an annual report thereof and shall in such report set forth in detail the operations and transactions conducted by it pursuant to this compact. The commission, however, shall not incur any obligations for administrative or other expenses prior to the making of appropriations adequate to meet the same nor shall it in any way pledge the credit of any of the signatory bodies. Each of the signatory bodies reserves the right to make at any time an examination and audit of the accounts of the commission.
(D) A quorum of the commission shall, for the transaction of business, the exercise of any powers, or the performance of any duties, consist of at least six members of the commission who shall represent at least a majority of the signatory bodies: Provided, That no action of the commission relating to policy or stream classification or standards shall be binding on any one of the signatory bodies unless at least two of the commissioners from such signatory body shall vote in favor thereof.

Article II

The commission shall have the power:

(A) To collect, analyze, interpret, coordinate, tabulate, summarize and distribute technical and other data relative to, and to conduct studies, sponsor research and prepare reports on, pollution and other water problems of the conservancy district.

(B) To cooperate with the legislative and administrative agencies of the signatory bodies, or the equivalent thereof, and with other commissions and federal, local governmental and nongovernmental agencies, organizations, groups and persons for the purpose of promoting uniform laws, rules or regulations for the abatement and control of pollution of streams and the utilization, conservation and development of the water and associated land resources in the said conservancy district.

(C) To disseminate to the public information in relation to stream pollution problems and the utilization, conservation and development of the water and associated land resources of the conservancy district and on the aims, views, purposes and recommendations of the commission in relation thereto.

(D) To cooperate with, assist, and provide liaison for and among, public and nonpublic agencies and organizations concerned with pollution and other water problems in the formulation and coordination of plans, programs and other activities relating to stream pollution or to the utilization, conservation or development of water or associated land resources, and to sponsor cooperative
action in connection with the foregoing.

(E) In its discretion and at any time during or after the formulation thereof, to review and to comment upon any plan or program of any public or private agency or organization relating to stream pollution or the utilization, conservation or development of water or associated land resources.

(F) (1) To make, and, if needful from time to time, revise and to recommend to the signatory bodies, reasonable minimum standards for the treatment of sewage and industrial or other wastes now discharged or to be discharged in the future to the streams of the conservancy district, and also, for cleanliness of the various streams in the conservancy district.

(2) To establish reasonable physical, chemical and bacteriological standards of water quality satisfactory for various classifications of use. It is agreed that each of the signatory bodies through appropriate agencies will prepare a classification of its interstate waters in the district in entirety or by portions according to present and proposed highest use, and for this purpose technical experts employed by appropriate state water pollution control agencies are authorized to confer on questions relating to classification of interstate waters affecting two or more states. Each signatory body agrees to submit its classification of its interstate waters to the commission with its recommendations thereon.

The commission shall review such classification and recommendations and accept or return the same with its comments. In the event of return, the signatory body will consider the comments of the commission and resubmit the classification proposal, with or without amendment, with any additional comments for further action by the commission.

It is agreed that after acceptance of such classification, the signatory body through its appropriate state water pollution control agencies will work to establish programs of treatment of sewage and industrial wastes which will meet or exceed standards established by the commission.
for classified waters. The commission may from time to
time make such changes in definitions of classifications
and in standards as may be required by changed
conditions or as may be necessary for uniformity and in a
manner similar to that in which these standards and
classifications were originally established.

It is recognized, owing to such variable factors as
location, size, character and flow and the many varied uses
of the waters subject to the terms of this compact, that no
single standard of sewage and waste treatment and no
single standard of quality of receiving waters is practical
and that the degree of treatment of sewage and industrial
wastes should take into account the classification of the
receiving waters according to present and proposed
highest use, such as for drinking water supply, bathing and
other recreational purposes, maintenance and propagation
of fish life, industrial and agricultural uses, navigation and
disposal of wastes.

Article III

For the purpose of dealing with the problems of
pollution and of water and associated land resources in
specific areas which directly affect two or more, but not
all, signatory bodies, the commission may establish
sections of the commissions consisting of the
commissioners from such affected signatory bodies:
Provided, That no signatory body may be excluded from
any section in which it wishes to participate. The
commissioners appointed by the president of the United
States may participate in any section. The commission
shall designate, and from time to time may change, the
geographical area with respect to which each section shall
function. Each section shall, to such extent as the
commission may from time to time authorize, have
authority to exercise and perform with respect to its
designated geographical area any power or function
vested in the commission, and in addition may exercise
such other powers and perform such functions as may be
vested in such section by the laws of any signatory body
or by the laws of the United States. The exercise or
performance by a section of any power or function vested
in the commission may be financed by the commission, but the exercise or performance of powers or functions vested solely in a section shall be financed through funds provided in advance by the bodies, including the United States, participating in such section.

Article IV

The moneys necessary to finance the commission in the administration of its business in the conservancy district shall be provided through appropriations from the signatory bodies and the United States, in the manner prescribed by the laws of the several signatory bodies and of the United States, and in amounts as follows:

The pro rata contribution shall be based on such factors as population; the amount of industrial and domestic pollution; and a flat service charge; as shall be determined from time to time by the commission, subject, however, to the approval, ratification and appropriation of such contribution by the several signatory bodies.

Article V

Pursuant to the aims and purposes of this compact, the signatory bodies mutually agree:

1. Faithful cooperation in the abatement of existing pollution and the prevention of future pollution in the streams of the conservancy district and in planning for the utilization, conservation and development of the water and associated land resources thereof.

2. The enactment of adequate and, insofar as is practicable, uniform legislation for the abatement and control of pollution and control and use of such streams.

3. The appropriation of biennial sums on the proportionate basis as set forth in article four.

Article VI

This compact shall become effective immediately after it shall have been ratified by the majority of the legislatures of the states of Maryland and West Virginia, the commonwealths of Pennsylvania and Virginia, and by the commissioners of the District of Columbia, and
281 approval by the Congress of the United States: Provided,
282 That this compact shall not be effective as to any signatory
283 body until ratified thereby.

Article VII
285 Any signatory body may, by legislative action, after one
286 year's notice to the commission, withdraw from this com-
287 pact.

CHAPTER 204
(S. B. 358—By Senators Wooton, Anderson, Buckalew, Dittmar,
Miller, Ross, Schoonover, Scott and Yoder)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, three, four-a, five,
six, seven, eight, ten, eleven and twelve, article one, chapter
thirty of the code of West Virginia, one thousand nine hun-
dred thirty-one, as amended; to further amend said article by
adding thereto two new sections, designated sections one-a
and seven-a; and to amend and reenact section five-a, article
two of said chapter, all relating to state boards of examina-
tion or registration; application of article; legislative findings
and declaration; officers; lay members of professional
boards; meetings; quorum; investigatory powers; duties;
application for license or registration; fees; contents of li-
cense or certificate of registration; continuing education;
denial, suspension or revocation of a license or registration;
disposition of money; compensation of members; expenses;
record of proceedings; register of applicants; report to gov-
ernor and Legislature; and legal corporations.

Be it enacted by the Legislature of West Virginia:

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

Article
1. General Provisions Applicable to All State Boards of Examination or Registration Referred to in Chapter.
2. Attorneys-at-law.

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-1. Application of article.
§30-1-1a. Legislative findings and declaration.
§30-1-3. Officers.
§30-1-4a. Lay members of professional boards.
§30-1-5. Meetings; quorum; investigatory powers; duties.
§30-1-6. Application for license or registration; examination fee.
§30-1-7. Contents of license or certificate of registration.
§30-1-7a. Continuing education.
§30-1-8. Denial, suspension or revocation of a license or registration; probation; proceedings; effect of suspension or revocation; transcript; report; judicial review.
§30-1-10. Disposition of money; fines; legislative audit.
§30-1-11. Compensation of members; expenses.
§30-1-12. Record of proceedings; register of applicants; certified copies of records prima facie evidence; report to governor and Legislature.

§30-1-1. Application of article.

1 Unless otherwise specifically provided, every board of examination or registration referred to in this chapter shall conform to the requirements prescribed in the following sections of this article.

§30-1-1a. Legislative findings and declaration.

1 The Legislature hereby finds and declares that as a matter of public policy the practice of the professions referred to in this chapter is a privilege and is not a natural right of individuals. The fundamental purpose of licensure and registration is to protect the public, and any license, registration, certificate or other authorization to practice issued pursuant to this chapter is a revocable privilege.
§30-1-3. Officers.

(a) Every board referred to in this chapter shall elect annually from its members a president and a secretary who shall hold their offices for one year, but shall continue to hold their offices until their successors are elected. However, the state board of law examiners, the state board of examiners for nurses and the state board of dental examiners may each elect a secretary from outside their membership.

(b) The officers of the boards referred to in this chapter shall register annually with the governor, the secretary of administration, the legislative auditor and the secretary of state.

§30-1-4a. Lay members of professional boards.

(a) Notwithstanding any provisions of this code to the contrary, the governor shall appoint at least one lay person to represent the interests of the public on every health professional licensing board which is referred to in this chapter. If the total number of members on any of these boards after the appointment of one lay person is an even number, one additional lay person shall be appointed. Lay members shall serve in addition to any other members otherwise provided for by law or rule. Lay members shall be at least eighteen years of age, shall be of good moral character, and shall be competent to represent and safeguard the interests of the public. Each lay member is empowered to participate in and vote on all transactions and business of the board, committee or group to which he or she is appointed.

(b) Any person whose addition to a board as a lay member under the provisions of this section results in the addition of an odd number of lay additions to the board shall serve for a term ending in an odd-numbered year on the date in that year on which terms of the professional members expire. Of the members first appointed, each shall serve for a term ending in the year one thousand nine hundred seventy-nine, and the successor to each of the first members shall serve for a term equal in length to the terms of the other professional members of the board.
(c) Any person whose addition to a board as a lay member under the provisions of this section results in the addition of an even number of lay additions to the board shall serve for a term ending in an even-numbered year on the date in that year on which terms of the professional members expire. Of the members first appointed, each shall serve for a term ending in the year one thousand nine hundred seventy-eight, and the successor to each of the first members shall serve for a term equal in length to the terms of the other professional members of the board.

§30-1-5. Meetings; quorum; investigatory powers; duties.

(a) Every board referred to in this chapter shall hold at least one meeting each year, at such time and place as it may prescribe by rule, for the examination of applicants who desire to practice their respective professions or occupations in this state and to transact any other business which may legally come before it. The board may hold additional meetings as may be necessary, which shall be called by the secretary at the direction of the president or upon the written request of any three members. A majority of the members of the board constitutes a quorum for the transaction of its business. The board is authorized to compel the attendance of witnesses, to issue subpoenas, to conduct investigations and hire an investigator, and to take testimony and other evidence concerning any matter within its jurisdiction. The president and secretary of the board are authorized to administer oaths for these purposes.

(b) Every board referred to in this chapter has a duty to investigate and resolve complaints which it receives and shall do so in a timely manner. Every board shall provide public access to the record of the disposition of the complaints which it receives, in accordance with the provisions of chapter twenty-nine-b of this code. Every board has a duty to report violations of individual practice acts contained in this chapter to the board by which the individual may be licensed, and shall do so in a timely manner upon receiving notice of such violations. Every person licensed or registered by a board has a duty to report to the board which licenses or registers him or her a known or observed violation of the practice act or the board's rules by any
other person licensed or registered by the same board, and
shall do so in a timely manner. Law-enforcement agen-
cies or their personnel and courts shall report in a timely
manner to the appropriate board any violations of individ-
ual practice acts by any individual.

(c) Whenever a board referred to in this chapter ob-
tains information that a person subject to its authority has
engaged in, is engaging in, or is about to engage in any
act which constitutes or will constitute a violation of the
provisions of this chapter which are administered and
enforced by that board, it may apply to the circuit court
for an order enjoining the act. Upon a showing that the
person has engaged, is engaging, or is about to engage in
any such act, the court shall order an injunction, restrain-
ing order or other order as the court may deem appropri-
ate.

§30-1-6. Application for license or registration; examination
fee.

(a) Every applicant for license or registration under
the provisions of this chapter shall apply for such license
or registration in writing to the proper board and shall
transmit with his or her application an examination fee
which the board is authorized to charge for an examina-
tion or investigation into the applicant's qualifications to
practice.

(b) Each board referred to in this chapter is authorized
to establish by rule a deadline for application for exami-
nation which shall be no less than ten nor more than ninety
days prior to the date of the examination.

(c) Boards may set by rule fees relating to the licens-
ing or registering of individuals, which shall be sufficient
to enable the boards to carry out effectively their responsi-
bilities of licensure or registration and discipline of indi-
viduals subject to their authority: Provided, That when
any board proposes to promulgate a rule regarding fees
for licensing or registration, that board shall notify its
membership of the proposed rule by mailing a copy of
the proposed rule to the membership at the time that the
proposed rule is filed with the secretary of state for publi-
22 cation in the state register in accordance with section five,
23 article three, chapter twenty-nine-a of this code.

§30-1-7. Contents of license or certificate of registration.

Every license or certificate of registration issued by
1 each board shall bear a serial number, the full name of the
2 applicant, the date of issuance, and the seal of the board.
3 It shall be signed by the board's president and secretary or
4 executive secretary. No license or certificate of registra-
5 tion granted or issued under the provisions of this chapter
6 may be assigned.

§30-1-7a. Continuing education.

Each board referred to in this chapter shall establish
1 continuing education requirements as a prerequisite to
2 license renewal. Each board shall develop continuing
3 education criteria appropriate to its discipline, which shall
4 include, but not be limited to, course content, course ap-
5 proval, hours required and reporting periods.

§30-1-8. Denial, suspension or revocation of a license or regis-
1 tration; probation; proceedings; effect of suspension
2 or revocation; transcript; report; judicial
3 review.

(a) Every board referred to in this chapter is autho-
1 rized to suspend or revoke the license of any person who
2 has been convicted of a felony or who has been found to
3 have engaged in conduct, practices or acts constituting
4 professional negligence or a willful departure from ac-
5 cepted standards of professional conduct. Where any
6 person has been so convicted of a felony or has been
7 found to have engaged in such conduct, practices or acts,
8 every board referred to in this chapter is further autho-
9 rized to enter into consent decrees, to reprimand, to enter
10 into probation orders, to levy fines not to exceed one
11 thousand dollars per day per violation, or any of these,
12 singly or in combination. Each board is also authorized
13 to assess administrative costs. Any costs which are as-
14 sessed shall be placed in the special account of the board,
15 and any fine which is levied shall be deposited in the state
16 treasury's general revenue fund. For purposes of this
section, the word "felony" means a felony or crime pun-

ishable as a felony under the laws of this state, any other
state, or the United States. Every board referred to in this
chapter is authorized to promulgate rules in accordance
with the provisions of chapter twenty-nine-a of this code
to delineate conduct, practices or acts which, in the judg-
ment of the board, constitute professional negligence, a
willful departure from accepted standards of professional
conduct or which may render an individual unqualified or
unfit for licensure, registration or other authorization to
practice.

(b) Notwithstanding any other provision of law to the
contrary, no certificate, license, registration or authority
issued under the provisions of this chapter may be sus-
pended or revoked without a prior hearing before the
board or court which issued the certificate, license, regis-
tration or authority. However, this does not apply in cases
where a board is authorized to suspend or revoke a certifi-
cate, license, registration or authority prior to a hearing if
the individual's continuation in practice constitutes an
immediate danger to the public.

(c) In all proceedings before a board or court for the
suspension or revocation of any certificate, license, regist-
ration or authority issued under the provisions of this
chapter, a statement of the charges against the holder
thereof and a notice of the time and place of hearing shall
be served upon the person as a notice is served under
section one, article two, chapter fifty-six of this code, at
least thirty days prior to the hearing, and he or she may
appear with witnesses and be heard in person, by counsel,
or both. The board may take oral or written proof, for or
against the accused, as it may deem advisable. If upon
hearing the board finds that the charges are true, it may
suspend or revoke the certificate, license, registration or
authority, and suspension or revocation shall take from the
person all rights and privileges acquired thereby.

(d) Pursuant to the provisions of section one, article
five, chapter twenty-nine-a of this code, informal dispo-
sition may also be made by the board of any contested case
by stipulation, agreed settlement, consent order or default.
Further, the board may suspend its decision and place a licensee found by the board to be in violation of the applicable practice on probation.

(e) Any person denied a license, certificate, registration or authority who believes the denial was in violation of this article or the article under which the license, certificate, registration or authority is authorized shall be entitled to a hearing on the action denying the license, certificate, registration or authority. Hearings under this subsection shall be in accordance with the provisions for hearings which are set forth in this section.

(f) A stenographic report of each proceeding on the denial, suspension or revocation of a certificate, license, registration or authority shall be made at the expense of the board and a transcript thereof retained in its files. The board shall make a written report of its findings, which shall constitute part of the record.

(g) All proceedings under the provisions of this section are subject to review by the supreme court of appeals.

§30-1-10. Disposition of money fines; legislative audit.

(a) The secretary of every board referred to in this chapter shall receive and account for all money which it derives pursuant to the provisions of this chapter which are applicable to it. With the exception of money received as fines, each board shall pay all money which is collected into a separate special fund of the state treasury which has been established for each board. This money shall be used exclusively by each board for purposes of administration and enforcement of its duties pursuant to this chapter. Any money received as fines shall be deposited into the general revenue fund of the state treasury. When the special fund of any board accumulates to an amount which exceeds twice the annual budget of the board or ten thousand dollars, whichever is greater, the excess amount shall be transferred by the state treasurer to the state general revenue fund.
§30-1-11. Compensation of members; expenses.

Each member of every board which is referred to in this chapter shall receive compensation and expense reimbursement which shall not exceed the amount 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.

§30-1-12. Record of proceedings; register of applicants; certified copies of records prima facie evidence; report to governor and Legislature.

(a) The secretary of every board shall keep a record of its proceedings and a register of all applicants for license or registration, showing for each the date of his or her application, his or her name, age, educational and other qualifications, place of residence, whether an examination was required, whether the applicant was rejected or a certificate of license or registration granted, the date of this action, the license or registration number, all renewals of the license or registration, if required, and any suspension or revocation thereof. The books and register of the board shall be open to public inspection at all reasonable times, and the books and register, or a copy of any part thereof, certified by the secretary and attested by the seal of the board, shall be prima facie evidence of all matters recorded therein.

(b) On or before the first day of January of each year in which the Legislature meets in regular session, the board shall submit to the governor and to the Legislature a report of its transactions for the preceding two years, an itemized statement of its receipts and disbursements for that period, a full list of the names of all persons licensed or registered by it during that period, statistical reports by county of practice, by specialty if appropriate to the particular profession, and a list of any complaints which were filed against persons licensed by the board, including any
action taken by the board regarding those complaints. The report shall be certified by the president and the secretary of the board, and a copy of the report shall be filed with the secretary of state.

ARTICLE 2. ATTORNEYS-AT-LAW.

§30-2-5a. Legal corporations.

(a) One or more individuals, each of whom is licensed to practice law within this state, may organize and become a shareholder or shareholders of a legal corporation. Individuals who may be practicing law as an organization created otherwise than pursuant to the provisions of this section may incorporate under and pursuant to this section. This section is not intended to amend the statutory or common law as it relates to associations or partnerships, except to allow partnerships of lawyers to organize as a legal corporation.

(b) A legal corporation may render professional service only through officers, employees and agents who are themselves duly licensed to render legal service within this state. The term "employee" or "agent" as used in this section does not include secretaries, clerks, typists, paralegal personnel or other individuals who are not usually and ordinarily considered by custom and practice to be rendering legal services for which a license is required.

(c) This section does not modify the law as it relates to the relationship between a person furnishing legal services and his client, nor does it modify the law as it relates to liability arising out of such a professional service relationship. Except for permitting legal corporations, this section is not intended to modify any legal requirement or court rule relating to ethical standards of conduct required of persons providing legal service.

(d) A legal corporation may issue its capital stock only to persons who are duly licensed attorneys.

(e) When not inconsistent with this section, the organization and procedures of legal corporations shall conform to the requirements of article one, chapter thirty-one of this code.
(f) The West Virginia state bar may require that lawyers under its licensing authority must obtain its prior authorization before beginning to act as a legal corporation and may require a fee of not more than fifty dollars for each application for authorization to form a legal corporation. The state bar may adopt rules: (1) To set reasonable standards for granting or refusing prior approval; (2) to require appropriate information therefor from a legal corporation applicant; and (3) to notify the secretary of state that certain persons have been given authorization by the state bar to form a legal corporation.

(g) Upon notification by the West Virginia state bar of its approval, the secretary of state, upon compliance by the incorporators with this section and the applicable provisions of chapter thirty-one of this code, may issue to the incorporators a certificate of incorporation for the legal corporation which then may engage in practice through duly licensed or otherwise legally authorized stockholders, employees and agents.

(h) A shareholder of a legal corporation may sell or transfer his or her shares of stock in such corporation only to another individual who is duly licensed to practice law in this state or back to the corporation. However, a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during the administration of the estate.

(i) The corporate name of a legal corporation shall contain the last name or names of one or more of its shareholders. If the rules of the state bar so permit, the corporate name may contain or include the name or names of former shareholders or of persons who were associated with a predecessor partnership or other organization. The corporate name shall also contain the words "legal corporation" or the abbreviation "L.C." The use of the word "company", "corporation" or "incorporated" or any other words or abbreviations in the name of a corporation organized under this article which indicates that such corporation is a corporation, other than the words "legal corporation" or the abbreviation "L.C.", is specifically prohibited.
AN ACT to amend and reenact section sixteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to licensure procedures for physician assistants; requiring approval of educational programs for physician assistants by the successor organization to the committee on allied health education and accreditation of the American medical association; requiring rules promulgated by the board of medicine to be pursuant to the provisions of chapter twenty-nine-a; changing biennial report to an annual report and eliminating certain report requirements; adding current certification by the national commission on certification of physician assistants for licensure; changing the name of the certifying examination for physician assistants; changing requirements for temporary licensure; terminating temporary licensure upon failure of the national commission on certification of physician assistants examination; requiring notice to the board of medicine of reports of performance on certifying examination within thirty days of receipt of same; deleting conflicting language regarding criminal penalties for misrepresentation as a physician assistant; and making technical changes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-16. Physician assistants; definitions; board of medicine rules; annual report; licensure; temporary license; relicensure; job description required; revocation or suspension of licensure; responsibilities of supervising physician; legal responsibility for physician assistants; reporting by
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(b) The board shall promulgate rules pursuant to the provisions of article three, chapter twenty-nine-a of this code governing the extent to which physician assistants may function in this state. The rules shall provide that the physician assistant is limited to the performance of those services for which he or she is trained and that he or she performs only under the supervision and control of a

health care facilities; identification; limitations on employment and duties; fees; continuing education; unlawful representation of physician assistant as a physician; criminal penalties.

(a) As used in this section:

(1) "Physician assistant" means an assistant to a physician who is a graduate of an approved program of instruction in primary health care or surgery, has attained a baccalaureate or master's degree, has passed the national certification examination and is qualified to perform direct patient care services under the supervision of a physician;

(2) "Physician assistant-midwife" means a physician assistant who meets all qualifications set forth under subdivision (1) of this subsection and fulfills the requirements set forth in subsection (d) of this section; is subject to all provisions of this section; and assists in the management and care of a woman and her infant during the prenatal, delivery and postnatal periods;

(3) "Supervising physician" means a doctor or doctors of medicine or podiatry permanently licensed in this state who assume legal and supervisory responsibility for the work or training of any physician assistant under his or her supervision;

(4) "Approved program" means an educational program for physician assistants approved and accredited by the committee on allied health education and accreditation on behalf of the American medical association or its successor; and

(5) "Health care facility" means any licensed hospital, nursing home, extended care facility, state health or mental institution, clinic or physician's office.
physician permanently licensed in this state, but that super-

supervision and control does not require the personal pres-
ence of the supervising physician at the place or places
where services are rendered if the physician assistant's
normal place of employment is on the premises of the
supervising physician. The supervising physician may
send the physician assistant off the premises to perform
duties under his or her direction, but a separate place of
work for the physician assistant shall not be established.
In promulgating the rules, the board shall allow the physi-
cian assistant to perform those procedures and examina-
tions and in the case of certain authorized physician assis-
tants to prescribe at the direction of his or her supervising
physician in accordance with subsection (l) of this section
those categories of drugs submitted to it in the job de-
scription required by subsection (g) of this section. The
board shall compile and publish an annual report that
includes a list of currently licensed physician assistants
and their employers and location in the state.

(c) The board shall license as a physician assistant any
person who files an application and furnishes satisfactory
evidence to it that he or she has met the following stan-
dards:

(1) He or she is a graduate of an approved program of
instruction in primary health care or surgery;

(2) He or she has passed the certifying examination
for a primary care physician assistant administered by the
national commission on certification of physician assis-
tants and has maintained certification by that commission
so as to be currently certified;

(3) He or she is of good moral character; and

(4) He or she has attained a baccalaureate or master's
degree.

(d) The board shall license as a physician
assistant-midwife any person who meets the standards set
forth under subsection (c) of this section and, in addition
thereto, the following standards:
(1) He or she is a graduate of a school of midwifery accredited by the American college of nurse-midwives;

(2) He or she has passed an examination approved by the board;

(3) He or she practices midwifery under the supervision of a board certified obstetrician, gynecologist or a board certified family practice physician who routinely practices obstetrics.

(e) The board may license as a physician assistant any person who files an application and furnishes satisfactory evidence that he or she is of good moral character and meets either of the following standards:

(1) He or she is a graduate of an approved program of instruction in primary health care or surgery prior to the first day of July, one thousand nine hundred ninety-four, and has passed the certifying examination for a physician assistant administered by the national commission on certification of physician assistant's certified; or

(2) He or she had been certified by the board as a physician assistant then classified as "Type B", prior to the first day of July, one thousand nine hundred eighty-three.

Licensure of an assistant to a physician practicing the specialty of ophthalmology is permitted under this section: Provided, That a physician assistant may not dispense a prescription for a refraction.

(f) When any graduate of an approved program, within two years of graduation, submits an application to the board for a physician assistant license, accompanied by a job description in conformity with subsection (g) of this section, the board shall issue to that applicant a temporary license allowing that applicant to function as a physician assistant until the applicant successfully passes the national commission on certification of physician assistants' certifying examination: Provided, That the applicant shall sit for and obtain a passing score on the next offered examination within one year of issuance of the temporary li-
A physician assistant who has not been certified by the national board of medical examiners on behalf of the national commission on certification of physician assistants will be restricted to work under the direct supervision of the supervising physician.

A physician assistant who has been issued a temporary license shall, within thirty days of receipt of written notice from the national commission on certification of physician assistants of his or her performance on the certifying examination, notify the board in writing of his or her results. In the event of failure of that examination, the temporary license shall expire and terminate automatically, and the board shall so notify the physician assistant in writing.

(g) Any physician applying to the board to supervise a physician assistant shall provide a job description that sets forth the range of medical services to be provided by the assistant. Before a physician assistant can be employed or otherwise use his or her skills, the supervising physician must obtain approval of the job description from the board. The board may revoke or suspend any license of an assistant to a physician for cause, after giving that assistant an opportunity to be heard in the manner provided by article five of chapter twenty-nine-a of this code and as set forth in rules duly adopted by the board.

(h) The supervising physician is responsible for observing, directing and evaluating the work, records and practices of each physician assistant performing under his or her supervision. He or she shall notify the board in writing of any termination of his or her supervisory relationship with a physician assistant within ten days of the termination. The legal responsibility for any physician assistant remains with the supervising physician at all times, including occasions when the assistant under his or her direction and supervision, aids in the care and treatment of a patient in a health care facility. In his or her absence, a supervising physician must designate an alternate supervising physician, however, the legal responsibility remains with the supervising physician at all times. A health care facility is not legally responsible for the ac-
tions or omissions of the physician assistant unless the physician assistant is an employee of the facility.

(i) The acts or omissions of a physician assistant employed by health care facilities providing inpatient or outpatient services shall be the legal responsibility of the facilities. Physician assistants employed by facilities in staff positions shall be supervised by a permanently licensed physician.

(j) A health care facility shall report in writing to the board within sixty days after the completion of the facility's formal disciplinary procedure, and also after the commencement, and again after the conclusion, of any resulting legal action, the name of any physician assistant practicing in the facility whose privileges at the facility have been revoked, restricted, reduced or terminated for any cause including resignation, together with all pertinent information relating to the action. The health care facility shall also report any other formal disciplinary action taken against any physician assistant by the facility relating to professional ethics, medical incompetence, medical malpractice, moral turpitude or drug or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend staff or section meetings need not be reported.

(k) When functioning as a physician assistant, the physician assistant shall wear a name tag that identifies him or her as a physician assistant. A two and one-half by three and one-half inch card of identification shall be furnished by the board upon licensure of the physician assistant.

(l) A physician assistant may write or sign prescriptions or transmit prescriptions by word of mouth, telephone or other means of communication at the direction of his or her supervising physician. The board shall promulgate rules pursuant to the provisions of article three, chapter twenty-nine-a of this code governing the eligibility and extent to which a physician assistant may prescribe at the direction of the supervising physician. The rules shall include, but not be limited to, the following:
(1) Provisions for approving a state formulary classifying pharmacologic categories of drugs that may be prescribed by a physician assistant:

(A) The following categories of drugs shall be excluded from the formulary: Schedules I and II of the uniform controlled substances act, anticoagulants, antineoplastics, radiopharmaceuticals, general anesthetics and radiographic contrast materials;

(B) Drugs listed under Schedule III shall be limited to a seventy-two hour supply without refill;

(C) Categories of other drugs may be excluded as determined by the board;

(2) All pharmacological categories of drugs to be prescribed by a physician assistant shall be listed in each job description submitted to the board as required in subsection (g) of this section;

(3) The maximum dosage a physician assistant may prescribe;

(4) A requirement that to be eligible for prescription privileges, a physician assistant shall have performed patient care services for a minimum of two years immediately preceding the submission to the board of the job description containing prescription privileges and shall have successfully completed an accredited course of instruction in clinical pharmacology approved by the board; and

(5) A requirement that to maintain prescription privileges, a physician assistant shall continue to maintain national certification as a physician assistant, and in meeting the national certification requirements shall complete a minimum of ten hours of continuing education in rational drug therapy in each certification period. Nothing in this subsection shall be construed to permit a physician assistant to independently prescribe or dispense drugs.

(m) A supervising physician shall not supervise at any one time more than two physician assistants, except that a physician may supervise up to four hospital-employed physician assistants.
A physician assistant shall not sign any prescription, except in the case of an authorized physician assistant at the direction of his or her supervising physician in accordance with the provisions of subsection (l) of this section. A physician assistant shall not perform any service that his or her supervising physician is not qualified to perform. A physician assistant shall not perform any service that is not included in his or her job description and approved by the board as provided for in this section.

The provisions of this section do not authorize any physician assistant to perform any specific function or duty delegated by this code to those persons licensed as chiropractors, dentists, dental hygienists, optometrists or pharmacists or certified as nurse anesthetists.

(n) Each application for licensure submitted by a licensed supervising physician under this section is to be accompanied by a fee of one hundred dollars. A fee of fifty dollars is to be charged for the biennial renewal of the license. A fee of twenty-five dollars is to be charged for any change of supervising physician.

(o) Beginning with the biennial renewal forms completed by physician assistants and submitted to the board in the year one thousand nine hundred ninety-three, as a condition of renewal of physician assistant license, each physician assistant shall provide written documentation pursuant to rules promulgated by the board in accordance with chapter twenty-nine-a of this code of participation in and successful completion during the preceding two-year period of a minimum of forty hours of continuing education designated as category I by the American medical association, American academy of physician assistants or the academy of family physicians, and sixty hours of continuing education designated as category II by the association or either academy. Notwithstanding any provision of this chapter to the contrary, failure to timely submit the required written documentation shall result in the automatic suspension of any license as a physician assistant until the written documentation is submitted to and approved by the board.
(p) It is unlawful for any physician assistant to represent to any person that he or she is a physician, surgeon or podiatrist. Any person who violates the provisions of this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than two years, or be fined not more than two thousand dollars, or both fined and imprisoned.

(q) All physician assistants holding valid certificates issued by the board prior to the first day of July, one thousand nine hundred ninety-two, shall be considered to be licensed under this section.

CHAPTER 206

(H. B. 4591—By Delegates Given, Trump, Compton, Rowe and Michael)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and ten, article twenty-seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the board of barbers and cosmetologists; placing aestheticians under the authority of the board; permitting tropical birds in shops; and authorizing the promulgation of rules by the board of health to establish sanitation and safety requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.

§30-27-1. Board of barbers and cosmetologists; salary of board director; appointment, qualifications and terms of board members; compensation and expenses of members; powers and duties of board.
§30-27-10. Requirements to operate shops and schools; sanitary rules.

§30-27-1. Board of barbers and cosmetologists; salary of board director; appointment, qualifications and terms of board members; compensation and expenses of members; powers and duties of board.

(a) The board of barbers and beauticians heretofore established is continued and shall be known henceforth as the board of barbers and cosmetologists. The annual salary of the director of such board shall be thirty-one thousand seven hundred ninety-six dollars. All members of the board, serving for a term which has not expired on the effective date of this article, shall continue to serve the terms for which they were appointed. The board shall promulgate rules pursuant to the provisions of article three, chapter twenty-nine-a of this code, pertaining to the licensure and qualifications of barbers, cosmetologists and manicurists, and curricula and standards of instruction for schools of barbering and beauty culture. The board shall aid and assist in the enforcement of all rules in accordance with the provisions of article fourteen, chapter sixteen of this code. The board shall consist of four professional members to be appointed by the governor, by and with the advice and consent of the Senate, and one lay member to be appointed in accordance with the provisions of section four-a, article one of this chapter. Of the four professional members, one shall be an employing barber, one an employee barber, one an employing cosmetologist and one an employee cosmetologist. Each professional member of the board shall have been engaged within this state in the practice of barbering or beauty culture, as the case may be, for a period of five years prior to his or her appointment and no more than two of the four professional members may belong to the same political party. No member of the board shall own or have a pecuniary interest in a barber or beauty culture school licensed by or doing business within this state or shall be employed by such an institution.

(b) On or before the thirtieth day of June of each year, the governor shall appoint one member of the board to serve for a term of four years, to begin on the first day
of July. No professional member of the board may serve
for more than two complete terms.

(c) The board shall designate one of its members as
chairperson.

(d) Each member of the board shall receive as com-
pensation a per diem of fifty dollars for each day of atten-
dance at board sessions, but the compensation for each
member shall not exceed the sum of three thousand dol-
ars in any calendar year. Each member shall be reim-
bursed for actual and necessary expenses incurred in the
performance of his or her duties, upon presentation of an
itemized sworn statement thereof.

(e) The board shall examine all applicants for licen-
sure and shall issue licenses to those entitled thereto and
collect examination and licensure fees, in accordance with
regulations promulgated by the board of health pursuant
to article fourteen, chapter sixteen of this code or the
board of barbers and cosmetologists.

(f) It is unlawful for any person to practice or offer to
practice barbering, beauty culture or manicuring in this
state without first obtaining a license for such purposes
from the board of barbers and cosmetologists.

(g) The board shall have the power to promulgate
rules generally regarding the practice and conduct of
barbering and beauty culture, including, but not limited to,
the procedures, criteria and curricula for examination and
qualifications of applicants for licensure, and for the li-
censing of instructional personnel for schools of barber-
ing and beauty culture, and the practice and conduct of
aestheticians.

The power of the board to promulgate rules shall be
concurrent with that of the board of health as authorized
in article fourteen, chapter sixteen of this code: Provided,
That in the case of conflicting provisions regarding re-
quirements for health and sanitation, the rule of the board
of health shall be deemed to apply. The board of health
and the board of barbers and cosmetologists shall for a
reasonable fee make available upon request to any licens-
ee a copy of any rules.
§30-27-10. Requirements to operate shops and schools; sanitary rules.

It shall be unlawful for any person, firm or corporation to own or operate a beauty shop or barbershop, or a school of beauty culture or barbering, or to act as a barber, beautician or manicurist, unless:

(a) The beauty shop, barbershop, or school of beauty culture or barbering shall before opening its place of business to the public, have been approved by the board as having met all the requirements and qualifications for the places of business as are required by this article and for this purpose. It shall be the duty of the owner or operator of each beauty shop, barbershop, or school of beauty culture or barbering to notify the board, in writing, at least ten days before the proposed opening date of the shop or school, whereupon it shall become the duty of the board, through the inspectors herein provided for, to inspect that shop or school. Upon giving notice of the opening of any shop or school, the owner or operator shall pay to the board an inspection fee of twenty-five dollars. In the event the shop or school fails to meet the requirements of this article, and is not approved, the inspection fee shall be returned to the person paying same. Any shop or school meeting the prescribed requirements shall be granted a license permitting it to do business. If, however, after the lapse of ten days after the giving of the notice of opening to the board, an inspection is not made or a certificate of opening has not been granted or refused, the owner or operator of the shop or school may open provisionally subject to later inspection and to all other provisions and rules provided for in this article;

(b) All shops and schools, bathrooms, toilets and adjoining rooms used in connection therewith, are kept clean, sanitary, well lighted and ventilated at all times. The use of chunk alum, powder puffs and styptic pencils in any shop is prohibited;

(c) Each barber, beautician, manicurist, instructor and student shall thoroughly cleanse his or her hands with soap and water immediately before serving any patron;
(d) Each patron is served with clean, freshly laundered linen that is kept in a closed cabinet used for that purpose alone. All linens, immediately after being used, shall be placed in a receptacle used for that purpose alone.

The board of health shall prescribe any other rules in regard to sanitation and cleanliness in such shops and schools as it may deem proper and necessary: Provided, That these shops may contain a tropical bird for display purposes: Provided, however, That the board of health in consultation with the board of barbers and cosmetologists and the board of veterinary medicine shall promulgate rules establishing minimum sanitary and safety requirements designed to protect the health of both the public and the tropical birds. The director of health or inspectors designated pursuant to subsection (d), section one, article fourteen, chapter sixteen of the code shall have the power to enforce compliance. All rules shall be kept posted in a conspicuous place in each shop or school.

CHAPTER 207

(Com. Sub. for H. B. 4136—By Mr. Speaker, Mr. Chambers, and Delegates Adkins, Sprouse, Amores and Leach)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]
hearings and procedures; judicial review; prohibitions and penalties; and termination of the board.

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-five, to read as follows:

ARTICLE 35. BOARD OF DIETITIANS.

§30-35-1. License to practice.

(a) After the thirtieth day of June, one thousand nine hundred ninety-seven, anyone who represents or implies to the public by use of the title "dietitian" or "licensed dietitian" or any other title intended to convey the impression that he or she is authorized to practice dietetics in this state must be licensed pursuant to this article.

(b) No person may use any title, sign, card or other device which indicates that such person is a licensed dietitian unless expressly authorized and licensed pursuant to the provisions of this article: Provided, That a dietitian registered by the commission on dietetic registration may use the title of registered dietitian: Provided, however,
That the requirements and provisions of this article do not apply to any person employed as a cook at any public or private educational institution in this state.

(c) Nothing in this article may be construed to affect individuals who furnish nutrition information on food, food materials or dietary supplements or who engage in explanation to customers about food, food materials or dietary supplements in connection with the marketing and distribution of those products, and who do not use the title "dietician" or "licensed dietician."


As used in this article, the following terms shall have the meanings ascribed to them:

(a) "Board" means the West Virginia board of licensed dietitians;

(b) "Commission on dietetic registration" means the commission on dietetic registration that is a member of the national commission for health certifying agencies;

(c) "Fund" means the board of examiners for dietitians' administrative fund created pursuant to the provision of section five of this article;

(d) "Licensed dietitian" means any person who has obtained a license to practice as a licensed dietitian from the West Virginia board of licensed dietitians; and

(e) "Registered dietitian" means a person registered by the commission on dietetic regulation.

§30-35-3. Board of licensed dietitians.

(a) There is hereby created the West Virginia board of licensed dietitians. The board consists of five members who shall be appointed by the governor, by and with the advice and consent of the Senate. The governor shall make appointments from a list of not less than eight names submitted to the governor by the West Virginia dietetic association. Each member of the board shall be a citizen of the United States and a resident of this state. Four members shall have experience as a registered or
licensed dietitian for a minimum of three years preceding the date of appointment. One member of the board shall be a lay person who is not a registered or licensed dietitian and not subject to the practice requirements of this subsection.

(b) The governor shall appoint initially one member for a term of one year, one for a term of two years, one for a term of three years and two for a term of four years. Thereafter, the members of the board shall be appointed for overlapping terms of four years. No member of the board may serve more than four years.

(c) In the event a board member is unable to complete a term, the governor shall appoint a person with similar qualifications to complete the unexpired term. Each vacancy occurring on the board shall be filled by appointment within sixty days after such vacancy is created.

(d) Each member of the board shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of the board member's duties, not to exceed fifty dollars per day.

(e) At its initial meeting, and annually thereafter, the members shall elect a chair, vice chair and secretary. The chair shall preside over the meetings and hearings of the board. The vice chair shall assume the chair's duties in the absence of the chair. All meetings shall be general meetings for the consideration of any matter which may properly come before the board. A majority of the board constitutes a quorum for the transaction of business. The board shall meet at least once a year and at such other times and places as it may determine; and shall meet on the call of the chair. It shall be the duty of the chair to call a meeting of the board on the written request of three members thereof. The board shall keep an accurate record of all proceedings and maintain such board records. The board may employ personnel necessary to accomplish the performance of its duties: Provided, That the board may not expend more than it has available to it solely through the fees established in this article.

(a) The board may, in its discretion, perform the following functions and duties, depending on the financial resources available to the board:

(1) Promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to implement and effectuate the provisions of this article, including, but not limited to, legislative rules establishing the following:

(A) A code of professional ethics;

(B) Continuing education requirements and standards;

(C) Examination, licensure and renewal requirements of duly qualified applicants; and

(D) Procedures and guidelines for the suspension or revocation of a license.

(2) Adopt procedural and interpretive rules in accordance with the provisions of chapter twenty-nine-a of this code;

(3) Adopt an official seal;

(4) Conduct license examinations of duly qualified applicants;

(5) Issue and renew licenses and issue interim permits to duly qualified applicants;

(6) Impose and collect fees for the issuance and renewal of permits or licenses;

(7) Suspend, revoke and reinstate licenses;

(8) Conduct hearings on licensing issues and any other matter properly within the jurisdiction of the board;

(9) Maintain a record of all proceedings of the board; and

(10) Submit a biennial report to the governor describing the activities of the board.

(b) The Legislature finds and declares that this board is intended to be fully self supported through the fee
structure provided for in this article, and that the board shall not require any legislative appropriation beyond the revenues the board receives in fees. Accordingly, in the event the board has insufficient moneys to perform its duties under this article, the board shall prioritize its duties under this article so at all times to remain within the money available to it through the fees established in this article. The board created in this article has only discretionary duties.

§30-35-5. Fees; special revenue account; expenditures and transfers.

(a) All fees and other moneys collected by the board pursuant to the provisions of this article shall be deposited in an appropriated special revenue account designated the "board of examiners for licensed dietitians," which is hereby created in the state treasury.

(b) All expenses incurred by the board shall be paid from the special fund provided in subsection (a) herein. No compensation or expense incurred pursuant to the provisions of this article may be charged against the general revenue funds of this state. Expenditures shall be made only in accordance with appropriation by the Legislature pursuant to the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions of article two, chapter five-a of this code. Expenditures from the special fund shall be for the purposes set forth in this article and are not authorized from collections: 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.

(c) Amounts collected which are found from time to time to exceed the funds needed to effectuate the purposes set forth in this section may be transferred to other accounts or funds and redesignated for other purposes upon appropriation by the Legislature.

§30-35-6. Provisional permits; renewals; fees.
The board may issue a provisional permit to engage in practice as a licensed dietitian to any person who has not met the experience requirements set forth in this article upon the filing of an application and submission of evidence of successful completion of the education requirements of this article. A provisional permit expires one year from the date of issuance. Renewals may be issued for a period not to exceed three years upon request by the applicant and submission of a satisfactory explanation for the applicant's failure to become licensed.

(b) The fee for a provisional permit or renewal is fifty dollars, which shall be submitted with the application. All fees collected shall be deposited to the credit of the fund provided in section five of this article.

§30-35-7. Qualifications; licensure; examinations; waivers and fees.

(a) An applicant for a license to engage in practice as a licensed dietitian shall submit to the board written evidence, verified by oath, that he or she:

(1) Complies with the code of ethics adopted by the board;

(2) Has completed a major course of study in human nutrition, dietetics, food systems management or equivalent thereof and possesses a baccalaureate or postbaccalaureate degree; and

(3) Has completed a planned continuous professional experience component in dietetic practice of not less than nine hundred hours under the supervision of a registered or licensed dietitian.

(b) Each applicant is required to pass a written examination demonstrating competence in the discipline of dietetics and nutrition. Each written examination may be supplemented by an oral examination. The board shall determine the times and places for examinations.

(c) Upon successfully passing such examination or examinations, the board shall issue to the applicant a license to engage in practice as a licensed dietitian. In the
event an applicant has failed to pass examinations on three occasions, the applicant shall, in addition to the other requirements of this section, present to the board such other evidence of his or her qualifications as the board may prescribe.

(d) Prior to the thirtieth day of June, one thousand nine hundred ninety-seven, the board shall waive the examination requirements of this section and shall grant a license to any person who:

(1) Is registered by the commission on dietetic registration as a registered dietitian; or

(2) Possesses a baccalaureate or postbaccalaureate degree and has completed a major course of study in the fields of human nutrition, dietetics, food systems management or equivalent, as approved by the board, and has been engaged in the practice of dietetics or nutrition for three of the last ten years.

(e) Upon application and submission of the applicable fee, the board may waive the examination requirements of this section and issue a license to practice as a licensed dietitian to an applicant who is registered by the commission on dietetic registration or who has been duly licensed as a nutritionist or dietitian under the laws of another state if the standards for licensing in that state are no less stringent than those required under the provisions of this article.

(f) Any person applying for a dietitian license shall submit a fee of fifty dollars with the application to the board, which fee shall be deposited to the credit of the fund provided in section five of this article.

§30-35-8. Renewal of licenses; reinstatement; fees; penalties; inactive lists.

(a) The license of every person licensed under the provisions of this article shall be annually renewed except as otherwise provided by this section. At such times as the board, in its discretion, may determine, the board shall mail a renewal application to every person whose license was initially granted or renewed during the previous calen-
All persons seeking renewal shall submit a completed application and a fifty-dollar annual renewal fee. Upon receipt of the application and fee, the board shall verify the accuracy of the application and, if it is accurate, issue to the applicant a certificate of renewal of the license for the current year. The certificate of renewal entitles the holder thereof to practice dietetics for the period stated on the certificate of renewal.

(b) Any licensee who allows his or her license to lapse by failing to renew for a period not exceeding three years, may be reinstated by the board upon receipt of a satisfactory explanation for such failure to renew his or her license and payment of the annual renewal fee plus a reinstatement fee of twenty-five dollars.

(c) Any person allowing his or her license to lapse for a period exceeding three years is required, to be reinstated as a licensed dietitian, to pass a written examination established by the board, and to pay to the board a licensing fee of fifty dollars.

(d) Any person engaged in the practice of licensed dietetics during the time his or her license has lapsed is in violation of the provisions of this article and is subject to the penalties provided in section fourteen of this article.

(e) Any licensed dietitian who desires to retire from practice temporarily shall submit a written notice of such retirement to the board. Upon receipt of such notice the board shall place the name of such person upon the inactive list. Any person remaining on the inactive list may not engage in the practice of licensed dietetics in this state and is not subject to the payment of any renewal fees. Upon submission of an application for renewal of license and payment of the renewal fee for the current year, a licensed dietitian may resume active practice.

§30-35-9. Contents of license or provisional permit.

Each license or provisional permit issued by the board shall bear a serial number, the full name of the applicant, the date of expiration of any such license, or the date of issuance and expiration of any such provisional permit
and the seal of the board, and shall be signed by the secre-
tary of the board. The licensee shall display the license in
his or her place of business in view of the public.

§30-35-10. Denial, revocation or suspension of license;
grounds for discipline.

(a) The board may at any time upon its own motion,
and shall upon the verified written complaint of any per-
son, conduct an investigation to determine whether there
are grounds for denial, suspension or revocation of a li-
cense issued pursuant to the provisions of this article.

(b) The board may deny, revoke or suspend any li-
cense to engage in the practice of licensed dietetics issued
pursuant to the provisions of this article, or any applica-
tion therefor, or may otherwise discipline a licensee or
applicant upon proof that he or she:

(1) Is or was guilty of fraud or deceit in procuring or
attempting to procure a license or renewal to practice as a
licensed dietitian;

(2) Has been grossly negligent or exhibited unprofes-
sional or unethical conduct in the practice as a licensed
dietitian;

(3) Is habitually intemperate or is addicted to the use
of alcohol or controlled substances;

(4) Is mentally incompetent; or

(5) Has willfully or repeatedly violated any of the
provisions of this article.


(a) Whenever the board denies an application for any
original or renewal license or denies an application for a
license or suspends or revokes any license, it shall make an
interim order to that effect and serve a copy thereof on the
applicant or licensee by certified mail, return receipt re-
quested. Such order shall state the grounds for the action
taken and shall require that any license or temporary per-
mit suspended or revoked thereby be returned to the
board by the holder within twenty days after receipt of the

(b) Any person adversely affected by any such order
is entitled to a hearing thereon pursuant to the provisions
of article five, chapter twenty-nine-a of this code if, within
twenty days after receipt of a copy of the order, he or she
files with the board a written demand for such hearing. A
demand for hearing shall operate automatically to stay or
suspend the execution of any order. The board may re-
quire the person demanding such hearing to give reason-
able security for the cost of the hearing. If such person
does not substantially prevail at the hearing, the costs
therefor shall be assessed against him or her and may be
collected by civil action or other proper remedy.

(c) Upon a receipt of a written demand for a hearing,
the board shall set a time and place therefor not less than
ten and not more than thirty days thereafter. Any sched-
uled hearing may be continued by the board upon its own
motion or for good cause shown by the person demand-
ing the hearing.

(d) The provisions of article five, chapter twenty-
nine-a of this code apply to and govern the hearing and
administrative procedures in connection therewith.

(e) All administrative hearings shall be conducted by
a quorum of the board. For the purpose of conducting
any such hearing any member of the board may issue
subpoenas and subpoenas duces tecum which shall be
issued and served pursuant to the provisions of section
one, article five, chapter twenty-nine-a of this code.

(f) At any hearing the person who demanded the same
may represent himself or herself or be represented by an
attorney admitted to practice in this state.

(g) After any such hearing and consideration of all
testimony, evidence and record in the case, the board shall
render its decision in writing. The written decision of the
board shall be accompanied by findings of fact and con-
clusions of law as specified in section three, article five,
chapter twenty-nine-a of this code. A copy of such deci-
sion and accompanying findings and conclusions shall be
served by certified mail, return receipt requested, upon the
person demanding such hearing, and the attorney of re-
cord.

(h) The decision of the board is final unless reversed,
vacated or modified upon judicial review thereof in accor-
dance with the provisions of section twelve of this article.


(a) Any applicant or licensee adversely affected by a
decision of the board rendered after a hearing held pursu-
ant to the provisions of section eleven of this article is
entitled to judicial review thereof. All of the provisions of
section four, article five, chapter twenty-nine-a of this code
apply to, and govern, such review.

(b) The judgment of the circuit court shall be final
unless reversed, vacated or modified on appeal to the su-
preme court of appeals in accordance with the provisions
of section one, article six, chapter twenty-nine-a of this
code.


(a) Whenever it appears to the board that any person
has been or is violating or is about to violate any provision
of this article or any final decision of the board, the board
may apply in the name of the state to the circuit court of
the county in which the violation or violations or any part
thereof has occurred, is occurring or is about to occur, or
the judge thereof in vacation, for an injunction against the
person and any other persons who have been, are or are
about to be, involved in any practice, act or omission, so in
violation, enjoining the person or persons from any viola-
tion or violations. Such application may be made and
prosecuted to conclusion regardless of whether any viola-
tion has resulted or shall result in prosecution or convic-
tion pursuant to the provisions of section fourteen of this
article.

(b) Upon application by the board, any circuit court
of this state with appropriate jurisdiction may, by manda-
tory or prohibitory injunction, compel compliance with
the provisions of this article and all final decisions of the
board. The court may issue a temporary injunction in any
case pending a decision on the merits of any application
filed.

(c) The judgment of the circuit court upon any appli-
cation permitted by the provisions of this section shall be
final unless reversed, vacated or modified on appeal to the
supreme court of appeals. Any such appeal shall be
sought in the manner and within the time provided by law
for appeals from circuit courts in other civil cases.


(a) It is a misdemeanor for any person, corporation or
association to:

(1) Sell, fraudulently obtain, furnish or assist in selling,
fraudulently obtaining or furnishing any dietitian license
or license record;

(2) Engage in the practice as a licensed dietitian under
cover of any diploma, license or record illegally or fraud-
ulently obtained;

(3) Represent or imply to the public that he or she is
authorized to use the title "dietitian" or "licensed dietitian"
or any other title intended to convey that impression, un-
less duly licensed pursuant to the provisions of this article;

(4) Engage in the practice as a licensed dietitian dur-
dring the time his or her license is suspended or revoked; or

(5) Otherwise violate any provisions of this article.

(b) Any person, corporation or association who vio-
lates the provisions of subsection (a) of this section is
guilty of a misdemeanor and, upon conviction thereof,
shall be fined not less than fifty dollars nor more than one
hundred dollars.


The board of examiners for licensed dietitians shall be
terminated pursuant to the provisions of article ten, chap-
ter four of this code, on the first day of July, two thousand,
unless sooner terminated, continued or reestablished pur-
suant to the provisions of such article.
CHAPTER 208

(Com. Sub. for H. B. 4200—By Delegates Fleischauer, Gallagher, Compton, Mezzatesta, Amores and Petersen)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-six, relating to requiring licensing for acupuncturists; definitions; creating an acupuncture board; board membership; officers; quorum; meetings; reimbursement; staff; rule making authority; powers and duties; acupuncture board fund; fees; expenses; disposition of funds; license required; exemptions; qualifications of applicants; applications for licenses; issuance of license; scope of license; term and renewal of licenses; advertisements; reciprocity; inactive status; reinstatement of expired license; surrender of license; reprimands, probations, suspensions and revocation; grounds; due process procedure.

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-six, to read as follows:

ARTICLE 36. ACUPUNCTURISTS.

§30-36-1. License required to practice.
§30-36-2. Definitions.
§30-36-3. Board established.
§30-36-4. Board membership.
§30-36-5. Officers.
§30-36-6. Quorum; meetings; reimbursement; staff.
§30-36-7. Rule-making authority; miscellaneous powers and duties.
§30-36-8. Acupuncture board fund; fees; expenses; disposition of funds.
§30-36-9. License required; exemptions.
§30-36-10. Qualifications of applicants.
§30-36-11. Applications for license.
§30-36-12. Issuance of license.
§30-36-14. Term and renewal of licenses; advertisements.
§30-36-15. Reciprocal licensure of acupuncturists from other states or countries.
§30-36-16. Inactive status; reinstatement of expired license.
§30-36-17. Surrender of license by licensee.
§30-36-18. Reprimands, probations, suspensions and revocations; grounds.
§30-36-19. Due process procedure.

§30-36-1. License required to practice.

In order to protect the life, health and safety of the public, any person practicing or offering to practice as an acupuncturist 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-seven, it shall be unlawful for any person not licensed under the provisions of this article to practice acupuncture in this state, or to use any title, sign, card or device to indicate that he or she is an acupuncturist. The provisions of this article are not intended to limit, preclude or otherwise interfere with the practice of other 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 acupuncturist.

§30-36-2. Definitions.

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

(1) "Acupuncture" means a form of health care, based on a theory of energetic physiology, that describes the interrelationship of the body organs or functions with an associated point or combination of points.

(2) "Board" means the West Virginia acupuncture board.

(3) "License" means a license issued by the board to practice acupuncture.

(4) "Moxibustion" means the burning of mugwort on or near the skin to stimulate the acupuncture point.
(5) "Practice acupuncture" means the use of oriental medical therapies for the purpose of normalizing energetic physiological functions including pain control, and for the promotion, maintenance and restoration of health.

(b) "Practice acupuncture" includes:

(1) Stimulation of points of the body by the insertion of acupuncture needles;

(2) The application of moxibustion; and

(3) Manual, mechanical, thermal or electrical therapies only when performed in accordance with the principles of oriental acupuncture medical theories.

§30-36-3. Board established.

There is hereby created a state board to be known and designated as the "West Virginia Acupuncture Board."

§30-36-4. Board membership.

(a) The board shall consist of five members appointed by the governor with the advise and consent of the Senate.

(1) Three shall be licensed acupuncturists appointed from a list submitted as provided in subsection (c) of this section;

(2) One shall be a member of the general public; and

(3) One shall be a physician licensed to practice medicine in the state of West Virginia.

(b) Each licensed acupuncturist shall:

(1) Be a resident of the state; and

(2) For at least three years immediately prior to appointment have been engaged in the practice of acupuncture in the state.

(c) For each vacancy of an acupuncture member, the board shall compile a list of names to be submitted to the governor in the following manner:

(1) The board shall notify all licensed acupuncturists in the state of the vacancy to solicit nominations to fill the vacancy;
(2) Each professional association of acupuncturists in the state shall nominate at least two persons for every vacancy; and

(3) Each educational institution that provides acupuncture training in the state shall nominate at least two persons for every vacancy.

(d) The member from the general public:

(1) May not be or ever have been an acupuncturist or in training to become an acupuncturist;

(2) May not have a household member who is an acupuncturist or in training to become an acupuncturist;

(3) May not participate or ever have participated in a commercial or professional field related to acupuncture;

(4) May not have a household member who participates in a commercial or professional field related to acupuncture; and

(5) May not have had within two years prior to appointment a substantial financial interest in a person regulated by the board.

(e) While a member of the board, the member from the general public may not have a substantial financial interest in a person regulated by the board.

(f) Before taking office, each appointee to the board shall take and subscribe to the oath prescribed by section 5, article IV of the constitution of this state.

(g) Tenure; vacancies.

(1) The term of a member is three years.

(2) The terms of members are staggered from the first day of July, one thousand nine hundred ninety-six. The terms of the members first appointed shall expire as designated by the governor at the time of the nomination, one at the end of the first year, two at the end of the second year, and two at the end of the third year. As these original appointments expire, each subsequent appointment shall be for a full three-year term.
(3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(4) A member may not serve more than two consecutive full terms.

(5) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(h) 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.

§30-36-5. Officers.

From among its members, the board shall elect officers in a manner and for terms that the board determines.

§30-36-6. Quorum; meetings; reimbursement; staff.

(a) A majority of the full authorized membership of the board constitutes a quorum.

(b) The board shall meet at least twice a year, at the times and places that it determines.

(c) Each member of the board is entitled to reimbursement of travel and other necessary expenses actually incurred while engaging in board activities. All reimbursement of expenses shall be paid out of the acupuncture board fund created by the provisions of this article.

(d) The board may employ such staff as necessary to perform the functions of the board, including an administrative secretary, and pay all personnel from the acupuncture board fund in accordance with the state budget.

(e) The board may contract with other state boards or state agencies to share offices, personnel and other administrative function as authorized under this article.
§30-36-7. Rule-making authority; miscellaneous powers and duties.

(a) The board may propose for promulgation legislative rules to carry out the provisions of this article in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(b) The board may adopt a code of ethics for licensure.

(c) In addition to the powers set forth elsewhere in this article, the board shall keep:

(1) Records and minutes necessary for the orderly conduct of business; and

(2) A list of each currently licensed acupuncturist.

§30-36-8. Acupuncture board fund; fees; expenses; disposition of funds.

(a) There is hereby established an acupuncture board fund in the state treasurer's office.

(b) The board may set reasonable fees for the issuance and renewal of licenses and its other services. All funds to cover the compensation and expenses of the board members or staff shall be generated by the fees set under this subsection.

(c) The board shall pay all fees collected under the provisions of this article to the state treasurer.

(d) The fund shall be used exclusively to cover the actual documented direct and indirect costs of fulfilling the statutory and regulatory duties of the board as provided by the provisions of this article. The fund is a continuing, nonlapsing fund. Any unspent portions of the fund may not be transferred or revert to the general revenue fund of the state, but shall remain in the fund to be used for the purposes specified in this article.

(e) The legislative auditor shall audit the accounts and transactions of the fund.

§30-36-9. License required; exemptions.
(a) Except as otherwise provided in this article, an individual shall be licensed by the board before he or she may practice acupuncture in this state.

(b) This section does not apply to:

(1) An individual employed by the federal government as an acupuncturist while practicing within the scope of that employment; or

(2) A student, trainee or visiting teacher who is designated as a student, trainee or visiting teacher while participating in a course of study or training under the supervision of a licensed acupuncturist in a program that is approved by the board or the state board of education.

§30-36-10. Qualifications of applicants.

To qualify for a license, an applicant shall:

(a) Be of good moral character;

(b) Be at least 18 years of age;

(c) Demonstrate competence in performing acupuncture by meeting one of the following standards for education, training or demonstrated experience:

(1) Graduation from a course of training of at least one thousand eight hundred hours, including three hundred clinical hours, that is:

(A) Approved by the national accreditation commission for schools and colleges of acupuncture and oriental medicine; or

(B) Found by the board to be equivalent to a course approved by the national accreditation commission for schools and colleges of acupuncture and oriental medicine;

(2) Achievement of a passing score on an examination that is:

(A) Given by the national commission for the certification of acupuncturists; or
(B) Determined by the board to be equivalent to the examination given by the national commission for the certification of acupuncturists;

(3) Successful completion of an apprenticeship consisting of at least two thousand seven hundred hours within a five-year period under the direction of an individual properly approved by that jurisdiction to perform acupuncture; or

(4) Performance of the practice of acupuncture in accordance with the law of another jurisdiction or jurisdictions for a period of at least three years within the five years immediately prior to application that consisted of at least five hundred patient visits per year; and

(d) Achievement of any other qualifications that the board establishes in rules.

§30-36-11. Applications for license.

To apply for a license, an applicant shall:

(a) Submit an application to the board on the form that the board requires; and

(b) Pay to the board the application fee set by the board.

§30-36-12. Issuance of license.

The board shall issue a license to any applicant who meets the requirements of this article and the rules adopted by the board pursuant to this article.


Except as otherwise provided in this article, a license authorizes the licensee to practice acupuncture while the license is effective.

§30-36-14. Term and renewal of licenses; advertisements.

(a) Terms of license:

(1) The board shall provide for the term and renewal of licenses under this section;

(2) The term of a license may not be more than three years;
A license expires at the end of its term, unless the license is renewed for a term as provided by the board.

(b) Renewal notice. At least one month before the license expires, the board shall send to the licensee, by first-class mail to the last known address of the licensee, a renewal notice that states:

(1) The date on which the current license expires;
(2) The date by which the renewal application must be received by the board for the renewal to be issued and mailed before the license expires; and
(3) The amount of the renewal fee.

(c) Applications for renewal. Before the license expires, the licensee periodically may renew it for an additional term, if the licensee:

(1) Otherwise is entitled to be licensed;
(2) Pays to the board a renewal fee set by the board; and
(3) Submits to the board:

(A) A renewal application on the form that the board requires; and
(B) Satisfactory evidence of compliance with any continuing education requirements set under this section for license renewal.

(d) In addition to any other qualifications and requirements established by the board, the board may establish continuing education requirements as a condition to the renewal of licenses under this section.

(e) The board shall renew the license of and issue a renewal certificate to each licensee who meets the requirements of this section.

(f) A licensee may advertise only as permitted by rules adopted by the board.

§30-36-15. Reciprocal licensure of acupuncturists from other states or countries.

(a) The acupuncture board may by reciprocity license acupuncturists in this state who have been legally
registered or licensed acupuncturists 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 acupuncturists from another state where that state does not permit reciprocity to acupuncturists licensed in West Virginia.

(b) The board may refuse reciprocity to acupuncturists 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 board the established fee.

§30-36-16. Inactive status; reinstatement of expired license.

(a) The board shall place a licensee on inactive status if the licensee submits to the board:

(1) An application for inactive status on the form required by the board; and

(2) The inactive status fee set by the board.

(b) The board shall issue a license to an individual who is on inactive status if the individual complies with the renewal requirements that exist at the time the individual changes from inactive to active status.

(c) The board shall reinstate the license of a former licensee who has failed to renew the license for any reason if the former licensee:

(1) Meets the renewal requirements of section fourteen of this article; and

(2) Pays to the board a reinstatement fee set by the board.

§30-36-17. Surrender of license by licensee.

(a) Unless the board agrees to accept the surrender of a license, a licensee may not surrender the license nor may the license lapse by operation of law while the licensee is
§30-36-18. Reprimands, probations, suspensions and revocations; grounds.

The board, on the affirmative vote of a majority of its full authorized membership, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

(a) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;

(b) Fraudulently or deceptively:

(1) Uses a license; or

(2) Solicits or advertises.

(c) Is guilty of immoral or unprofessional conduct in the practice of acupuncture;

(d) Is professionally, physically or mentally incompetent;

(e) Provides professional services while:

(1) Under the influence of alcohol; or

(2) Using any narcotic or controlled substance, as defined in section one hundred one, article one, chapter sixty-a of this code, or other drug that is in excess of therapeutic amounts or without a valid medical indication;

(f) Knowingly violates any provision of this article or any rule of the board adopted under this article;

(g) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;
(h) Practices acupuncture with an unauthorized person or assists an unauthorized person in the practice of acupuncture;

(i) Is disciplined by the licensing or disciplinary authority of any other state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under this section;

(j) Willfully makes or files a false report or record in the practice of acupuncture;

(k) Willfully fails to file or record any report as required by law, willfully impedes or obstructs the filing or recording of the report, or induces another to fail to file or record the report;

(l) Submits a false statement to collect a fee; or

(m) Refuses, withholds from, denies or discriminates against an individual with regard to the provision of professional services for which the person is licensed and qualified to render because the individual is HIV positive, in conformity with standards established for treatment by physicians, dentists and other licensed health care professionals in cases of this nature.

§30-36-19. 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 sixteen 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 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.

CHAPTER 209

(S. B. 94—By Senators Wooton, Anderson, Bowman, Dittmar, Grubb, Oliverio, Ross, Schoonover, Wagner, Buckalew and Scott)

[Passed March 15, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, six, eight, nine, thirteen-a, fifteen and seventeen, article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to public defender services generally; defining eligible proceedings to include ancillary proceedings to enhance sentences and for the forfeiture of property; defining legal representation to include services as guardian ad litem; requiring public defender corporations to file periodic reports; removing the requirement that one public defender serve two certain judicial circuits; eliminating requirement that panel attorneys file written request for appointments to represent eligible clients; compensation rates for attorney and paralegal services; limitations on reimbursements for transcripts, court reporter and transcription services, travel expenses and investigative services; voucher requirements and corrections; terms of governor's appointees to boards of directors of public defender corporations; public notice required for meetings of such boards of directors; limitations on compensation benefits to
part-time employees of public defender corporations; re­moval of such employees; eligibility of member of such boards of directors to represent eligible clients; and dismissal of certain employees of public defender corporations for violation of provisions restricting the part-time practice of law by such employees.

Be it enacted by the Legislature of West Virginia:

That sections two, six, eight, nine, thirteen-a, fifteen and sev­enteen, article twenty-one, 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:

ARTICLE 21. PUBLIC DEFENDER SERVICES.


1 As used in this article, the following words and phrases
2 are hereby defined:

3 (1) "Eligible client": Any person who meets the re­
4 quirements established by this article to receive publicly
5 funded legal representation in an eligible proceeding as
6 defined herein;

7 (2) "Eligible proceeding": Criminal charges which
8 may result in incarceration; juvenile proceedings; pro­
9 ceedings to revoke parole or probation if the revocation
10 may result in incarceration; contempt of court; child abuse
11 and neglect proceedings which may result in a termination
12 of parental rights; mental hygiene commitment proceed­
13 ings; extradition proceedings; proceedings which are an­
14 cilliary to an eligible proceeding, including, but not limited
15 to, proceedings to enhance sentences brought pursuant to
16 sections eighteen and nineteen, article eleven, chapter
sixty-one of this code, forfeiture proceedings brought pursuant to article seven, chapter sixty-a of this code, and proceedings brought to obtain extraordinary remedies; and appeals from or post-conviction challenges to the final judgment in an eligible proceeding. Legal representation provided pursuant to the provisions of this article is limited to the court system of the state of West Virginia, but does not include representation in municipal courts unless the accused is at risk of incarceration;

(3) "Legal representation": The provision of any legal services or legal assistance as counsel or guardian ad litem consistent with the purposes and provisions of this article;

(4) "Private practice of law": The provision of legal representation by a public defender or assistant public defender to a client who is not entitled to receive legal representation under the provisions of this article, but does not include, among other activities, teaching;

(5) "Public defender": The staff attorney employed on a full-time basis by a public defender corporation who, in addition to providing direct representation to eligible clients, has administrative responsibility for the operation of the public defender corporation. The public defender may be a part-time employee if the board of directors of the public defender corporation finds efficient operation of the corporation does not require a full-time attorney and the executive director approves such part-time employment;

(6) "Assistant public defender": A staff attorney providing direct representation to eligible clients whose salary and status as a full-time or part-time employee are fixed by the board of directors of the public defender corporation;

(7) "Public defender corporation": A corporation created under section eight of this article for the sole purpose of providing legal representation to eligible clients;
(8) "Public defender office": An office operated by a public defender corporation to provide legal representation under the provisions of this article.

(a) Consistent with the provisions of this article, the agency is authorized to make grants to and contracts with public defender corporations and with individuals, partnerships, firms, corporations and nonprofit organizations, for the purpose of providing legal representation under this article, and may make such other grants and contracts as are necessary to carry out the purposes and provisions of this article.

(b) The agency is authorized to accept, and employ or dispose of in furtherance of the purposes of this article, any money or property, real, personal or mixed, tangible or intangible, received by gift, devise, bequest or otherwise.

(c) The agency shall establish and the executive director or his designate shall operate a criminal law research center as provided for in section seven of this article. This center shall undertake directly, or by grant or contract, to serve as a clearinghouse for information; to provide training and technical assistance relating to the delivery of legal representation; and to engage in research, except that broad general legal or policy research unrelated to direct representation of eligible clients may not be undertaken.

(d) The agency shall establish and the executive director or his designate shall operate an accounting and auditing division to require and monitor the compliance with this article by public defender corporations and other persons or entities receiving funding or compensation from the agency. This division shall review all plans and proposals for grants and contracts, and shall make a recommendation of approval or disapproval to the executive director. The division shall prepare, or cause to be prepared, reports concerning the evaluation, inspection or monitoring of public defender corporations and other grantees, contractors, persons or entities receiving financial assistance under this article, and shall further carry out the
agency's responsibilities for records and reports as set forth in section eighteen of this article.

The accounting and auditing division shall require each public defender corporation to periodically report on the billable and nonbillable time of its professional employees, including time utilized in administration of the respective offices, so as to compare such time to similar time expended in nonpublic law offices for like activities.

The accounting and auditing division shall provide to the executive director assistance in the fiscal administration of all of the agency's divisions. Such assistance shall include, but not be limited to, budget preparation and statistical analysis.

(e) The agency shall establish and the executive director or a person designated by the executive director shall operate an appellate advocacy division for the purpose of prosecuting litigation on behalf of eligible clients in the supreme court of appeals. The executive director or a person designated by the executive director shall be the director of the appellate advocacy division. The appellate advocacy division shall represent eligible clients upon appointment by the circuit courts, or by the supreme court of appeals. The division may, however, refuse such appointments due to a conflict of interest or if the executive director has determined the existing caseload cannot be increased without jeopardizing the appellate division's ability to provide effective representation. In order to effectively and efficiently utilize the resources of the appellate division the executive director may restrict the provision of appellate representation to certain types of cases.

The executive director is empowered to select and employ staff attorneys to perform the duties prescribed by this subsection. The division shall maintain vouchers and records for representation of eligible clients for record purposes only.

(a) In each judicial circuit of the state, there is hereby created a "public defender corporation" of the circuit. The purpose of these public defender corporations is to provide legal representation in the respective circuits in accordance with the provisions of this article.

(b) If the judge of a single-judge circuit, the chief judge of a multi-judge circuit or a majority of the active members of the bar in the circuit determine there is a need to activate the corporation, they shall certify that fact in writing to the executive director. The executive director shall allocate funds to those corporations so certifying in the order in which he or she deems most efficient and cost effective.

(c) Public defender corporations may apply in writing to the executive director for permission to merge to form multi-circuit or regional public defender corporations. Applications for mergers shall be subject to the review procedures set forth in section eleven of this article.


(a) In each circuit of the state, the circuit court shall establish and maintain regional and local panels of private attorneys-at-law who shall be available to serve as counsel for eligible clients.

An attorney-at-law may become a panel attorney and be enrolled on the regional or local panel, or both, to serve as counsel for eligible clients, by informing the court. An agreement to accept cases generally or certain types of cases particularly shall not prevent a panel attorney from declining an appointment in a specific case.

(b) In all cases where an attorney-at-law is required to be appointed for an eligible client, the appointment shall be made by the circuit judge. In circuits where a public defender office is in operation, the judge shall appoint the public defender office unless such appointment is not appropriate due to a conflict of interest or unless the public defender corporation board of directors or the public defender, with the approval of the board, has notified the court that the existing caseload cannot be increased with-
out jeopardizing the ability of defenders to provide effective representation.

If the public defender office is not available for appointment, the court shall appoint one or more panel attorneys from the local panel. If there is no local panel attorney available, the judge shall appoint one or more panel attorneys from the regional panel. If there is no regional panel attorney available, the judge may appoint a public defender office from an adjoining circuit if such public defender office agrees to the appointment.

In circuits where no public defender office is in operation, the judge shall first refer to the local panel and then to the regional panel in making appointments, and if an appointment cannot be made from the panel attorneys, the judge may appoint the public defender office of an adjoining circuit if the office agrees to the appointment. In any circuit, when there is no public defender, or assistant public defender, local panel attorney or regional panel attorney available, the judge may appoint one or more qualified private attorneys to provide representation, and such private attorney or attorneys shall be treated as panel attorneys for that specific case. In any given case, the appointing judge may alter the order in which attorneys are appointed if the case requires particular knowledge or experience on the part of the attorney to be appointed.

§29-21-13a. Compensation and expenses for panel attorneys.

(a) All panel attorneys shall maintain detailed and accurate records of the time expended and expenses incurred on behalf of eligible clients, and upon completion of each case, exclusive of appeal, shall submit to the appointing court a voucher for services. Claims for fees and expense reimbursements shall be submitted to the appointing court on forms approved by the executive director. Claims submitted more than four years after the last date of service shall be rejected.

The appointing court shall review the voucher to determine if the time and expense claims are reasonable, necessary and valid, and shall forward the voucher to the agency with an order approving payment of the claimed
amount or of such lesser sum the court considers appropriate.

(b) Notwithstanding any other provision of this section to the contrary, public defender services may pay by direct bill, prior to the completion of the case, litigation expenses incurred by attorneys appointed under this article.

(c) Notwithstanding any other provision of this section to the contrary, a panel attorney may be compensated for services rendered and reimbursed for expenses incurred prior to the completion of the case where: (1) More than six months have expired since the commencement of the panel attorney's representation in the case; and (2) no prior payment of attorney fees has been made to the panel attorney by public defender services during the case. The amounts of any fees or expenses paid to the panel attorney on such an interim basis, when combined with any such amounts paid to the panel attorney at the conclusion of the case, shall not exceed the limitations on fees and expenses imposed by this section.

(d) In each case in which a panel attorney provides legal representation under this article, and in each appeal after conviction in circuit court, the panel attorney shall be compensated at the following rates for actual and necessary time expended for services performed and expenses incurred subsequent to the effective date of this article:

(1) For attorney's work performed out of court, compensation shall be at the rate of forty-five dollars per hour. For paralegal's work performed out of court for the attorney, compensation shall be at the rate of the paralegal's regular compensation on an hourly basis or, if salaried, at the hourly rate of compensation which would produce the paralegal's current salary, but in no event shall the compensation exceed twenty dollars per hour. Out-of-court work includes, but is not limited to, travel, interviews of clients or witnesses, preparation of pleadings and prehearing or pretrial research.

(2) For attorney's work performed in court, compensation shall be at the rate of sixty-five dollars per hour. No
compensation for paralegal's work performed in court shall be allowed. In-court work includes, but is not limited to, all time spent awaiting hearing or trial if the presence of the attorney is required.

(3) The maximum amount of compensation for out-of-court and in-court work under this subsection is as follows: For proceedings of any kind involving felonies for which a penalty of life imprisonment may be imposed, such amount as the court may approve; for all other eligible proceedings, three thousand dollars unless the court, for good cause shown, approves payment of a larger sum.

(e) Actual and necessary expenses incurred in providing legal representation for proceedings of any kind involving felonies for which a penalty of life imprisonment may be imposed, including, but not limited to, expenses for travel, transcripts, salaried or contracted investigative services and expert witnesses, shall be reimbursed in such amount as the court may approve. For all other eligible proceedings, actual and necessary expenses incurred in providing legal representation, including, but not limited to, expenses for travel, transcripts, salaried or contracted investigative services and expert witnesses, shall be reimbursed to a maximum of fifteen hundred dollars unless the court, for good cause shown, approves reimbursement of a larger sum.

Expense vouchers shall specifically set forth the nature, amount and purpose of expenses incurred and shall provide such receipts, invoices or other documentation required by the executive director and the state auditor:

(1) (A) Reimbursement of expenses for production of transcripts of proceedings reported by a court reporter is limited to the cost per original page set forth in section four, article seven, chapter fifty-one of this code. Reimbursement of the cost of copies of such transcripts is limited to twenty-five cents per page.

(B) (i) There shall be no reimbursement of expenses for or production of a transcript of a preliminary hearing before a magistrate or juvenile referee, or of a magistrate court jury trial, which has been reported by a court report-
er at the request of the attorney, where the preliminary
hearing or jury trial has also been recorded electronically
in accordance with the provisions of section eight, article
five, chapter fifty of this code or court rule.

(ii) Reimbursement of the expense of an appearance
fee for a court reporter who reports a proceeding other
than one described in subparagraph (i) of this paragraph,
or who reports a proceeding which is not reported by an
official court reporter acting in his or her official capacity
for the court, is limited to twenty-five dollars. Where a
transcript of such proceeding is produced, there shall be
no reimbursement for the expense of any appearance fee.
Where a transcript is requested by the attorney after an
appearance fee has been paid, reimbursement of the ex­
 pense incurred to obtain the transcript is limited to the cost
of producing the transcript, within the prescribed limita­
tions of paragraph (A) of this subdivision, less the amount
of the paid appearance fee.

(iii) Reimbursement of travel expenses incurred for
travel by a court reporter is subject to the limitations pro­
vided by subdivision (2) of this subsection.

(iv) Except for the appearance fees provided in this
paragraph, there shall be no reimbursement for hourly
court reporters' fees or fees for other time expended by
the court reporter, either at the proceeding or traveling to
or from the proceeding.

(C) Reimbursement of the cost of transcription of
tapes electronically recorded during preliminary hearings
or magistrate court jury trials is limited to the rates estab­
lished by the supreme court of appeals for the reimburse­
ment of transcriptions of electronically recorded hearings
and trial.

(2) Reimbursement for any travel expense incurred in
an eligible proceeding is limited to the rates for the reim­
bursement of travel expenses established by rules promul­
gated by the governor pursuant to the provisions of sec­
tion eleven, article eight, chapter twelve of this code and
administered by the secretary of the department of admin
istration pursuant to the provisions of section forty-eight, article three, chapter five-a of this code.

(3) Reimbursement for investigative services is limited to a rate of thirty dollars per hour for work performed by an investigator.

(f) For purposes of compensation under this section, an appeal from a final order of the circuit court, or proceeding seeking an extraordinary remedy, made to the supreme court of appeals, shall be considered a separate case.

(g) Vouchers submitted under this section shall specifically set forth the nature of the service rendered, the stage of proceeding or type of hearing involved, the date and place the service was rendered and the amount of time expended in each instance. All time claimed on the vouchers shall be itemized to the nearest tenth of an hour. If the charge against the eligible client for which services were rendered is one of several charges involving multiple warrants or indictments, the voucher shall indicate such fact and sufficiently identify the several charges so as to enable the court to avoid a duplication of compensation for services rendered. The executive director shall refuse to requisition payment for any voucher which is not in conformity with the recordkeeping, compensation or other provisions of this article and in such circumstance shall return the voucher to the court or to the service provider for further review or correction.


(a) The governing body of each public defender corporation shall be a board of directors consisting of persons who are residents of the area to be served by the public defender corporation.

(1) In multi-county circuits, and in the case of multi-circuit or regional corporations, the county commission of each county within the area served shall appoint a director, who shall not be an attorney-at-law. The president of each county bar association within the area served
shall appoint a director, who shall be an attorney-at-law: 
Provided, That in a county where there is not an organized and active bar association, the circuit court shall convene a meeting of the members of the bar of the court resident within the county and such members of the bar shall elect one of their number as a director. The governor shall appoint one director, who shall serve as chairman, who may be an attorney-at-law, unless such appointment would result in there being an even number of directors, in which event the governor shall appoint two directors, one of whom may be an attorney-at-law. The governor's appointees shall serve four-year terms which terms shall coincide with the term of the governor. Appointments may be made for unexpired terms as may be necessary. Other board members' terms shall be as determined by the board.

(2) In single-county circuits, the manner of selecting directors shall be the same as that described in subdivision (1) of this subsection, except that the county commission shall appoint two directors rather than one, and the bar shall appoint two directors rather than one.

(b) The board of directors shall have at least four meetings a year. Timely and effective prior public notice of all meetings shall be given pursuant to rules promulgated in accordance with the provisions of section three, article nine-a, chapter six of this code, and all meetings shall be public except for those concerned with matters properly discussed in executive session.

(c) The board of directors shall establish and enforce broad policies governing the operation of the public defender corporation but shall not interfere with any attorney's professional responsibilities to clients. The duties of the board of directors shall include, but not be limited to, the following:

(1) Appointment of the public defender and any assistant public defenders as may be necessary to enable the public defender corporation to provide legal representation to eligible clients; and
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(2) Approval of the public defender corporation's budget and the fixing of professional and clerical salaries: Provided, That the compensation paid to any part-time public defender, part-time assistant public defender or other part-time employee shall not include benefits such as retirement, health insurance or paid leave time for illness or vacation unless public defender services has certified in writing to the board of directors that there exists sufficient funding to provide such benefits and the board of directors authorizes such benefits to be included in the compensation; and

(3) Removal of any public defender, assistant public defender or other employee for misfeasance, malfeasance or nonfeasance.

d) To the extent that the provisions of chapter thirty-one of this code regarding nonprofit corporations are not inconsistent with this article, the provisions of said chapter shall be applicable to the board of directors of the public defender corporation.

e) While serving on the board of directors, no member may receive compensation from the public defender corporation, but a member may receive payment for normal travel and other out-of-pocket expenses required for fulfillment of the obligations of membership and may accept appointments to represent eligible clients so long as he or she does not discuss a particular case with any public defender, assistant public defender or other employee of the office governed by the board. Directors may not serve as cocounsel with the public defender or assistant public defender in any matter.

§29-21-17. Private practice of law by public defenders.

(a) No full-time public defender or full-time assistant public defender may engage in any private practice of law except as provided in this section.

(b) A board of directors may permit a newly employed full-time public defender or full-time assistant
public defender to engage in the private practice of law for compensation for the sole purpose of expeditiously closing and withdrawing from existing private cases from a prior private practice. In no event shall any person employed for more than ninety days as a full-time public defender or full-time assistant public defender be engaged in any other private practice of law for compensation: Provided, That until the first day of January, one thousand nine hundred ninety-three, the prohibition against the private practice of law does not apply to full-time public defenders employed in Class II, III or IV counties as defined by article seven, chapter seven of this code.

(c) A board of directors may permit a full-time public defender or full-time assistant public defender to engage in private practice for compensation if the defender is acting pursuant to an appointment made under a court rule or practice of equal applicability to all attorneys in the jurisdiction and if the defender remits to the public defender corporation all compensation received.

(d) A board of directors may permit a full-time public defender or full-time assistant public defender to engage in uncompensated private practice of law if the public defender or assistant public defender is acting:

(1) Pursuant to an appointment made under a court rule or practice of equal applicability to all attorneys in the jurisdiction; or

(2) On behalf of a close friend or family member; or

(3) On behalf of a religious, community or charitable group.

(e) Violation of the requirements of this section is sufficient grounds for immediate summary dismissal regardless of the conditions of employment established by a corporation's board of directors.
AN ACT to amend and reenact section thirteen, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to eligibility for coverage under the public employees insurance act; and providing that certain employees with twenty years of service with a participating agency and employees who have been covered by the act for twenty years may retain coverage after leaving employment if those eligible employees pay the actual cost of the retiree coverage plus five percent.

Be it enacted by the Legislature of West Virginia:

That section thirteen, 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.

§5-16-13. Payment of costs by employer and employee; coverage for employee’s spouse and dependents generally; short term continuance of coverage for involuntary employee termination; extended insurance coverage for retired employees with accrued annual leave and sick leave; increased retirement benefits for retired employees with accrued annual and sick leave; additional eligible retired employees; option for health insurance coverage without life insurance coverage made available to retirees; health insurance for surviving dependents of deceased employees.

(a) The director is hereby authorized to provide under any contract or contracts entered into under the provisions of this article that the costs of any such group hospital and
surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance benefit plan or plans may be paid by the employer and employee. In addition, each employee shall be entitled to have his or her spouse and dependents, as defined by the rules of the public employees insurance agency, included in any group hospital and surgical insurance, group major medical insurance or group prescription drug insurance coverage: Provided, That such spouse and dependent coverage shall be limited to excess or secondary coverage for each spouse and dependent who has primary coverage from any other source. For purposes of this section, the term "primary coverage" means individual or group hospital and surgical insurance coverage or individual or group major medical insurance coverage or group prescription drug coverage in which the spouse or dependent is the named insured or certificate holder. The director may require proof regarding spouse and dependent primary coverage and shall adopt rules governing the nature, discontinuance and resumption of any employee's coverage for his or her spouse and dependents.

(b) Should a participating employee be terminated from employment involuntarily or in reduction of work force, the employee's insurance coverage provided under this article shall continue for a period of three months at no additional cost to the employee. An employee discharged for misconduct shall not be eligible for extended benefits under this section. Coverage may be extended up to the maximum period of three months, while administrative remedies contesting the charge of misconduct are pursued. If the discharge for misconduct be upheld, the full cost of the extended coverage shall be reimbursed by the employee. If the employee is again employed or recalled to active employment within twelve months of his or her prior termination, he or she shall not be considered a new enrollee and shall not be required to again contribute his or her share of the premium cost, if he or she had already fully contributed such share during the prior period of employment.
(c) Except as otherwise provided in subsection (f) for higher education full-time faculty employed on an annual contract basis other than for twelve months, when a participating employee, who has elected to participate in the plan before the first day of July, one thousand nine hundred eighty-eight, is compelled or required by law to retire before reaching the age of sixty-five, or when a participating employee voluntarily retires as provided by law, that employee's accrued annual leave and sick leave, if any, shall be credited toward an extension of the insurance coverage provided by this article, according to the following formulae: Such insurance coverage for a retired employee shall continue one additional month for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement. For a retired employee, his or her spouse and dependents, such insurance coverage shall continue one additional month for every three days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement.

(d) Notwithstanding the preceding subsection, except as otherwise provided in subsection (f) for higher education full-time faculty employed on an annual contract basis other than for twelve months, when a participating employee who elects to participate in the plan on and after the first day of July, one thousand nine hundred eighty-eight, is compelled or required by law to retire before reaching the age of sixty-five, or when such a participating employee voluntarily retires as provided by law, that employee's annual leave or sick leave, if any, shall be credited toward one half of the premium cost of the insurance provided by this article, for periods and scope of coverage determined according to the following formulae: (1) One additional month of single retiree coverage for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement; or (2) one additional month of coverage for a retiree, his or her spouse and dependents for every three days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement.
The remaining premium cost shall be borne by such retired employee if he or she elects such coverage. For purposes of this subsection, an employee who has been a participant under spouse or dependent coverage and who reenters the plan within twelve months after termination of his or her prior coverage shall be considered to have elected to participate in the plan as of the date of commencement of the prior coverage. For purposes of this subsection, an employee shall not be considered a new employee after returning from extended authorized leave on or after the first day of July, one thousand nine hundred eighty-eight.

(e) In the alternative to the extension of insurance coverage through premium payment provided in the two preceding subsections, the participating employee’s accrued annual leave and sick leave may be applied, on the basis of two days retirement service credit for each one day of accrued annual and sick leave, toward an increase in the employee's retirement benefits with such days constituting additional credited service in computation of such benefits under any state retirement system. However, such credited service shall not be used in meeting initial eligibility for retirement criteria, but only as additional service credited in excess thereof.

(f) When a participating employee, who is a higher education full-time faculty member employed on an annual contract basis other than for twelve months, is compelled or required by law to retire before reaching the age of sixty-five, or when such a participating employee voluntarily retires as provided by law, that employee's insurance coverage, as provided by this article, shall be extended according to the following formulae: Such insurance coverage for a retired higher education full-time faculty member, formerly employed on an annual contract basis other than for twelve months, shall continue beyond the effective date of his or her retirement one additional year for each three and one-third years of teaching service, as determined by uniform guidelines established by the university of West Virginia board of trustees and the board of directors of the state college
system, for individual coverage, or one additional year for each five years of teaching service for "family" coverage.

(g) Any employee who retired prior to the twenty-first day of April, one thousand nine hundred seventy-two, and who also otherwise meets the conditions of the "retired employee" definition in section two of this article, shall be eligible for insurance coverage under the same terms and provisions of this article. The retired employee's premium contribution for any such coverage shall be established by the finance board.

(h) All retirees under the provisions of this article, including those defined in section two of this article; those retiring prior to the twenty-first day of April, one thousand nine hundred seventy-two; and those hereafter retiring shall be eligible for and permitted to obtain health insurance coverage. The retired employee's premium contribution for any such coverage shall be established by the finance board.

(i) A surviving spouse and dependents of a deceased employee, who was either an active or retired employee just prior to such decease, shall be entitled to be included in any group insurance coverage provided under this article, and such spouse and dependents shall bear the premium cost of such insurance coverage. The finance board shall establish the premium cost of any such coverage.

(j) In construing the provisions of this section or any other provisions of this code, the Legislature declares that it is not now nor has it ever been the Legislature's intent that elected public officials be provided any sick leave, annual leave or personal leave, and the enactment of this section is based upon the fact and assumption that no statutory or inherent authority exists extending sick leave, annual leave or personal leave to elected public officials and the very nature of such positions preclude the arising or accumulation of such, so as to be thereafter usable as premium paying credits for which such officials may claim extended insurance benefits.
(k) An employee, eligible for coverage under the provisions of this article who has twenty years of service with any agency or entity participating in the public employees insurance program or who has been covered by the public employees insurance program for twenty years may, upon leaving employment with a participating agency or entity, continue to be covered by the program if the employee pays one hundred and five percent of the cost of retiree coverage: Provided, That the employee shall elect to continue coverage under this subsection within two years of the date the employment with a participating agency or entity is terminated.

CHAPTER 211

(Com. Sub. for H. B. 4204—By Delegates Staton, Prezioso and Border)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections fifteen and seventeen, article eight, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section twenty; to amend and reenact sections seven-a and seven-c, article one, chapter fifty-seven of said code; and to further amend said article by adding thereto a new section, designated section seven-d, all relating to management and preservation of government records; offering government records to director of the section of archives and history of the division of culture and history for historical or other preservation purposes prior to destruction or disposal; preservation of government records by state records administrator, courts and Legislature; and providing copies of government records in computer disk, optical disk or other format.

Be it enacted by the Legislature of West Virginia:
That sections fifteen and seventeen, article eight, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twenty; that sections seven-a and seven-c, article one, chapter fifty-seven of said code be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section seven-d, all to read as follows:

Chapter

5A. Department of Administration.
57. Evidence and Witnesses.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.

§5A-8-15. Records management and preservation of local records.
§5A-8-17. Disposal of records.
§5A-8-20. Alternate storage of state records.

§5A-8-15. Records management and preservation of local records.

1 (a) The governing body of each county, city, town, authority or any public corporation or political entity, whether organized and existing under a charter or under general law, shall promote the principles of efficient records management and preservation of local records. Such governing body may, as far as practical, follow the program established for the management and preservation of state records. The administrator shall, upon the request of a local governing body, provide advice and assistance in the establishment of a local records management and preservation program.

(b) In the event any such governing body decides to destroy or otherwise dispose of a local record, the governing body may, prior to destruction or disposal thereof, offer the record to the director of the section of archives and history of the division of culture and history
§5A-8-17. Disposal of records.

Except as provided in section seven-a, article one, chapter fifty-seven of this code, no record shall be destroyed or otherwise disposed of by any agency of the state, unless it is determined by the administrator and the director of the section of archives and history of the division of culture and history that the record has no further administrative, legal, fiscal, research or historical value. In the event the administrator is of the opinion that the record has no further administrative, legal, fiscal, research or historical value, the administrator shall, prior thereto, give written notice of the administrator's intention to direct the destruction or other disposal of the record to the director. Upon the written request of the director, given to the administrator within ten days of receipt of said notice, the administrator shall direct the retention of the record for a period of thirty days. In the event the director fails to retrieve the original document from the administrator or the administrator's designee within the thirty day period, the administrator may direct the destruction or other disposal of the original without further notice to the director.

§5A-8-20. Alternate storage of state records.

(a) Findings and purpose — The Legislature finds that continuous advances in technology have resulted and will continue to result in the development of alternate formats for the nonerasable storage of state records, and that the use of such alternative storage formats, where deemed advisable, promote the efficient and economical administration of government and provide a means for the preservation of valuable records which are subject to decay or destruction. It is the purpose of the Legislature to authorize the storage of state records in such alternate formats, as may be determined by the various branches of the government of this state, that reasonably ensure that the originals of such records are copied into such formats
in a manner in which the image thereof may not be erased
or altered, and from which true and accurate
reproductions of the original state records may be
retrieved.

(b) Approved format — In addition to those formats,
processes and systems described in section ten of this
article, sections seven-a and seven-c, article one, chapter
fifty-seven of this code, and section twelve, article five of
said chapter fifty-seven, which are otherwise authorized
for the reproduction of state records, a preservation
duplicate of a state record may be stored in any approved
format where the image of the original state record is
preserved in a form in which the image thereof is
incapable of erasure or alteration, and from which a
reproduction of the stored state record may be retrieved
which truly and accurately depicts the image of the
original state record.

(c) Executive agency records — (1) Except for those
formats, processes and systems used for the storage of
state records on the effective date of this section, no
alternate format for the storage of state records described
in this section is authorized for the storage of the state
records of any agency of this state unless the particular
format has been approved by the state records
administrator pursuant to legislative rule promulgated in
accordance with the provisions of chapter twenty-nine-a of
this code. No provision of this section shall be construed
to prohibit the state records administrator from
prohibiting the use of any format, process or system used
for the storage of executive state records upon his or her
determination that the same is not reasonably adequate to
preserve the state records from destruction, alteration or
decay.

(2) Upon creation of a preservation duplicate which
stores an original executive state record in an approved
format in which the image thereof is incapable of erasure
or alteration, and from which a reproduction of the stored
state record may be retrieved which truly and accurately
depicts the image of the original state record, the state
records administrator may destroy or otherwise dispose of the original in accordance with the provisions of section seventeen of this article for the destruction of records.

(d) Judicial records — (1) Except for those formats, processes and systems used for the storage of state records on the effective date of this section, no alternate format for the storage of state records described in this section is authorized for the storage of the state records of any court of this state unless the particular format has been approved by the supreme court of appeals by rule. No provision of this section shall be construed to prohibit the supreme court of appeals from prohibiting the use of any format, process or system used for the storage of judicial state records upon its determination that the same is not reasonably adequate to preserve the state records from destruction, alteration or decay.

(2) Upon creation of a preservation duplicate which stores an original judicial state record in an approved format in which the image thereof is incapable of erasure or alteration, and from which a reproduction of the stored state record may be retrieved which truly and accurately depicts the image of the original state record, the court or the clerk thereof creating the same may destroy or otherwise dispose of the original in accordance with the provisions of section seven, article one, chapter fifty-seven of this code for the destruction of records.

(e) Legislative records — (1) Except for those formats, processes and systems used for the storage of state records on the effective date of this section, no alternate format for the storage of state records described in this section is authorized for the storage of the state records of the Legislature unless the particular format has been approved in a writing jointly by the speaker of the House of Delegates and the president of the Senate to the clerks of their respective houses. No provision of this section shall be construed to prohibit the presiding officers of the houses of the Legislature from prohibiting the use of any format, process or system used for the storage of legislative state records upon their
determination that the same is not reasonably adequate to
preserve the state records from destruction, alteration or
decay.

(2) Upon creation of a preservation duplicate which
stores an original legislative state record in an approved
format in which the image thereof is incapable of erasure
or alteration, and from which a reproduction of the stored
state record may be retrieved which truly and accurately
depicts the image of the original state record, the clerks of
the respective houses of the Legislature may destroy or
otherwise dispose of the original. However, prior thereto,
the clerks shall give written notice of their intention to do
so to the director of the section of archives and history of
the division of culture and history. Upon the written
request of the director, given to the clerks within ten days
of receipt of said notice, the clerks shall retain the original
record for a period of thirty days. In the event the
director fails to retrieve the original document from the
clersks within the thirty day period, the clerks may destroy
or otherwise dispose of the original without further notice
to the director.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 1. LEGISLATIVE ACTS AND RESOLUTIONS; PUBLIC
RECORDS.

§57-1-7a. Use of photographic copies in evidence; state
records, papers or documents; destruction or transfer to archives of originals;
destruction of canceled checks and paid and canceled bonds and
coupons.

§57-1-7c. Use of microfilm or microcards to reproduce and preserve records;
destruction or transfer of originals to archivist.

§57-1-7d. Records provided on computer or optical disc.

§57-1-7a. Use of photographic copies in evidence; state
records, papers or documents; destruction or transfer to archives of originals;
destruction of canceled checks and paid and canceled bonds and
coupons.

Any public officer of the state may, with the approval
of the state records administrator, cause any or all records,
papers or documents kept by him to be photographed, microphotographed, microfilmed or reproduced on film. Such photographic film shall be of durable material and the device used to reproduce such records on such film shall be one which accurately reproduces the original thereof in all details.

Such photographs, microphotographs, microfilms or photographic film shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. A transcript, exemplification or certified copy thereof shall, for all purposes recited herein, be deemed to be a transcript, exemplification or certified copy of the original. Whenever photographs, microphotographs, microfilms or reproductions on film have been made and put in conveniently accessible fireproof files, and provision has been made for preserving, examining and using the same, the respective heads of the departments, divisions, institutions and agencies of the state may, with the approval of the state records administrator, cause the records and papers so photographed, microphotographed or reproduced on film, or any part thereof, to be destroyed; but before any such records, papers or documents are authorized to be destroyed, the state records administrator shall obtain the advice and counsel of the state historian and archivist, or his designated representative, as to the desirability of placing the said records, papers and documents in the archives of that department. In the event the administrator is of the opinion that the record has no further administrative, legal, fiscal, research or historical value, the administrator may destroy or otherwise dispose of the record, paper or document if otherwise permitted to do so after complying with the provisions of section seventeen, article eight, chapter five-a of this code. Notwithstanding any other provisions of this code to the contrary, the state treasurer may at his discretion destroy any canceled checks of the state after ten years have elapsed since the date of the check, whether or not such checks have been photographed, microphotographed, microfilmed or repro-
duced on film:  Provided, That any canceled bonds or
interest coupons of any bond issues of this state in the
custody of the treasurer, or for which the treasurer acts as
fiscal agent or paying agent, may at his discretion be
destroyed by one of the two methods described below:

**Method I** — The treasurer shall maintain a permanent
record for the purpose of recording the destruction of
bonds and coupons, showing the following: (1) With
respect to bonds, the purpose of issuance, the date of issue,
denomination, maturity date, and total principal amount;
and (2) with respect to coupons, the purpose of issue and
date of the bonds to which the coupons appertain, the
maturity date of the coupons, and, as to each maturity
date, the denomination, quantity and total amount of
coupons.

After recording the specified information, the
treasurer shall have the canceled bonds and coupons
destroyed either by burning or shredding, in the presence
of an employee of the treasurer and an employee of the
legislative auditor, each of whom shall certify that he saw
the canceled bonds and coupons destroyed. Such
certificates shall be made a part of the permanent record.
Canceled bonds or coupons shall not be destroyed until
after one year from the date of payment.

**Method II** — The treasurer may contract with any
bank or trust company acting as paying agent or copaying
agent for a bond issue of the state for the destruction of
bonds and interest coupons which have been canceled by
the paying agent. The contract shall require that the
paying agent give the treasurer a written certificate
containing the same information required by Method I.
Such certificate shall include a sworn statement that the
described bonds or coupons have been destroyed. The
certificate shall be made a part of the treasurer's
permanent record.

Each contract shall also require that the paying agent
be responsible for proper payment and disposition of all
bonds and coupons, and for any duplicate payments to
unauthorized persons and nonpayment to authorized
82 persons occurring as a result of destruction of bonds or
83 coupons under this section. In addition, the treasurer may
84 require the paying agent to submit an indemnity bond, in
85 an amount to be determined by the treasurer, to assure
86 performance of the duties specified in this section.
87 Canceled bonds or coupons may not be destroyed until
88 one year from the date of payment.

89 For purposes of this section, the term "bonds" shall
90 include interim certificates.

§57-1-7c. Use of microfilm or microcards to reproduce and
preserve records; destruction or transfer of
originals to archivist.

1 The clerk of any court of record of the state may, with
2 the approval of the court for which he or she is clerk,
3 cause any or all records, papers, plats, or other documents
4 kept by him or her to be reproduced on photographic
5 microfilm or microcards and may, with the approval of the
6 court for which he or she is clerk, record, keep and
7 preserve any and all records, papers, plats, or other
documents required by the laws of this state to be
8 recorded or kept by said clerk or court exclusively upon
9 photographic microfilm or microcards instead of in
10 well-bound books or instead of by any other method
11 heretofore prescribed by law.

12 Such photographic microfilm and microcards shall be
13 of durable material and possess good, archival qualities.
14 The device used to reproduce such records on such film
15 and cards shall be one which accurately reproduces the
16 original thereof in all details.

17 Such photographic microfilm and microcards shall be
18 deemed to be an original record for all purposes,
19 including introduction into evidence in all courts or
20 administrative agencies. A transcript, exemplification, or
21 photographic reproduction thereof shall, when properly
22 authenticated by the clerk of such court, be deemed for all
23 purposes to be a transcript, exemplification, or certified
24 copy of the original.
Such photographic microfilm and microcards shall be put in convenient, accessible fireproof files and adequate provision shall be made for preserving, examining and using the same.

Any such records, papers, plats, or other documents not held for others by said clerk or court or required by law to be delivered to some other person, court, corporation or agency, may with the approval of the court keeping such records, papers, plats, or other documents be destroyed; but before any such records, papers, plats or other documents are authorized to be destroyed the court keeping them or the clerk thereof shall obtain the advice and counsel of the state historian or archivist, or his designated representatives, as to the desirability of placing the said records, papers, plats, or other documents in the department of archives and history. However, prior to destroying or otherwise disposing of the same, the court or clerk thereof shall give written notice of the intention to do so to the director of the section of archives and history of the division of culture and history. Upon the written request of the director, given to the court or clerk thereof within ten days of receipt of said notice, the court or clerk thereof shall retain the original record for a period of thirty days. In the event the director fails to retrieve the original document from the court or clerk thereof within the thirty-day period, the court or clerk thereof may destroy or otherwise dispose of the original without further notice to the director.

§57-1-7d. Records provided on computer or optical disc.

Notwithstanding any other provision of this code to the contrary, where any provision of this code requires that a copy of any record of any branch of the government of this state be provided or delivered, the custodian of said record is authorized to comply with the requirement by providing or delivering a true copy in the form of a computer or optical disc which is not subject to alteration, is formatted to write once read many, and is attested by the custodian thereof to be a true, accurate and complete copy of the record required to be provided or delivered.
AN ACT to amend and reenact section two, article one-a, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adjutant general; appointment; consent of Senate required for appointment; qualifications; and bond.

Be it enacted by the Legislature of West Virginia:

That section two, article one-a, 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 1A. ADJUTANT GENERAL.

§15-1A-2. Appointment; qualifications; bond.

1. The adjutant general shall be appointed by the governor, by and with the advice and consent of the Senate, for a term of four years. He or she shall have the rank of major general, or such other rank as is recognized by federal authority. No person may be appointed adjutant general unless he or she has had at least six years' commissioned service and attained field grade or higher rank in the organized militia of this or some other state or in the armed forces of the United States, or in all combined. The governor shall require the adjutant general to furnish bond as required by law, which bond shall be filed with the auditor of the state.
AN ACT to amend and reenact section twenty-five, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one-b and three, article one, chapter twenty-four of said code; and to amend and reenact section two, article two of said chapter, all relating to the public service commission; decreasing the time period to profile for a certificate of public convenience and necessity in advance of the formal application from sixty to thirty days; requiring the public service commission to advise and assist Class III cities and Class IV towns or villages; adjusting the salaries of the members of the public service commission; and allowing the public service commission to establish water and sewer rates based on the debt costs associated with new projects.

Be it enacted by the Legislature of West Virginia:

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

Chapter


CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

§16-13A-25. Borrowing and bond issuance; procedure.
Notwithstanding any other provisions of this article to the contrary, a public service district shall not borrow money, enter into contracts for the provision of engineering, design or feasibility studies, issue or contract to issue revenue bonds or exercise any of the powers conferred by the provisions of section thirteen, twenty or twenty-four of this article, without the prior consent and approval of the public service commission. Unless the properties to be constructed or acquired represent ordinary extensions or repairs of existing systems in the usual course of business, a public service district must first obtain a certificate of public convenience and necessity from the public service commission in accordance with the provisions of chapter twenty-four of this code, when a public service district is seeking to acquire or construct public service property.

Thirty days prior to making formal application for the certificate, the public service district shall prefile with the public service commission its plans and supporting information for the project and shall publish a Class II legal advertisement in a newspaper or newspapers of general circulation in each city, incorporated town or municipal corporation if available in the public service district, which legal advertisement shall state:

(a) The amount of money to be borrowed, or the amount of revenue bonds to be issued: Provided, That if the amount is an estimate, the notice may be stated in terms of an amount "not to exceed" a specific amount;

(b) The interest rate and terms of the loan or bonds: Provided, That if the interest rate is an estimate, the notice may be stated in terms of a rate "not to exceed" a specific rate;

(c) The public service properties to be acquired or constructed, and the cost of the public service properties;

(d) The anticipated rates which will be charged by the public service district: Provided, That if the rates are an estimate, the notice may be stated in terms of rates "not to exceed" a specific rate; and
(e) The date that the formal application for a certificate of public convenience and necessity is to be filed with the public service commission. The public service commission may grant its consent and approval for the certificate, or any other request for approval under this section, subject to such terms and conditions as may be necessary for the protection of the public interest, pursuant to the provisions of chapter twenty-four of this code, or may withhold such consent and approval for the protection of the public interest.

In the event of disapproval, the reasons for the disapproval shall be assigned in writing by the commission.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

Article
2. Powers and Duties of Public Service Commission.

ARTICLE 1. GENERAL PROVISIONS.

§24-1-1b. Supplemental rule for reorganization.

§24-1-3. Commission continued; membership; chairman; compensation.

§24-1-1b. Supplemental rule for reorganization.

The public service commission shall, by general order, create a division within its staff which shall provide legal, engineering, financial and accounting advice and assistance to public service districts and Class III cities and Class IV towns or villages in operational, financial and regulatory matters, and may perform or participate in the studies required under section one-b, article thirteen-a, chapter sixteen of this code: Provided, That advice and assistance to a Class III city or Class IV town or village shall only be given if such advice or assistance is specifically requested by the Class III city or the Class IV town or village. The request may be withdrawn by the city or town at any time, after which the commission shall not provide further assistance or advice.

§24-1-3. Commission continued; membership; chairman; compensation.
(a) The public service commission of West Virginia, heretofore established, is continued and directed as provided by this chapter, chapter twenty-four-a and chapter twenty-four-b of this code. After having conducted a performance 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 that the public service commission should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the public service commission shall continue to exist until the first day of July, one thousand nine hundred ninety-nine. The public service commission may sue and be sued by that name. The public service commission shall consist of three members who shall be appointed by the governor with the advice and consent of the Senate. The commissioners shall be citizens and residents of this state and at least one of them shall be duly licensed to practice law in West Virginia, with not less than ten years' actual work experience in the legal profession as a member of a state bar. No more than two of the commissioners shall be members of the same political party. Each commissioner shall, before entering upon the duties of his or her office, take and subscribe to the oath provided by section five, article IV of the constitution of this state. The oath shall be filed in the office of the secretary of state. The governor shall designate one of the commissioners to serve as chairman at the governor's will and pleasure. The chairman shall be the chief administrative officer of the commission. The governor may remove any commissioner only for incompetency, neglect of duty, gross immorality, malfeasance in office or violation of subsection (c) of this section.

(b) The unexpired terms of members of the public service commission at the time this subsection becomes effective are continued. Upon expiration of the terms, appointments are for terms of six years, except that an appointment to fill a vacancy is for the unexpired term only. The commissioners whose terms are terminated by the provisions of this subsection are eligible for reappointment.
(c) No person while in the employ of, or holding any official relation to, any public utility subject to the provisions of this chapter, or holding any stocks or bonds of a public utility subject to the provisions of this chapter, or who is pecuniarily interested in a public utility subject to the provisions of this chapter, may serve as a member of the commission or as an employee of the commission. Nor may any commissioner be a candidate for or hold public office, or be a member of any political committee, while acting as a commissioner; nor may any commissioner or employee of the commission receive any pass, free transportation or other thing of value, either directly or indirectly, from any public utility or motor carrier subject to the provisions of this chapter. In case any of the commissioners becomes a candidate for any public office or a member of any political committee, the governor shall remove him or her from office and shall appoint a new commissioner to fill the vacancy created.

(d) The salaries of members of the public service commission and the manner in which they are paid established by the prior enactment of this section are continued. Effective the first day of July, one thousand nine hundred ninety-six, and in light of the assignment of new, substantial additional duties embracing new areas and fields of activity under certain legislative enactments, each commissioner shall receive an annual salary of sixty-five thousand dollars to be paid in monthly installments from the special funds in the amounts that follow:

(1) From the public service commission fund collected under the provisions of section six, article three of this chapter, fifty-two thousand dollars;

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

(3) From the public service commission gas pipeline safety fund collected under the provisions of section three, article five, chapter twenty-four-b of this code, two thousand one hundred fifty dollars.
In addition to this salary provided for all commissioners, the chairman of the commission shall receive five thousand dollars per annum to be paid in monthly installments from the public service commission fund collected under the provisions of section six, article three of this chapter on and after the first day of July, one thousand nine hundred ninety-six.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-2. General power of commission to regulate public utilities.

(a) The commission is hereby given power to investigate all rates, methods and practices of public utilities subject to the provisions of this chapter; to require them to conform to the laws of this state and to all rules, regulations and orders of the commission not contrary to law; and to require copies of all reports, rates, classifications, schedules and timetables in effect and used by the public utility or other person, to be filed with the commission, and all other information desired by the commission relating to the investigation and requirements, including inventories of all property in such form and detail as the commission may prescribe. The commission may compel obedience to its lawful orders by mandamus or injunction or other proper proceedings in the name of the state in any circuit court having jurisdiction of the parties or of the subject matter, or the supreme court of appeals direct, and the proceedings shall have priority over all pending cases. The commission may change any intrastate rate, charge or toll which is unjust or unreasonable or any interstate charge with respect to matters of a purely local nature which have not been regulated by or pursuant to an act of Congress and may prescribe a rate, charge or toll that is just and reasonable, and change or prohibit any practice, device or method of service in order to prevent undue discrimination or favoritism between persons and between localities and between commodities for a like and contemporaneous service. But in no case shall the rate, toll or charge be more than the service is reasonably worth, considering the cost of the service. Every order
entered by the commission shall continue in force until
the expiration of the time, if any, named by the commis-
sion in the order, or until revoked or modified by the
commission, unless the order is suspended, modified or
revoked by order or decree of a court of competent juris-
diction.

(b) Notwithstanding any other provision of this code
to the contrary, rates are not discriminatory if, when con-
sidering the debt costs associated with a future water or
sewer project which would not benefit existing customers,
the commission establishes rates which ensure that the
future customers to be served by the new project are solely
responsible for the debt costs associated with the project.

CHAPTER 214

(S. B. 285—By Senators Anderson, Wooton, Bowman, Buckalew, Deem, Dittmar,
Grubb, Miller, Oliverio, Ross, Schoonover and Scott)

[Passed February 23, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article seven, chapter
twenty-four-a of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the enforce-
ment of laws governing the public service commission; clari-
ifying the duties of law-enforcement officers, prosecuting
attorneys and motor carrier inspectors; authorizing motor
carrier inspectors to carry handguns in the course of their
official duties; establishing qualifications to carry such hand-
guns; providing for the payment of handguns training; clari-
ifying scope of authority of motor carrier inspectors; and
making certain technical revisions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. COMPLAINTS, DAMAGES AND VIOLATIONS.

§24A-7-6. Duty of prosecuting attorneys and law-enforcement
officers to enforce chapter; regulatory authority
of commission; qualifications of commission
employees designated as motor carrier inspec-
tors.
It shall be the duty of the West Virginia state police and the sheriffs of the counties in West Virginia to make arrests and the duty of the prosecuting attorneys of the several counties to prosecute all violations of this chapter and of other chapters governing the regulatory authority of the commission. The commission employees designated as motor carrier inspectors shall have the same authority as law-enforcement officers to enforce the provisions of this chapter and the provisions of other chapters of this code governing the regulatory authority of the commission as such provisions apply to entities and persons regulated by the commission in any county or city of this state. Notwithstanding any provision of this code to the contrary, such motor carrier inspectors may carry handguns in the course of their official duties after meeting specialized qualifications established by the governor's committee on crime, delinquency and correction, which qualifications shall include the successful completion of handgun training, including a minimum of four hours training in handgun safety, paid for by the commission and comparable to the handgun training provided to law-enforcement officers by the West Virginia state police: Provided, That nothing in this section shall be construed to include motor carrier inspectors within the meaning of law-enforcement officers as defined in section one, article twenty-nine, chapter thirty of this code.

CHAPTER 215

(H. B. 4637—By Delegates Kiss, Browning, Kelley, Petersen, Talbott, Tomblin and Wallace )

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]
ten-a and ten-b, all relating to the state auditor's office; providing itemized statements of claims against the state; authorizing promulgation of rules by the state auditor regarding specificity of statement; authorizing the use of a purchasing card for state purchases of five hundred dollars or less; providing limitations on use of purchasing card; requiring competitive bid for selection of purchasing card vendor; requiring the auditor and director of the purchasing division to promulgate legislative rules; and providing criminal penalties for violation of purchasing card program.

Be it enacted by the Legislature of West Virginia:

That section ten, article three, chapter twelve 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 two new sections, designated sections ten-a and ten-b, all to read as follows:

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-10. Itemized statement of claim against state; rules to be promulgated concerning same.

§12-3-10a. Purchasing card program.

§12-3-10b. Fraudulent or unauthorized use of purchasing card prohibited; penalties.

§12-3-10. Itemized statement of claim against state; rules to be promulgated concerning same.

1 It is unlawful for any state officer to issue his or her requisition on the state auditor in payment of any claim unless an itemized account is filed in the office of the officer issuing the requisition. The auditor shall propose rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code, to govern the form and manner by which claims shall be itemized for payment.

§12-3-10a. Purchasing card program.

1 Notwithstanding the provisions of section ten of this article, payment of claims may be made through the use of the state purchasing card program authorized by the provisions of this section. The auditor may establish a
state purchasing card program for the purpose of authorizing all spending units of state government to use a purchasing card as an alternative payment method when making small purchases. The purchasing card program shall be conducted so that procedures and controls for the procurement and payment of goods and services are made more efficient. The program shall permit spending units to use a purchase charge card to purchase goods and services. The amount of any one purchase made with the purchase charge card shall not exceed five hundred dollars: Provided, That purchasing cards may not be utilized for the purpose of obtaining cash advances, whether the advances are made in cash or by other negotiable instrument. Purchases of goods and services must be received either in advance of or simultaneously with the use of a state purchasing card for payment for those goods or services. The auditor, by legislative rule, may eliminate the requirement for vendor invoices and provide a procedure for consolidating multiple vendor payments into one monthly payment to a charge card vendor. Selection of a charge card vendor to provide state purchase cards shall be accomplished by competitive bid. The purchasing division of the department of administration shall contract with the successful bidder for provision of state purchase charge cards. Purchase charge cards issued under the program shall be used for official state purchases only. The auditor and the director of the purchasing division of the department of administration shall jointly propose rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to govern the implementation of the purchase card program.

§12-3-10b. Fraudulent or unauthorized use of purchasing card prohibited; penalties.

It is unlawful for any person to use a state purchase card, issued in accordance with the provisions of section ten-a of this article, to make any purchase of goods or services in a manner which is contrary to the provisions of section ten-a of this article or the rules promulgated pursuant to that section. Any person who violates the provisions of this section is guilty of a felony and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years, or fined no more than five thousand dollars, or both fined and imprisoned.
AN ACT to amend and reenact section three, article twenty-two-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to deleting a restriction on video lottery game themes depicting symbols on reels at licensed horse and dog racetracks.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22A. RACETRACK VIDEO LOTTERY.


As used in this article:

(a) "Applicant" means any person applying for any video lottery license or permit.

(b) "Associated equipment" means any hardware located on a licensed racetrack's premises which is connected to the video lottery system for the purpose of performing communication, validation or other functions, but not including the video lottery terminals or the communication facilities of a regulated public utility.

(c) "Background investigation" means a security, criminal and credit investigation of a person, as defined in this section, who has applied for a video lottery license or permit, or who has been granted a video lottery license or permit.

(d) "Central computer," "central control computer" or "central site system" means any central site computer
provided to and controlled by the commission to which video lottery terminals communicate for purposes of information retrieval and terminal activation and disable programs.

(e) "Commission" or "state lottery commission" means the West Virginia lottery commission created by article twenty-two of this chapter.

(f) "Control" means the authority to direct the management and policies of an applicant or a license or permit holder.

(g) "Costs" means the expenses incurred by the commission in the testing and examination of video lottery terminals and the performance of background investigations and other related activities which are charged to and collected from applicants or license or permit holders.

(h) "Director" means the individual appointed by the governor to provide management and administration necessary to direct the state lottery office.

(i) "Disable" or "terminal disable" means the process of executing a shutdown command from the central control computer which causes video lottery terminals to cease functioning.

(j) "Display" means the visual presentation of video lottery game features on the video display monitor or screen of a video lottery terminal.

(k) "Gross terminal income" means the total amount of cash inserted into the video lottery terminals operated by a licensee, minus the total value of game credits which are cleared from the video lottery terminals in exchange for winning redemption tickets.

(l) "License" or "video lottery license" means authorization granted by the commission to a racetrack which is licensed by the West Virginia racing commission to conduct thoroughbred or greyhound racing meetings pursuant to article twenty-three, chapter nineteen of this
code permitting the racetrack to operate video lottery terminals authorized by the commission.

(m) "Lottery" means the public gaming systems or games established and operated by the state lottery commission.

(n) "Manufacturer" means any person holding a permit granted by the commission to engage in the business of designing, building, constructing, assembling or manufacturing video lottery terminals, the electronic computer components thereof, the random number generator thereof, or the cabinet in which it is housed, and whose product is intended for sale, lease or other assignment to a licensed racetrack in West Virginia, and who contracts directly with the licensee for the sale, lease or other assignment to a licensed racetrack in West Virginia.

(o) "Net terminal income" means gross terminal income minus an amount deducted by the commission to reimburse the commission for its actual costs of administering racetrack video lottery at the licensed racetrack. No deduction for any or all costs and expenses of a licensee related to the operation of video lottery games shall be deducted from gross terminal income.

(p) "Own" means any beneficial or proprietary interest in any property or business of an applicant or licensed racetrack.

(q) "Pari-mutuel racing facility," "licensed racetrack," "racetrack" or "track" means a facility where horse or dog race meetings are held and the pari-mutuel system of wagering is authorized pursuant to the provisions of article twenty-three, chapter nineteen of this code: Provided, That, for the purposes of this article, "pari-mutuel racing facility," "licensed racetrack," "racetrack" or "track" includes only a facility which was licensed prior to the first day of January, one thousand nine hundred ninety-four, to hold horse or dog race meetings, and which conducts not less than two hundred twenty live racing dates for each horse or dog race meeting or such other number of live racing dates as may be approved by the racing...
commission in accordance with the provisions of section
twelve-b, article twenty-three, chapter nineteen of this
code.

(r) "Permit" means authorization granted by the
commission to a person to function as either a video
lottery manufacturer, service technician or validation
manager.

(s) "Person" means any natural person, corporation,
association, partnership, limited partnership, or other
entity, regardless of its form, structure or nature.

(t) "Player" means a person who plays a video lottery
game on a video lottery terminal at a racetrack licensed by
the commission to conduct video lottery games.

(u) "Service technician" means a person, employed by
a licensed racetrack, who holds a permit issued by the
commission and who performs service, maintenance and
repair on licensed video lottery terminals in this state.

(v) "Video lottery game" means a commission
approved, owned and controlled electronically simulated
game of chance which is displayed on the screen or video
monitor of a video lottery terminal and which:

(1) Is connected to the commission's central control
computer by an on-line or dial-up communication system;

(2) Is initiated by a player's insertion of coins or
currency into a video lottery terminal, which causes game
play credits to be displayed on the video lottery terminal
and, with respect to which, each game play credit entitles a
player to choose one or more symbols or numbers or to
cause the video lottery terminal to randomly select
symbols or numbers;

(3) Allows the player to win additional game play
credits based upon game rules which establish the random
selection of winning combinations of symbols or numbers
or both and the number of free play credits to be awarded
for each winning combination of symbols or numbers or
both;
(4) Is based upon computer-generated random selection of winning combinations based totally or predominantly on chance;

(5) In the case of a video lottery game which allows the player an option to select replacement symbols or numbers or additional symbols or numbers after the game is initiated and in the course of play, either (A) signals the player, prior to any optional selection by the player of randomly generated replacement symbols or numbers, as to which symbols or numbers should be retained by the player to present the best chance, based upon probabilities, that the player may select a winning combination, (B) signals the player, prior to any optional selection by the player of randomly generated additional symbols or numbers, as to whether such additional selection presents the best chance, based upon probabilities, that the player may select a winning combination, or (C) randomly generates additional or replacement symbols and numbers for the player after automatically selecting the symbols and numbers which should be retained to present the best chance, based upon probabilities, for a winning combination, so that in any event, the player is not permitted to benefit from any personal skill, based upon a knowledge of probabilities, before deciding which optional numbers or symbols to choose in the course of video lottery game play;

(6) Allows a player at any time to simultaneously clear all game play credits and print a redemption ticket entitling the player to receive the cash value of the free plays cleared from the video lottery terminal; and

(7) Does not use the following game themes commonly associated with casino gambling: Roulette, dice, or baccarat card games: Provided, That games having a video display depicting symbols which appear to roll on drums to simulate a classic casino slot machine, game themes of other card games and keno may be used.

(w) "Validation manager" means a person who holds a permit issued by the commission and who performs video lottery ticket redemption services.
(x) "Video lottery" means a lottery which allows a game to be played utilizing an electronic computer and an interactive computer terminal device, equipped with a video screen and keys, a keyboard or other equipment allowing input by an individual player, into which terminal device the player inserts coins or currency as consideration in order for play to be available, and through which terminal device the player may receive free games or credit that can be redeemed for cash, or nothing, as may be determined wholly or predominantly by chance. "Video lottery" does not include a lottery game which merely utilizes an electronic computer and a video screen to operate a lottery game and communicate the results thereof, such as the game "Travel," and which does not utilize an interactive electronic terminal device allowing input by an individual player.

(y) "Video lottery terminal" means a commission-approved interactive electronic terminal device which is connected with the commission's central computer system, and which is used for the purpose of playing video lottery games authorized by the commission. A video lottery terminal may simulate the play of one or more video lottery games.

(z) "Wager" means a sum of money or thing of value risked on an uncertain occurrence.

CHAPTER 217

(H. B. 4739—By Delegates Kiss, Burke and Farris)

[Passed March 8, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twenty-two-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to local option elections to determine whether video lottery games shall be permitted at pari-mutuel racetracks; limiting the election on this question to general elections; and defining the term "two-years" for purposes of this section.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-8. Form of application; local option elections; issuance of license; notice of incomplete application; notice of license or permit denial, suspension or revocation; procedure for review of license or permit denial, suspension or revocation; fees, renewal fees and renewal dates; bonding; renewal of licenses and permits; notice of change affecting license or permit; license or permit not transferrable or assignable.

(a) The commission shall determine the form of applications to be used and shall not consider incomplete applications. The commission may consider an application when the applicant has completed and executed all forms and documents required by the commission and all application fees and costs have been paid.

(b) The question of whether video lottery games shall be permitted at pari-mutuel racetracks shall be determined by local option election in each county in which a pari-mutuel racetrack is located. The local option election on this question may be placed on the ballot in each county at the primary election to be held on the tenth day of May, one thousand nine hundred ninety-four, or at any general election to be held thereafter. The county commission of the county in which the racetrack is located shall give notice to the public of such election by publication thereof as a Class II-0 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 county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the fourteen consecutive days next preceding the election.
On the local option election ballot shall be printed the following:

Shall West Virginia lottery commission video lottery games be permitted within an area at the [name of racetrack] in which pari-mutuel betting is authorized by law?

[ ] Yes  [ ] No

(Place a cross mark in the square opposite your choice.)

The ballots shall be counted, returns made and canvassed as in general elections, and the results certified by the commissioners of election to the county commission. The county commission shall, without delay, certify the result of the election to the commission.

(c) Upon receipt of the results of the election from the county commission, and if a majority has voted "yes", the commission shall issue the requested license if the applicant is otherwise qualified for the license. If a majority has voted "no", the commission shall so notify the applicant, the application shall be denied, and another election on the issue shall not be held for a period of two years: Provided, That for purposes of this section, the term "two years" means the interval between a general election and the next general election, and in no event shall it mean or encompass a period of time in excess of one hundred four weeks. If a majority has voted "yes", another local option election on the issue shall not be held for a period of five years. A local option election may thereafter be held if a written petition of qualified voters residing within the county equal to at least five percent of the number of persons who were registered to vote in the next preceding general election is received by the county commission of the county in which the horse or dog racetrack is located. The petition may be in any number of counterparts.

The petition shall be in the following form:

Petition For Local Option Election
We, the undersigned legally qualified voters, resident within the county of _____________, do hereby petition that a special election be held within the county of _____________ upon the following question: Shall West Virginia lottery commission video lottery games be permitted within an area at the [name of racetrack] in which pari-mutuel betting is authorized by law?

Name Address Date

(Post office or street address)

(d) If the commission, prior to the first day of November, one thousand nine hundred ninety-three, has authorized any racetrack to conduct video lottery games at its pari-mutuel facility, the games may continue to operate until the first day of January, one thousand nine hundred ninety-five, pending the results of any local option election held pursuant to the provisions of this section.

(e) The commission may not issue any license or permit until background investigations are concluded. The commission must make an affirmative determination that the applicant is qualified and the applicable license or permit fees have been paid prior to issuing any license or permit.

(f) The commission shall notify the applicant if an application is incomplete and the notification shall state the deficiencies in the application.

(g) The commission shall notify applicants in writing of the denial, suspension or revocation of a permit or license and the reasons for the denial, suspension or revocation in accordance with the provisions of section fifteen of this article.

(h) An applicant may request a hearing to review a license or permit denial, suspension or revocation in accordance with section fifteen of this article.

(i) The following license or permit fees shall be paid annually by each licensed racetrack, or permitted manufacturer, service technician or validation manager:

(1) Racetrack: $1,000.
98  (2) Manufacturer: $10,000.
99  (3) Service technician: $100.
100 (4) Validation manager: $50.

The fees shall be paid to the commission at the time of license or permit application and on or before the first day of July of each year thereafter, at which time the license or permit may be renewed.

(j) An applicant for a video lottery license shall, prior to the issuance of the license, post a bond or irrevocable letter of credit in a manner and in an amount established by the commission. The bond shall be issued by a surety company authorized to transact business in West Virginia and the company shall be approved by the insurance commissioner of this state as to solvency and responsibility.

(k) The commission shall renew video lottery licenses and permits annually as of the first day of July of each year, if each person seeking license or permit renewal submits the applicable renewal fee, completes all renewal forms provided by the commission, and continues to meet all qualifications for a license or permit.

(l) License and permit holders shall notify the commission of any proposed change of ownership or control of the license or permit holder and of all other transactions or occurrences relevant to license or permit qualification. In order for a license or permit to remain in effect, commission approval is required prior to completion of any proposed change of ownership or control of a license or permit holder.

(m) A license or permit is a privilege personal to the license or permit holder and is not a legal right. A license or permit granted or renewed pursuant to this article may not be transferred or assigned to another person, nor may a license or a permit be pledged as collateral. The purchaser or successor of any license or permit holder must independently qualify for a license or permit. The sale of more than five percent of a license or permit holder's voting stock, or more than five percent of the
voting stock of a corporation which controls the license or permit holder or the sale of a license or permit holder’s assets, other than those bought and sold in the ordinary course of business, or any interest therein, to any person not already determined to have met the qualifications of section seven of this article voids the license unless the sale has been approved in advance by the commission.

CHAPTER 218

(H. B. 4169—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed March 9, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article twenty-two-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to race track video lottery; the division of net terminal income; the completion of the veterans memorial by deposit of income from video lottery terminals into the division of culture and history fund; providing for the annual payment of the bond indebtedness of the veterans memorial; providing that after the bonded indebtedness of the veterans memorial is paid that twenty thousand dollars be paid into a special revenue fund to provide markers for veterans graves; authorizing legislative rules; providing for the establishment of a veterans memorial archives within the division of culture and history; establishing the position of director of monuments; specifying effective dates; and providing for the restoration and maintenance of monuments located on the capitol grounds.

Be it enacted by the Legislature of West Virginia:

That section ten, article twenty-two-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

(a) The commission shall provide to manufacturers, or applicants applying for a manufacturer's permit, the protocol documentation data necessary to enable the respective manufacturer's video lottery terminals to communicate with the commission's central computer for transmitting auditing program information and for activation and disabling of video lottery terminals.

(b) The gross terminal income of a licensed racetrack shall be remitted to the commission through the electronic transfer of funds. Licensed racetracks shall furnish to the commission all information and bank authorizations required to facilitate the timely transfer of moneys to the commission. Licensed racetracks must provide the commission thirty days' advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds. From the gross terminal income remitted by the licensee to the commission, the commission shall deduct an amount sufficient to reimburse the commission for its actual costs and expenses incurred in administering racetrack video lottery at the licensed racetrack, and the resulting amount after such deduction shall be the net terminal income. The amount deducted for administrative costs and expenses of the commission may not exceed four percent of gross terminal income.

(c) Net terminal income shall be divided as set out in this subsection. The licensed racetrack's share shall be in lieu of all lottery agent commissions and is considered to cover all costs and expenses required to be expended by
the licensed racetrack in connection with video lottery operations. The division shall be made as follows:

(1) The commission shall receive thirty percent of net terminal income, which shall be paid into the general revenue fund of the state to be appropriated by the Legislature;

(2) Fourteen percent of net terminal income at a licensed racetrack shall be deposited in the special fund established by the licensee, and used for payment of regular purses in addition to other amounts provided for in article twenty-three, chapter nineteen of this code;

(3) The county where the video lottery terminals are located shall receive two percent of the net terminal income;

(4) One half of one percent of net terminal income shall be paid for and on behalf of all employees of the licensed racing association by making a deposit into a special fund to be established by the racing commission to be used for payment into the pension plan for all employees of the licensed racing association;

(5) The West Virginia thoroughbred development fund created under section thirteen-b, article twenty-three, chapter nineteen of this code and the West Virginia greyhound breeding development fund created under section ten, article twenty-three, chapter nineteen of this code shall receive an equal share of a total of not less than one and one-half percent of the net terminal income: Provided, That for any racetrack which does not have a breeder's program supported by the thoroughbred development fund or the greyhound breeding development fund, the one and one-half percent provided for in this subdivision shall be deposited in the special fund established by the licensee and used for payment of regular purses, in addition to other amounts provided for in subdivision (2) of this subsection and article twenty-three, chapter nineteen of this code;

(6) The West Virginia thoroughbred breeders classic shall receive one percent of the net terminal income which shall be used for purses. The moneys shall be deposited
in the separate account established for the classic under section thirteen, article twenty-three, chapter nineteen of this code;

(7) A licensee shall receive forty-seven percent of net terminal income;

(8) The tourism promotion fund established in section nine, article one, chapter five-b of this code shall receive three percent of the net terminal income; and

(9) The veterans memorial program shall receive one percent of the net terminal income until sufficient moneys have been received to complete the veterans memorial on the grounds of the state capitol complex in Charleston, West Virginia. The moneys shall be deposited in the state treasury in the division of culture and history special fund created under section three, article one-i, chapter twenty-nine of this code: Provided, That only after sufficient moneys have been deposited in the fund to complete the veterans memorial and to pay in full the annual bonded indebtedness on the veterans memorial, not more than twenty thousand dollars of the one percent of net terminal income provided for in this subdivision shall be deposited into a special revenue fund in the state treasury, to be known as the "John F. 'Jack' Bennett Fund". The moneys in this fund shall be expended by the division of veterans affairs to provide for the placement of markers for the graves of veterans in perpetual cemeteries in this state. The division of veterans affairs shall promulgate legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code specifying the manner in which the funds are spent, determine the ability of the surviving spouse to pay for the placement of the marker, and setting forth the standards to be used to determine the priority in which the veterans grave markers will be placed in the event that there are not sufficient funds to complete the placement of veterans grave markers in any one year, or at all. The remainder of the one percent of terminal income shall then continue to be deposited in the special fund in the division of culture and history created under section three, article one-i, chapter twenty-nine of this code and be expended by the division of culture and history to estab-
lish a West Virginia veterans memorial archives within the cultural center to serve as a repository for the documents and records pertaining to the veterans memorial, to restore and maintain the monuments and memorial on the capitol grounds and to pay the salary and benefits of a director of monuments. The director of monuments shall be responsible for restoring and maintaining all monuments and memorials situated upon the grounds of the capitol in Charleston, West Virginia, and, to the extent there are moneys remaining in this fund thereafter, the director of monuments may use the balance to landscape the capitol grounds. The director of monuments shall be under the supervision of and report to the commissioner of the division of culture and history. The provisions of this subdivision relating to the creation of the position of director of monuments shall be effective the first day of January, one thousand nine hundred ninety-seven.

(d) Each licensed racetrack shall maintain in its account an amount equal to or greater than the gross terminal income from its operation of video lottery machines, to be electronically transferred by the commission on dates established by the commission. Upon a licensed racetrack's failure to maintain this balance, the commission may disable all of a licensed racetrack's video lottery terminals until full payment of all amounts due is made. Interest shall accrue on any unpaid balance at a rate consistent with the amount charged for state income tax delinquency under chapter eleven of this code, which interest shall begin to accrue on the date payment is due to the commission.

(e) The commission's central control computer shall keep accurate records of all income generated by each video lottery terminal. The commission shall prepare and mail to the licensed racetrack a statement reflecting the gross terminal income generated by the licensee's video lottery terminals. Each licensed racetrack must report to the commission any discrepancies between the commission's statement and each terminal's mechanical and electronic meter readings. The licensed racetrack is solely responsible for resolving income discrepancies between actual money collected and the amount shown on the
accounting meters or on the commission's billing statement.

(f) Until an accounting discrepancy is resolved in favor of the licensed racetrack, the commission may make no credit adjustments. For any video lottery terminal reflecting a discrepancy, the licensed racetrack shall submit to the commission the maintenance log which includes current mechanical meter readings and the audit ticket which contains electronic meter readings generated by the terminal's software. If the meter readings and the commission's records cannot be reconciled, final disposition of the matter shall be determined by the commission. Any accounting discrepancies which cannot be otherwise resolved shall be resolved in favor of the commission.

(g) Licensed racetracks shall remit payment by mail if the electronic transfer of funds is not operational or the commission notifies licensed racetracks that remittance by this method is required. The licensed racetracks shall report an amount equal to the total amount of cash inserted into each video lottery terminal operated by a licensee, minus the total value of game credits which are cleared from the video lottery terminal in exchange for winning redemption tickets, and remit such amount as generated from its terminals during the reporting period. The remittance shall be sealed in a properly addressed and stamped envelope and deposited in the United States mail no later than noon on the day when the payment would otherwise be completed through electronic funds transfer.

(h) Licensed racetracks may, upon request, receive additional reports of play transactions for their respective video lottery terminals and other marketing information not considered confidential by the commission. The commission may charge a reasonable fee for the cost of producing and mailing any report other than the billing statements.

(i) The commission has the right to examine all accounts, bank accounts, financial statements and records in a licensed racetrack's possession, under its control or in which it has an interest and the licensed racetrack must authorize all third parties in possession or in control of the accounts or records to allow examination of any of those accounts or records by the commission.
AN ACT to amend and reenact section two, article five, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article two, chapter fifteen of said code, all relating to salary increases for state employees; providing incremental salary increases for state employees based upon years of service; a career progression system for the West Virginia state police; promulgation of rules; salaries for members of the West Virginia state police; salary increases for length of service; exclusion from state wage and hour laws; limitations of supplemental payments; bonds; leave for national guards or reserves; and increasing salaries of members of the West Virginia state police.

Be it enacted by the Legislature of West Virginia:

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

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.

15. Public Safety.
ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-2. Granting incremental salary increases based on years of service.

Effective for the fiscal year beginning the first day of July, one thousand nine hundred ninety-six, every eligible employee with three or more years of service shall receive an annual salary increase equal to fifty dollars times the employees' years of service, not to exceed twenty years of service. In each fiscal year thereafter and on the first day of July, each eligible employee shall receive an annual increment increase of fifty dollars for that fiscal year. Every employee becoming newly eligible as a result of meeting the three years of service minimum requirement on the first day of July in any fiscal year subsequent to one thousand nine hundred ninety-six, is entitled to the annual salary increase equal to fifty dollars times the employees' years of service, where he or she has not in a previous fiscal year received the benefit of an increment computation; and shall receive a single annual increment increase thereafter of fifty dollars for each subsequent fiscal year. These incremental increases shall be in addition to any across-the-board, cost-of-living or percentage salary increases which may be granted in any fiscal year by the Legislature. This article shall not be construed to prohibit other pay increases based on merit, seniority, promotion or other reason, if funds are available for the other pay increases: Provided, That the executive head of each spending unit shall first grant the mandated increase in compensation in this section to all eligible employees prior to the consideration of any increases based on merit, seniority, promotion or other reason.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-5. Career progression system; salaries; exclusion from wage and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

(a) The superintendent shall establish within the West Virginia state police a system to provide for: The promotion of members to the supervisory ranks of sergeant, first
sergeant, second lieutenant and first lieutenant; the classification of nonsupervisory members within the field operations force to the ranks of trooper, senior trooper, trooper first class or corporal; the classification of members assigned to the forensic laboratory as criminalist I-VII; and the temporary reclassification of members assigned to administrative duties as administrative support specialist I-VIII.

(b) The superintendent is authorized to promulgate legislative rules in accordance with article three, chapter twenty-nine-a of this code for the purpose of ensuring consistency, predictability and independent review of any system developed under the provisions of this section.

(c) The superintendent shall provide to each member a written manual governing any system established under the provisions of this section and specific procedures shall be identified for the evaluation and testing of members for promotion or reclassification and the subsequent placement of any members on a promotional eligibility or reclassification recommendation list.

(d) Members shall receive annual salaries as follows:

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<th>Rank</th>
<th>Annual Salary</th>
<th>Monthly Salary</th>
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<tr>
<td>Cadet During Training</td>
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<td>$20,208</td>
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<td>Cadet Trooper After Training</td>
<td>$1,799</td>
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<td>Trooper Second Year</td>
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<td>Trooper Fourth &amp; Fifth Year</td>
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<td>51</td>
<td>VII</td>
<td>35,160</td>
</tr>
<tr>
<td>52</td>
<td>VIII</td>
<td>36,960</td>
</tr>
<tr>
<td>53</td>
<td>ANNUAL SALARY SCHEDULE (BASE PAY)</td>
<td></td>
</tr>
<tr>
<td>54</td>
<td>CRIMINALIST CLASSIFICATION</td>
<td></td>
</tr>
<tr>
<td>55</td>
<td>I</td>
<td>22,560</td>
</tr>
<tr>
<td>56</td>
<td>II</td>
<td>24,360</td>
</tr>
<tr>
<td>57</td>
<td>III</td>
<td>26,160</td>
</tr>
<tr>
<td>58</td>
<td>IV</td>
<td>27,960</td>
</tr>
<tr>
<td>59</td>
<td>V</td>
<td>31,560</td>
</tr>
<tr>
<td>60</td>
<td>VI</td>
<td>33,360</td>
</tr>
<tr>
<td>61</td>
<td>VII</td>
<td>35,160</td>
</tr>
<tr>
<td>62</td>
<td>(e) Each member of the West Virginia state police</td>
<td></td>
</tr>
<tr>
<td>63</td>
<td>whose salary is fixed and specified pursuant to this section</td>
<td></td>
</tr>
<tr>
<td>64</td>
<td>shall receive and is entitled to an increase in salary over</td>
<td></td>
</tr>
<tr>
<td>65</td>
<td>that set forth in subsection (d) of this section, for grade in</td>
<td></td>
</tr>
<tr>
<td>66</td>
<td>rank, based on length of service, including that service</td>
<td></td>
</tr>
<tr>
<td>67</td>
<td>served before and after the effective date of this section</td>
<td></td>
</tr>
<tr>
<td>68</td>
<td>with the West Virginia state police as follows: At the end</td>
<td></td>
</tr>
<tr>
<td>69</td>
<td>of five years of service with the West Virginia state police,</td>
<td></td>
</tr>
</tbody>
</table>
the member shall receive a salary increase of three hundred dollars to be effective during his or her next three years of service and a like increase at three-year intervals thereafter, with the increases to be cumulative.

(f) In applying the salary schedules set forth in this section where salary increases are provided for length of service, members of the West Virginia state police in service at the time the schedules become effective shall be given credit for prior service and shall be paid such salaries as the same length of service entitles them to receive under the provisions of this section.

(g) The Legislature finds and declares that because of the unique duties of members of the West Virginia state police, it is not appropriate to apply the provisions of state wage and hour laws to them. Accordingly, members of the West Virginia state police are hereby excluded from the provisions of state wage and hour law. This express exclusion shall not be construed as any indication that the members were or were not covered by the wage and hour law prior to this exclusion.

In lieu of any overtime pay they might otherwise have received under the wage and hour law, and in addition to their salaries and increases for length of service, members who have completed basic training and who are exempt from federal Fair Labor Standards Act guidelines may receive supplemental pay as provided in this section.

The superintendent shall, within thirty days after the effective date of this section, promulgate a legislative rule to establish the number of hours per month which constitute the standard work month for the members of the West Virginia state police. The rule shall further establish, on a graduated hourly basis, the criteria for receipt of a portion or all of supplemental payment when hours are worked in excess of the standard work month. The legislative rule shall be promulgated pursuant to the provisions of article three, chapter twenty-nine-a of this code. The superintendent shall certify monthly to the West Virginia state police's payroll officer the names of those members who have worked in excess of the standard work month and the amount of their entitlement to supplemental payment.
The supplemental payment may not exceed two hundred thirty-six dollars monthly. The superintendent and civilian employees of the West Virginia state police are not eligible for any supplemental payments.

(h) Each member of the West Virginia state police, except the superintendent and civilian employees, shall execute, before entering upon the discharge of his or her duties, a bond with security in the sum of five thousand dollars payable to the state of West Virginia, conditioned upon the faithful performance of his or her duties, and the bond shall be approved as to form by the attorney general and as to sufficiency by the governor.

(i) Any member of the West Virginia state police who is called to perform active duty for training or inactive duty training in the national guard or any reserve component of the armed forces of the United States annually shall be granted, upon request, leave time not to exceed thirty calendar days for the purpose of performing the active duty for training or inactive duty training and the time granted may not be deducted from any leave accumulated as a member of the West Virginia state police.

(j) Beginning on the first day of July, one thousand nine hundred ninety-six, and continuing thereafter members shall receive annual salaries as follows:

<table>
<thead>
<tr>
<th>SUPERVISORY AND NONSUPERVISORY RANKS</th>
<th>AMENDED ANNUAL SALARY SCHEDULE</th>
<th>BASE PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cadet During Training</td>
<td>$1,684 Mo.</td>
<td>$20,208</td>
</tr>
<tr>
<td>Cadet Trooper After Training</td>
<td>2,087 Mo.</td>
<td>25,044</td>
</tr>
<tr>
<td>Trooper Second Year</td>
<td></td>
<td>25,500</td>
</tr>
<tr>
<td>Trooper Third Year</td>
<td></td>
<td>25,872</td>
</tr>
<tr>
<td>Trooper Fourth &amp; Fifth Year</td>
<td></td>
<td>26,172</td>
</tr>
<tr>
<td>Senior Trooper</td>
<td></td>
<td>28,260</td>
</tr>
<tr>
<td>Trooper First Class</td>
<td></td>
<td>30,348</td>
</tr>
<tr>
<td>Corporal</td>
<td></td>
<td>32,436</td>
</tr>
<tr>
<td>Sergeant</td>
<td></td>
<td>36,612</td>
</tr>
<tr>
<td>Rank</td>
<td>Salary</td>
<td></td>
</tr>
<tr>
<td>-------------------------------</td>
<td>--------------</td>
<td></td>
</tr>
<tr>
<td>First Sergeant</td>
<td>38,700</td>
<td></td>
</tr>
<tr>
<td>Second Lieutenant</td>
<td>40,788</td>
<td></td>
</tr>
<tr>
<td>First Lieutenant</td>
<td>42,876</td>
<td></td>
</tr>
<tr>
<td>Captain</td>
<td>44,964</td>
<td></td>
</tr>
<tr>
<td>Major</td>
<td>47,052</td>
<td></td>
</tr>
<tr>
<td>Lieutenant Colonel</td>
<td>49,140</td>
<td></td>
</tr>
</tbody>
</table>

**AMENDED ANNUAL SALARY SCHEDULE**

*(BASE PAY)*

**ADMINISTRATION SUPPORT SPECIALIST CLASSIFICATION**

<table>
<thead>
<tr>
<th>Level</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>26,172</td>
</tr>
<tr>
<td>II</td>
<td>28,260</td>
</tr>
<tr>
<td>III</td>
<td>30,348</td>
</tr>
<tr>
<td>IV</td>
<td>32,436</td>
</tr>
<tr>
<td>V</td>
<td>36,612</td>
</tr>
<tr>
<td>VI</td>
<td>38,700</td>
</tr>
<tr>
<td>VII</td>
<td>40,788</td>
</tr>
<tr>
<td>VIII</td>
<td>42,876</td>
</tr>
</tbody>
</table>

**AMENDED ANNUAL SALARY SCHEDULE**

*(BASE PAY)*

**CRIMINALIST CLASSIFICATION**

<table>
<thead>
<tr>
<th>Level</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>26,172</td>
</tr>
<tr>
<td>II</td>
<td>28,260</td>
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<td>36,612</td>
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<tr>
<td>VI</td>
<td>38,700</td>
</tr>
<tr>
<td>VII</td>
<td>40,788</td>
</tr>
</tbody>
</table>

Each member of the West Virginia state police whose salary is fixed and specified in the amended annual salary schedules is entitled to the length of service increases set forth in subsection (f) of this section and supplemental pay as provided in subsection (h) of this section.
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, continuing the state building commission until the first day of July, one thousand nine hundred ninety-seven.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. STATE BUILDING COMMISSION.

§5-6-1. Name of state office building commission changed; composition; appointment, terms and qualifications of members; chairman and secretary; compensation and expenses; powers and duties generally; frequency of meetings; continuation.

"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 appointed 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 gov-
ernor 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 commission. 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 compensation for their
services as members or officers of the commission: Pro-
vided, That each member of the commission appointed by
the governor shall, in addition to such reimbursement 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-seven, to allow for
completion of a preliminary performance review by the
joint committee on government operations.
AN ACT to amend and reenact section four, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia human rights commission until the first day of July, one thousand nine hundred ninety-seven.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-4. Human rights commission continued; status, powers and objects.

The West Virginia human rights commission, heretofore created, is hereby continued. The commission shall have the power and authority and shall perform the functions and services as in this article prescribed and as otherwise provided by law. The commission shall encourage and endeavor to bring about mutual understanding and respect among all racial, religious and ethnic groups within the state and shall strive to eliminate all discrimination in employment and places of public accommodations by virtue of race, religion, color, national origin, ancestry, sex, age, blindness or handicap and shall strive to eliminate all discrimination in the sale, purchase, lease, rental or financing of housing and other real property by virtue of race, religion, color, national origin, ancestry, sex, blindness, handicap or familial status.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia human rights commission shall continue to exist until the first day of July, one thou-
sand nine hundred ninety-seven, 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 222

(S. B. 110—By Senators Wagner, Bowman, Wiedebusch, Yoder and Minear)

[Passed March 5, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia board of investments until the first day of July, one thousand nine hundred ninety-seven.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-18. West Virginia board of investments continued.

After having conducted a 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 West Virginia board of investments should be continued and reestablished. Accordingly, notwithstanding the provisions of article ten, chapter four of this code, the West Virginia board of investments shall continue to exist until the first day of July, one thousand nine hundred ninety-seven, 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 223

(S. B. 120—By Senators Wiedebusch, Yoder, Minear, Wagner, Bowman and Buckalew)

[Passed February 21, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia state police until the first day of July, one thousand nine hundred ninety-seven.

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. WEST VIRGINIA STATE POLICE.

§15-2-2. Superintendent; departmental headquarters; continuation of the state police.

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
20 bond both as to form and security shall be approved as to form by the attorney general, and to sufficiency by the governor.

23 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.

27 Pursuant to the provisions of article ten, chapter four of this code, the West Virginia state police 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 through the joint committee on government operations.

CHAPTER 224

( S. B. 114—By Senators Wagner, Bowman, Wiedebusch, Yoder and Minear)

[Passed March 5, 1996; in effect ninety days from passage. 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 until the first day of July, two thousand two.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

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

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

(S. B. 127—By Senators Wiedebusch, Yoder, Minear, Wagner and Bowman)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article nine-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the school building authority until the first day of July, one thousand nine hundred ninety-seven.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article nine-d, 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 9D. SCHOOL BUILDING AUTHORITY.
§18-9D-18. Continuation.

Pursuant to the provisions of article ten, chapter four of this code, the school building authority shall continue to exist until the first day of July, one thousand nine hundred ninety-seven, to allow for monitoring of compliance with recommendations contained in the full-performance audit and to allow for further review by the joint committee on government operations.

CHAPTER 226

(S. B. 128—By Senators Wagner, Bowman, Wiedebusch, Yoder and Minear)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the division of rehabilitation services until the first day of July, one thousand nine hundred ninety-seven.

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 means the secretary of education and the arts. All references in the code to the division of vocational rehabilitation means the division of rehabilitation services and all references to the director of the division of vocational rehabilitation means 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-seven to allow for monitoring of compliance with recommendations contained in the full performance audit and to allow for further review by the joint committee on government operations.

CHAPTER 227

(H. B. 4084—By Delegates J. Martin, Varner, Love, Nesbitt and Stalnaker)

[Passed March 9, 1996; in effect ninety days from passage. 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, continuing the division of labor until the first day of July, two thousand two.

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.
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, two thousand two.

CHAPTER 228

(S. B. 109—By Senators Wagner, Bowman, Wiedebusch, Yoder and Minear)

[Passed March 5, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the division of environmental protection until the first day of July, one thousand nine hundred ninety-seven.

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-seven, to allow for the completion of a performance audit, monitoring of compliance with recommendations contained in the completed portions of the performance audit and further review by the joint committee on government operations.
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, continuing the office of water resources within the division of environmental protection until the first day of July, one thousand nine hundred ninety-seven.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-7. Offices within division; continuation of the water resources section.

1 Consistent with the provisions of this article the director shall, at a minimum, maintain the following offices within the division:

2 (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;

3 (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;

4 (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 eleven, twelve, thirteen and fourteen of this chapter; and

(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-seven, 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. 4082—By Delegates J. Martin, Varner, Love, Nesbitt and Stalnaker)

[Passed March 8, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the state geological and economic survey until the first day of July, two thousand two.

Be it enacted by the Legislature of West Virginia:

That section four, article two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
§29-2-4. State geological and economic survey; director.

Pursuant to the provisions of article ten, chapter four of this code, the state geological and economic survey shall continue to exist until the first day of July, two thousand two. The governor shall appoint as director of the survey a geologist of established reputation. The director may employ such assistants and employees as he may deem necessary. He shall also determine the compensation of all persons employed by the survey, and may remove them at pleasure.

The director may set such reasonable fees as may be necessary to recover additional costs incurred in performing geological and analytical analyses. These fees shall be deposited in the state treasury in a special revenue account, to be known as the "Geological and Analytical Services Fund". The director is hereby authorized to expend such funds, as are appropriated by the Legislature, from this fund for the purpose of defraying said costs.

CHAPTER 231

(S. B. 116—By Senators Wiedebusch, Yoder, Minear, Wagner and Bowman)

[Passed March 5, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the division of personnel until the first day of July, one thousand nine hundred ninety-seven.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CIVIL SERVICE COMMISSION.

§29-6-5a. Termination of division.
Pursuant to the provisions of article ten, chapter four of this code, the division of personnel shall continue to exist until the first day of July, one thousand nine hundred ninety-seven, to allow for monitoring of compliance with recommendations contained in the full-performance audit and to allow for further review by the joint committee on government operations.

CHAPTER 232

(S. B. 119—By Senators Wiedebusch, Yoder, Minear, Wagner and Bowman)

[Passed March 5, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article thirty-one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia board of examiners in counseling until the first day of July, one thousand nine hundred ninety-seven.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 31. LICENSED PROFESSIONAL COUNSELORS.

§30-31-15. Continuation of board.

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 West Virginia board of examiners in counseling should be continued and reestablished. Accordingly, notwithstanding the provisions of article ten, chapter four of this code, the West Virginia board of examiners in counseling shall continue to exist until the first day of July, one thousand nine hundred ninety-seven, 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.
AN ACT to repeal sections seven and thirty-two, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article one-c of said chapter by adding thereto two new sections, designated sections five-a and fourteen; to amend and reenact section fourteen, article ten of said chapter; to further amend said article by adding thereto four new sections, designated sections seven-b, seven-c, fourteen-c and fourteen-d; to amend and reenact sections three, seventeen, seventeen-a, nineteen, twenty and twenty-seven, article eleven of said chapter; and to further amend said article by adding thereto a new section, designated section forty-three, all relating generally to prohibiting the promulgation of emergency legislative rules relating to the valuation of real or personal property within the state; confidentiality and disclosure of return information to develop or maintain a mineral mapping or geographic information system; creating an offense for violation of confidentiality provisions and setting forth penalties; tax procedures and administration, abatement of interest attributable to errors and delays by tax division; abatement of any penalty or addition to tax attributable to written advice by tax commissioner; petition for reassessments; overpayments, credits and refunds; prompt payment of refunds of personal and corporate net income tax; imposition of estate tax; special lien for estate tax; discharge of nonresident decedent's real property in absence of ancillary administration; final accounting delayed until liability for tax determined; liability of personal representatives; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 11. TAXATION.

Article
1C. Fair and Equal Property Valuation.
10. Procedure and Administration.
11. Estate Taxes.

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-5a. Rules.

§11-1C-14. Confidentiality and disclosure of return information to develop or maintain a mineral mapping or geographic information system; offenses; penalties.

§11-1C-5a. Rules.

1 After the first day of January, one thousand nine hundred ninety-six, all rules proposed or promulgated by the tax commissioner regarding the valuation of real or personal property within the state shall be subject to review by the legislative rule-making review committee as provided in section eleven, article three, chapter twenty-nine-a of this code, and no such rules relating to the valuation of real or personal property within the state shall be promulgated as emergency legislative rules pursuant to section fifteen, article three, chapter twenty-nine-a of this code.

§11-1C-14. Confidentiality and disclosure of return information to develop or maintain a mineral mapping or geographic information system; offenses; penalties.

1 (a) All information provided by or on behalf of a natural resources property owner or by or on behalf of an owner of an interest in natural resources property to any state or county representative for use in the valuation or assessment of natural resources property or for use in the
development or maintenance of a legislatively funded mineral mapping or geologic information system shall be confidential. Such information shall be exempt from disclosure under section four, article one of chapter twenty-nine-b of this code, and shall be kept, held and maintained confidential except to the extent such information is needed by the state tax commissioner to defend an appraisal challenged by the owner or lessee of the natural resources property subject to the appraisal: Provided, That this section may not be construed to prohibit the publication or release of information generated as a part of the minerals mapping or geologic information system, whether in the form of aggregated statistics, maps, articles, reports, professional talks or otherwise, presented in accordance with generally accepted practices and in a manner so as to preclude the identification or determination of information about particular property owners.

(b) Any state or county representative who violates this section by disclosing confidential information shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both such fine and imprisonment, together with the cost of prosecution. As used in this section, the term "state or county representative" includes any current or former state or county employee, officer, commission or board member, and any state or county agency, institution, organization, contractor or subcontractor, and any principal, officer, agent or employee thereof.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-7b. Abatement of interest attributable to errors and by tax division.
§11-10-7c. Abatement of any penalty or addition to tax attributable to written advice by tax commissioner.
§11-10-14. Overpayments; credits; refunds and limitations.
§11-10-14c. Prompt payment of refunds of personal income taxes.
§11-10-14d. Prompt payment of refunds of corporation net income taxes.

§11-10-7b. Abatement of interest attributable to errors and by tax division.

(a) In general. — In the case of any interest due on:
(1) Any deficiency attributable, in whole or in part, to any error or delay determined by the tax commissioner to have been caused by an officer or employee of the tax division (acting in his or her official capacity) in performing a ministerial act; or

(2) Any payment of any tax (or fee) assessed under section seven of this article to the extent that any error or delay in such payment is determined by the tax commissioner to be attributable to an officer or employee of the tax division (acting in his or her official capacity) being erroneous or dilatory in performing a ministerial act, the tax commissioner may abate all or any part of such interest for any period. For purposes of the preceding sentence, an error or delay shall be taken into account only if no significant aspect of such error or delay can be attributable to the taxpayer (or feepayer) involved, and after the tax division has contacted the taxpayer (or feepayer) in writing with respect to such deficiency or payment.

(b) Interest abated with respect to erroneous refund check. — The tax commissioner may abate the interest that accrued under section seventeen of this article on any erroneous refund until the date demand for repayment is made, unless the taxpayer (or a related party) has in any way caused such erroneous refund.

§11-10-7c. Abatement of any penalty or addition to tax attributable to written advice by tax commissioner.

(a) In general. — The tax commissioner shall abate any portion of any penalty or addition to tax (or fee) attributable to erroneous advice furnished to the taxpayer (or feepayer) in writing by an officer or employee of the tax division, acting in such officer's or employee's official capacity.

(b) Limitations. — Subsection (a) of this section shall apply only if the tax commissioner finds that all of the following conditions are satisfied:

(1) The written advice was reasonably relied upon by the taxpayer (or feepayer) and was in response to a specific written request of the taxpayer (or feepayer); and
(2) The portion of the penalty or addition to tax (or fee) did not result from a failure by the taxpayer (or feepayer) to provide adequate or accurate information.

(c) Any person seeking relief under this section shall file with the commissioner all of the following:

(1) A copy of the person's written request to the commissioner and a copy of the commissioner's written advice;

(2) A statement signed under penalty of perjury setting forth the facts on which the claim is based;

(3) Any other information which the commissioner may require.

§11-10-14. Overpayments; credits; refunds and limitations.

(a) Refunds of credits of overpayments. — In the case of overpayment of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any of the other articles of this chapter, or of this code, to which this article is applicable, the tax commissioner shall, subject to the provisions of this article, refund to the taxpayer the amount of the overpayment or, if the taxpayer so elects, apply the same as a credit against the taxpayer's liability for the tax for other periods. The refund or credit shall include any interest due the taxpayer under the provisions of section seventeen of this article.

(b) Refunds or credits of gasoline and special fuel excise tax or motor carrier road tax. — Any person who seeks a refund or credit of gasoline and special fuel excise taxes under the provisions of section ten, eleven or twelve, article fourteen of this chapter, or section nine or eleven, article fourteen-a of this chapter, shall file his claim for refund or credit in accordance with the provisions of such sections. The ninety-day time period for determination of claims for refund or credit provided in subsection (d) of this section shall not apply to these claims for refund or credit.

(c) Claims for refund or credit. — No refund or credit shall be made unless the taxpayer has timely filed a claim for refund or credit with the tax commissioner. A person against whom an assessment or administrative decision has
become final shall not be entitled to file a claim for refund
or credit with the tax commissioner as prescribed herein.
The tax commissioner shall determine the taxpayer's claim
and notify the taxpayer in writing of his determination.

(d) Petition for refund or credit; hearing. — (1) If the
taxpayer is not satisfied with the tax commissioner's deter-
mination of taxpayer's claim for refund or credit, or if the
tax commissioner has not determined the taxpayer's claim
within ninety days after the claim was filed, or six months
in the case of claims for refund or credit of the taxes im-
posed by articles twenty-one, twenty-three and twenty-four
of this chapter, after the filing thereof, the taxpayer may
file, with the tax commissioner, either personally or by
certified mail, a petition for refund or credit: Provided,
That no petition for refund or credit may be filed more
than sixty days after the taxpayer is served with notice of
denial of taxpayer's claim.

(2) The petition for refund or credit shall be in writ-
ing, verified under oath by the said taxpayer, or by tax-
payer's duly authorized agent having knowledge of the
facts, and shall set forth with particularity the items of the
determination objected to, together with the reasons for
the objections.

(3) When a petition for refund or credit is properly
filed, the procedures for hearing and for decision applica-
ble when a petition for reassessment is timely filed shall be
followed.

(e) Appeal. — An appeal from the tax commissioner's
administrative decision upon the petition for refund or
credit may be taken by the taxpayer in the same manner
and under the same procedure as that provided for judicial
review of an administrative decision on a petition for reas-
essment, but no bond shall be required of the taxpayer.

(f) Decision of the court. — Where the appeal is to
review an administrative decision on a petition for refund
or credit, the court may determine the legal rights of the
parties but in no event shall it enter a judgment for mon-
ey.
(g) **Refund made or credit established.** — The tax commissioner shall promptly issue his requisition on the treasury or establish a credit, as requested by the taxpayer, for any amount finally administratively or judicially determined to be an overpayment of any tax (or fee) administered under this article. The auditor shall issue his warrant on the treasurer for any refund requisitioned under this subsection payable to the taxpayer entitled to the refund, and the treasurer shall pay the warrant out of the fund into which the amount so refunded was originally paid: Provided, That refunds of personal income tax may also be paid out of the fund established pursuant to section ninety-three, article twenty-one of this chapter.

(h) **Forms for claim for refund or a credit; where return shall constitute claim.** — The tax commissioner may prescribe by rule or regulation the forms for claims for refund or credit. Notwithstanding the foregoing, where the taxpayer has overpaid the tax imposed by article twenty-one, twenty-three or twenty-four of this chapter, a return signed by the taxpayer which shows on its face that an overpayment of such tax has been made shall constitute a claim for refund or credit.

(i) **Remedy exclusive.** — The procedure provided by this section shall constitute the sole method of obtaining any refund, or credit, or any tax (or fee) administered under this article, it being the intent of the Legislature that the procedure set forth in this article shall be in lieu of any other remedy, including the uniform declaratory judgments act embodied in article thirteen, chapter fifty-five of this code, and the provisions of section two-a, article one of this chapter.

(j) **Applicability of this section.** — The provisions of this section shall apply to refunds or credits of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any article of this chapter, or of this code, to which this article is applicable.

(k) **Erroneous refund or credit.** — If the tax commissioner believes that an erroneous refund has been made or an erroneous credit has been established, he may proceed to investigate and make an assessment or institute civil
action to recover the amount of such refund or credit, within two years from date the erroneous refund was paid or the erroneous credit was established, except that the assessment may be issued or civil action brought within five years from such date if it appears that any portion of the refund or credit was induced by fraud or misrepresentation of a material fact.

(1) Limitation on claims for refund or credit. —

(1) General rule. — Whenever a taxpayer claims to be entitled to a refund or credit of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any article of this chapter, or of this code, administered under this article, paid into the treasury of this state, such taxpayer shall, except as provided in subsection (d) of this section, file a claim for refund, or credit, within three years after the due date of the return in respect of which the tax (or fee) was imposed, determined by including any authorized extension of time for filing the return, or within two years from the date the tax (or fee), was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within two years from the time the tax (or fee) was paid, and not thereafter.

(2) Extensions of time for filing claim by agreement. — The tax commissioner and the taxpayer may enter into a written agreement to extend the period within which the taxpayer may file a claim for refund or credit, which period shall not exceed two years. The period so agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before expiration of the period previously agreed upon.

(3) Special rule where agreement to extend time for making an assessment. — Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, if an agreement is made under the provisions of section fifteen of this article extending the time period in which an assessment of tax can be made, then the period for filing a claim for refund or credit for overpayment of the same tax made during the periods subject to assessment under the extension agreement shall also be extended for the period of the extension agreement plus ninety days.
(4) Overpayment of federal tax. — Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, in the event of a final determination by the United States Internal Revenue Service or other competent authority of an overpayment in the taxpayer's federal income tax liability, the period of limitation upon claiming a refund reflecting the final determination in taxes imposed by articles twenty-one and twenty-four of this chapter shall not expire until six months after the determination is made by the United States Internal Revenue Service or other competent authority.

(5) Tax paid to the wrong state. — Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, when an individual, or the fiduciary of an estate, has in good faith erroneously paid personal income tax, estate tax or sales tax, to this state on income or a transaction which was lawfully taxable by another state and, therefore not taxable by this state, and no dispute exists as to the jurisdiction to which the tax should have been paid, then the time period for filing a claim for refund, or credit, for the tax erroneously paid to this state shall not expire until ninety days after the tax is lawfully paid to the other state.

(6) Exception for gasoline and special fuel excise tax and motor carrier road tax. — This subsection shall not apply to refunds of gasoline and special fuel excise tax or motor carrier road tax sought under the provisions of article fourteen or fourteen-a of this chapter.

(m) Effective date. — This section, as amended in the year one thousand nine hundred ninety-six, shall apply to claims for refund or credit filed on or after the first day of July, one thousand nine hundred ninety-six.

§11-10-14c. Prompt payment of refunds of personal income taxes.

(a) General rule. — The net amount of a lawful, mathematically correct, uncontested claim for refund of any tax imposed by article twenty-one of this chapter shall be refunded to the taxpayer within ninety days after such a claim for refund is filed with the tax commissioner. If the fund is not made to a taxpayer within the ninety days, the
tax commissioner shall pay interest, at the rate specified in
section seventeen-a of this article, for the period com-
encing with the date the claim for refund was received
by the tax commissioner until the date the state warrant for
the refund amount is issued, notwithstanding any provi-
sions of section seventeen of this article to the contrary.

(b) **Definitions.** — For purposes of this section:

(1) A claim for refund is "filed with the tax commis-

sioner" on the date it is physically received by the state tax
division.

(2) A "lawful, mathematically correct, uncontested
claim for refund" is one that is timely filed; is signed by
the appropriate taxpayer or taxpayers; is mathematically
correct; is supported by any necessary documentation;
and appears on its face to be correct.

(c) The payment of a claim for refund under this
section shall not bar the tax commissioner from later issu-
ing an assessment to recover any amount erroneously
refunded, plus statutory interest and any applicable addi-
tions to tax, within two years after the date the refund was
made: **Provided,** That if the refund or any part thereof
was obtained by fraud, the assessment may be made at any
time.

(d) This section shall apply only to claims for refund
of personal income taxes filed after the first day of Janu-
ary, one thousand nine hundred ninety-seven.

§11-10-14d. **Prompt payment of refunds of corporation net
income taxes.**

(a) **General rule.** — The net amount of a lawful, math-
ematically correct, uncontested claim for refund of any
tax imposed by article twenty-four of this chapter shall be
refunded to the taxpayer within six months after a claim
for refund is filed with the tax commissioner. If the re-
fund is not made to a taxpayer within this period, the tax
commissioner shall pay interest, at the rate specified in
section seventeen-a of this article, for the period com-
 mencing with the date the claim for refund was received
by the tax commissioner until the date the state warrant for
the refund amount is issued, notwithstanding any provi-
sions of section seventeen of this article to the contrary.

(b) Definitions. — For purposes of this section:

(1) A claim for refund is "filed with the tax commis-
sioner" on the date it is physically received by the state tax
division.

(2) A "lawful, mathematically correct, uncontested
claim for refund" is one that is timely filed; is signed by
the appropriate taxpayer or taxpayers; is mathematically
correct; is supported by any necessary documentation;
and appears on its face to be correct.

(c) The payment of a claim for refund under this
section shall not bar the tax commissioner from later issu-
ing an assessment to recover any amount erroneously
refunded, plus statutory interest and any applicable addi-
tions to tax, within two years after the date the refund was
made: Provided, That if the refund or any part thereof
was obtained by fraud, the assessment may be made at any
time.

(d) This section shall apply only to claims for refund
of corporation net income taxes filed after the first day of
January, one thousand nine hundred ninety-seven.

ARTICLE 11. ESTATE TAXES.

§11-11-3. Imposition of tax.
§11-11-17. Special lien for estate tax.
§11-11-17a. Discharge of nonresident decedent's real property in absence of
ancillary administration.
§11-11-20. Liability of personal representatives; etc.
§11-11-43. Effective date.

§11-11-3. Imposition of tax.

Whenever a federal estate tax is payable to the United
States, there is hereby imposed a West Virginia estate tax
equal to the portion, if any, of the maximum allowable
amount of federal credit for state death taxes which is
attributable to property located in this state, or within its
taxing jurisdiction. In no event, however, shall the estate
tax hereby imposed result in a total death tax liability to
this state and the United States in excess of the death tax
liability to the United States which would result if this
article were not in effect: Provided, That the estate tax
hereby imposed shall not be affected by other credits
properly allowable in computing the federal estate tax
except that the unified credit established in Section 2010
of the Internal Revenue Code of 1986, as amended, shall
be applied before calculating the West Virginia estate tax.

§11-11-17. Special lien for estate tax.

(a) Lien created. — Unless the tax imposed by section
three of this article is sooner paid in full, or becomes un-
enforceable by reason of lapse of time, it shall be a lien
for ten years after the death of the decedent upon all
property, real or personal, of the decedent located in this
state, except as provided in subsection (d) of this section.

(b) Liability of transferees and others. — If the tax
imposed by this article is not paid when due, then the
spouse, transferee, trustee (except the trustee of an em-
ployees' trust which meets the requirements of Section
401(a) of the Internal Revenue Code of 1986, as amend-
ed), surviving tenant, person in possession of the property
by reason of the exercise, nonexercise, or release of a
power of appointment, or beneficiary, who receives, or
possesses on the date of the decedent's death, property
included in the gross estate for federal estate tax purposes,
to the extent of the value at the time of the decedent's
death of the property, shall be personally liable for the
tax. Any part of the property transferred by (or trans-
f erred by a transferee of) the spouse, transferee, trustee,
surviving tenant, person in possession, or beneficiary, to a
purchaser or holder of a security interest shall be divested
of the lien provided in subsection (a) of this section and a
like lien shall attach to all the property of such spouse,
transferee, trustee, surviving tenant, person in possession,
or beneficiary, or transferee of any person, except any
part transferred to a purchaser or a holder of a security
interest.

(c) Continuance after discharge of fiduciary. — The
provisions of section twenty of this article eleven (relating
to discharge of fiduciary from personal liability) shall not operate as a release of any part of the gross estate from the lien provided in subsection (a) of this section for any deficiency that may thereafter be determined to be due, unless such part of the gross estate (or any interest therein) has been transferred to a purchaser or a holder of a security interest, in which case the part (or the interest) so transferred shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from the purchaser or holder of a security interest, by the heirs, legatees, devisees, or distributees.

(d) Exceptions. —

(1) The part of the property of the decedent as may at the time be subject to the lien provided for in subsection (a) of this section shall be divested of such lien to the extent used for payment of charges against the estate or expenses of its administration allowed by the county commission or court having jurisdiction thereof.

(2) The part of the personal property of the decedent as may at the time be subject to the lien provided for in subsection (a) of this section shall be divested of the lien upon the conveyance or transfer of the property to a bona fide purchaser or holder of a security interest for an adequate and full consideration in money or money's worth. The liens shall then attach to the consideration received for the property from the purchaser or holder of a security interest.

(e) Release of lien. — Subject to such regulations as the tax commissioner may prescribe, the tax commissioner shall issue a certificate of release of any lien arising under this section not later than thirty days after the day on which the tax commissioner finds that the liability for the amount assessed, together with all interest and applicable penalties and additions to tax in respect thereof, has been fully satisfied or has become legally unenforceable.

(f) Certificate of discharge. — Subject to such regulations as the tax commissioner may prescribe, the tax commissioner may issue a certificate of discharge of any or all
of the property subject to the lien imposed by this section if the tax commissioner finds that the liability secured by the lien has been fully satisfied or provided for.

(g) Effect of certificate. —

(1) Conclusiveness. — Except as provided in subdivisions (2) and (3) of this subsection, if a certificate is issued pursuant to subsection (f) of this section by the tax commissioner and is filed in the same office as the notice of lien to which it relates (if such notice of lien has been filed), the certificate shall have the following effect:

(A) In the case of a certificate of release, the certificate shall be conclusive that the lien referred to in the certificate is extinguished;

(B) In the case of a certificate of discharge, the certificate shall be conclusive that the property covered by the certificate is discharged from the lien; and

(C) In the case of a certificate of nonattachment, the certificate shall be conclusive that the lien of the state of West Virginia does not attach to the property of the person referred to in the certificate.

(2) Revocation of certification of release or nonattachment. — If the tax commissioner determines that a certificate of release or nonattachment of a lien imposed by this section was issued erroneously or improvidently, or if a certificate of release of the lien was issued pursuant to a collateral agreement entered into in connection with a compromise under section five-q, article ten of this chapter, which has been breached, and if the period of limitation on collection after assessment has not expired, the tax commissioner may revoke the certificate and reinstate the lien:

(A) By mailing written notice, by certified mail, return receipt requested, of the revocation to the person against whom the tax was assessed at his or her last known address; and

(B) By filing notice of the revocation in the same office in which notice of lien to which it relates was filed (if the notice of lien had been filed).
Such reinstated lien: (i) Shall be effective on the date the notice of revocation is mailed to the taxpayer in accordance with the provisions of the foregoing paragraph (A), but not earlier than the date on which any required filing of notice of revocation is filed in accordance with the provisions of the foregoing paragraph (B); and (ii) shall have the same force and effect (as of the date), until the expiration of the period of limitation on collection after assessment, as a lien imposed by section eleven, article ten of this chapter, (relating to lien for taxes).

(3) Certificates void under certain conditions. — Notwithstanding any other provision of this article, any lien imposed by this section shall attach to any property with respect to which a certificate of discharge has been issued if the person liable for payment of the tax reacquires the property after the certificate has been issued.

§11-11-17a. Discharge of nonresident decedent's real property in absence of ancillary administration.

(a) The domiciliary personal representative of a nonresident decedent may apply to the tax commissioner for a certificate releasing all real property situate in this state included in decedent's gross estate from any lien imposed by section seventeen of this article. In the absence of ancillary administration in this state, the tax commissioner may consider reliable and satisfactory evidence furnished by the personal representative regarding the value of real property and the amount of tax due under this article, or that no tax liability exists under this article with respect to any real property.

(b) If the tax commissioner determines that reliable and satisfactory evidence exists, an affidavit of value submitted by the personal representative made pursuant to and in conjunction with the evidence shall be marked as inspected by the commissioner and shall be filed by the estate in the county or counties of this state where the real property is situate.

(c) In determining tax liability, the tax commissioner may also consider an appraisal of the real property submitted in writing to the tax commissioner, paid for by the
personal representative and made at the personal representative's request. The appraisal shall be performed by a licensed real estate appraiser acceptable to the tax commissioner and it shall be filed in the county or counties where the real property is situate.

(d) If the tax commissioner is satisfied that no tax liability exists, or that the tax liability of the estate has been fully discharged, the tax commissioner may issue a certificate under subsection (f), section seventeen of this article.


(a) If a personal representative is required to file a federal estate tax return for the estate of a decedent, then no final account of that personal representative shall be allowed or approved in any probate proceeding with respect to that estate, by the county commission, or the clerk thereof, before whom the proceeding is pending, unless the county commission finds that the tax imposed on the transfer of property by this article has been paid in full, or that no tax is due.

(b) No final account of a personal representative of an estate shall be allowed by any county commission, or clerk thereof, unless such account shows and the county commission, or clerk thereof, finds that all taxes imposed by this article upon the personal representative, which have become payable, have been paid.

(c) The certificate of release, discharge or nonattachment issued to the personal representative by the tax commissioner under section seventeen of this article shall be conclusive in the proceeding as to the liability or the payment of tax, to the extent provided in the certificate.

§11-11-20. Liability of personal representatives; etc.

(a) Personal representative. — Any personal representative who distributes any property of an estate without first paying, securing another's payment of, or furnishing security for payment of the taxes due under this article, is personally liable for payment of the taxes due, to the ex-
tent of the value of any property that may come or that
may have come into the possession of the personal repre-
sentative. Security for payment of taxes due under this
article shall be in an amount equal to or greater than the
value of all property that is or has come into the posses­sion of the personal representative, determined as of the
time the security is furnished.

(b) Other person having control, custody or posses­sion of property. — Any person in this state who has con­trol, custody or possession of any property includible in
the gross estate of a decedent for federal estate tax pur­poses, and who delivers any of the property to the personal
representative or other legal representative of the decedent
outside this state without first paying, securing another's
payment of, or furnishing security for payment of the
taxes due under this article, is liable for the taxes due un­der this article to the extent of the value of the property
delivered. Security for payment of the taxes due under
this article shall be in an amount equal to or greater than
the value of all property delivered to the personal repre­sentative or other legal representative of the decedent
outside this state by such a person.

(c) Persons not having control. — For the purpose of
this section, persons do not have control, custody or pos­session of a decedent's property if they are not responsible
for paying the tax due under this article, such as
transferees, which term includes, but is not limited to,
stockbrokers or stock transfer agents, banks and other
depositories of checking and savings accounts, safe deposi­t companies and life insurance companies.

(d) Reliance upon tax commissioner's certificates. —
For the purposes of this section, any person in this state
who has the control, custody or possession of any prop­erty includible in the gross estate of the decedent for federal
estate tax purposes, and who delivers any of the property
to the personal representative or other legal representative
of the decedent, may rely upon the release or certificate
furnished by the tax commissioner under section seven­teen of this article to the personal representative as evi­dence of compliance with the requirements of this article,
and make the deliveries and transfers as the personal representa tive may direct without being liable for any taxes due under this article with respect to any property.

(e) Discharge of personal liability for federal estate taxes. — If a personal representative receives a discharge from personal liability for federal estate taxes pursuant to Section 2204 of the Internal Revenue Code of 1986, as amended, and if the personal representative makes written application to the tax commissioner for determination of the amount of the tax due under this article and for discharge from personal liability, the tax commissioner, within two months after receiving satisfactory evidence of the Section 2204 discharge, but not after the expiration of the period for issuance of a deficiency assessment, shall notify the personal representative of the amount of the tax due under this article, including the amount of any interest, additions to tax or penalties that are due. The personal representative, upon payment of the amount of which he is notified (other than any portion for which an extension of time for payment has been granted), and upon furnishing any bond that may be required by the tax commissioner to secure payment of any amount for which the time for payment has been extended, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing the discharge.


(a) The estate of each decedent whose property is subject to the laws of this state and which is required to file a federal estate tax return shall be deemed prima facie liable for payment of estate taxes under this article and shall be subject to a lien therefor in the amount as may be later determined to be due and payable on the estate as provided in this article.

(b) This presumption of liability shall begin on the date of the death of the decedent and shall continue until the full settlement of all taxes which may be found to be due under this article, the settlement to be shown by receipts for payment of all taxes due under this article, to be issued by the tax commissioner as provided for in this article.
(c) Whenever the tax commissioner determines that an estate described in subsection (a) of this section is not liable for payment of tax under this article, the tax commissioner shall issue to the personal representative a certificate in writing to that effect, showing the nonliability to tax, which certificate of nonliability shall have the same force and effect as a receipt showing payment of tax. This certificate of nonliability may be recorded and shall be admissible in evidence in like manner as receipts showing payment of taxes due under this article.

§11-11-43. Effective date.

The amendments to this article made by this act shall take effect as provided in the Constitution of this state and, upon the effective date, these amendments shall apply to the estates of all decedents dying after the thirtieth day of June, one thousand nine hundred eighty-five, for which no estate tax lien release has been issued by the tax commissioner prior to the effective date of these amendments in the year one thousand nine hundred ninety-six, and to estates of all decedents dying on or after the effective date of these amendments.

CHAPTER 234

(Com. Sub. for S. B. 363—By Senators Ross, Helmick, Sharpe and Schoonover)

[Passed March 7, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-d, relating to establishing an alternative-fuel motor vehicle tax credit which may be applied against personal net income tax and corporation net income tax; setting forth legislative findings; specifying definitions; specifying the mode and manner in which the credit may be taken; and specifying an effective date.

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-d, to read as follows:

ARTICLE 6D. ALTERNATIVE-FUEL MOTOR VEHICLES TAX CREDIT.

§11-6D-1. Legislative findings and purpose.

§11-6D-2. Definitions.

§11-6D-3. Credit allowed for alternative-fuel motor vehicles; application against personal income tax or corporate net income tax; effective date.

§11-6D-4. Eligibility for credit.

§11-6D-5. Amount of credit.

§11-6D-6. Credit to be apportioned over three-year period.

§11-6D-7. Duration of availability of credit.

§11-6D-8. Commissioner to design forms and schedules; promulgation of rules.

§11-6D-1. Legislative findings and purpose.

Consistent with the public policy as stated in section one, article two-d, chapter twenty-four of this code, the Legislature hereby finds that the use of alternative fuels is in the public interest and promotes the general welfare of the people of this state insofar as it addresses serious concerns for our environment and our state's and nation's dependence on foreign oil as a source of energy. The Legislature further finds that this state has an abundant supply of alternative fuels and an extensive supply network and that, by encouraging the use of alternatively-fueled motor vehicles, the state will be reducing its dependence on foreign oil and attempting to improve its air quality.

However, because the cost of motor vehicles which utilize alternative-fuel technologies remains high in relation to motor vehicles that employ more traditional technologies, citizens of this state who might otherwise choose an alternatively-fueled motor vehicle are forced by economic necessity to continue using motor vehicles that are fueled by more conventional means. Therefore, in order to encourage the use of alternatively-fueled motor vehicles...
and possibly reduce unnecessary pollution of our environment and reduce our dependence on foreign sources of energy, there is hereby created an alternative-fuel motor vehicles tax credit.

§11-6D-2. Definitions.

As used in this article, the following terms have the meanings ascribed to them in this section:

(a) "Alternative fuel" includes:

(1) Compressed natural gas;
(2) Liquified natural gas;
(3) Liquified petroleum gas;
(4) Methanol;
(5) Ethanol;
(6) Fuel mixtures that contain eighty-five percent or more by volume, when combined with gasoline or other fuels, of the following:

(A) Methanol;
(B) Ethanol; or
(C) Other alcohols;
(7) Coal-derived liquid fuels; and
(8) Electricity, including electricity from solar energy.

(b) "Alternative-fuel motor vehicle" means a motor vehicle that as a new or retrofitted or converted fuel:

(1) Operates solely on one alternative fuel;
(2) Is capable of operating on one or more alternative fuels, singly or in combination; or
(3) Is capable of operating on an alternative fuel and is also capable of operating on gasoline or diesel fuel.

§11-6D-3. Credit allowed for alternative-fuel motor vehicles; application against personal income tax or corporate net income tax; effective date.
The tax credit provided in this article may be applied against the tax liability of a taxpayer imposed by the provisions of either article twenty-one or article twenty-four of this chapter, but in no case may more than one credit be granted for the same alternative-fuel motor vehicle as defined in subdivision (b), section two of this article. This credit shall be available for those tax years beginning after the thirtieth day of June, one thousand nine hundred ninety-seven.

§11-6D-4. Eligibility for credit.

A taxpayer is eligible to claim the credit against tax provided in this article if he or she:

(a) Converts a motor vehicle that is presently registered in West Virginia to operate:

(1) Exclusively on an alternative fuel as defined in subdivision (a), section two of this article; or

(2) In a dual fuel mode, as defined in paragraph (6), subdivision (a), section two of this article; or

(b) Purchases from an original equipment manufacturer or an after-market conversion facility a new dedicated or dually fueled alternative-fuel motor vehicle for which the taxpayer then obtains a valid West Virginia registration.

(c) The credit provided in this article is not available to and may not be claimed by any taxpayer under any obligation pursuant to any federal or state law, policy or regulation to convert to the use of alternative fuels for any motor vehicle.

§11-6D-5. Amount of credit.

(a) The total amount of any credit allowed under this article is limited by and subject to the provisions set forth in this subsection and subsections (b), (c) and (d) of this section and may not exceed: (1) In the case of a motor vehicle conversions or retrofitting, the actual cost of converting from a traditionally-fueled motor vehicle to an alternatively-fueled motor vehicle; or (2) in the case of a new purchase, the incremental difference in cost between
an alternative-fuel motor vehicle and a comparably
equipped motor vehicle that employs traditional fuel tech-
nology.

(b) The maximum total credit allowed for an
alternative-fuel motor vehicle is:

(1) For a vehicle with a gross vehicle weight of not
more than ten thousand pounds, three thousand seven
hundred fifty dollars;

(2) For a vehicle with a gross vehicle weight of more
than ten thousand pounds up to twenty-six thousand
pounds, nine thousand two hundred fifty dollars;

(3) For a truck or van with a gross vehicle weight of
more than twenty-six thousand pounds, fifty thousand
dollars; and

(4) For a bus capable of seating at least twenty adults,
fifty thousand dollars.

(c) Subject to the limitations set forth in subsection (a)
of this section, a taxpayer who is otherwise entitled to a
credit against tax who claims the credit provided for in this
article on the basis of any alternative-fuel motor vehicle
that operates exclusively on electricity is entitled to an
additional credit of ten percent of the credit which is oth-
erwise allowed under subsection (b) of this section.

(d) The maximum incremental credit allowed per year
is one third of the credit attributable to five vehicles with
the cumulative credit over a three-year period not to ex-
ceed one third of the credit attributable to fifteen vehicles.

§11-6D-6. Credit to be apportioned over three-year period.

The credit against tax for any alternative-fuel motor
vehicle provided for in this article may be taken by a tax-
payer claiming the credit only in three equal increments
over a three-consecutive tax-year period, so that in any tax
year in which a taxpayer is entitled to the credit, only one
third of the total credit allowed for a certain alternative-
fuel motor vehicle under section five may be taken.

§11-6D-7. Duration of availability of credit.
The tax credit provided in this article shall expire by operation of law ten years after the effective date of this article: Provided, That any eligible taxpayer who makes a valid claim for the credit before that expiration is entitled to claim and receive the remaining one-third increment or increments of the total credit allowed under section five of this article for the tax year or years ensuing after the expiration of this article until the total amount of credit allowed has been exhausted.

§11-6D-8. Commissioner to design forms and schedules; promulgation of rules.

(a) The tax commissioner shall design and provide to the public simplified forms and schedules to implement and effectuate the provisions of this article.

(b) The tax commissioner is authorized to promulgate rules for the administration of this article consistent with its provisions and in accordance with article three, chapter twenty-nine-a of this code.

(c) Within one year following the expiration of the credit established in this article the state tax commissioner shall provide a written report to the Legislature setting forth the utilization of the credit, the benefit of the credit and the overall cost of the credit.

CHAPTER 235

(H. B. 4834—By Delegates Kiss, Clements, Compton, Farris, Talbott, Miller and Walters)

[Passed March 9, 1996; in effect from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

That section two-o, article thirteen, 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 13. BUSINESS AND OCCUPATION TAX.

§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; definitions; rate of tax; exemptions; effective date.

(a) Definitions. — As used in this section:

(1) "Average four-year generation" is computed by dividing by four the sum of a generating unit's net generation, expressed in kilowatt hours, for calendar years one thousand nine hundred ninety-one, 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 mod-
ifications 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 locat-
ed 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 gener-
ating 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 thou-
sand 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.

(c) 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: Provided, That the taxable generating capacity of a municipally-owned wood-waste fired generating unit and of a municipally-owned hydo-electric generating unit shall equal zero 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: Provided, That the taxable generating capacity of a municipally owned hydro-electric generating plant shall equal zero 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 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 applica-
tion 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 this code: Provided, however, 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 com-
pany shall pay the tax due under section two-o of this
article and not the tax due under subdivision (3), subsec-
tion (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 elec-
tric light and power companies shall determine their liabil-
ity for payment of tax under this article exclusively under
this section.

CHAPTER 236

(S. B. 78—By Senator Craigo)

[Passed February 14, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article thirteen-a,
chapter eleven of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to dedication
of oil and gas severance tax for benefit of counties and mu-
nicipalities; distribution of dedicated tax; promulgation of
rules; creation of special funds; methods and formulae for
distribution of the dedicated tax; expenditure of funds by
counties and municipalities; and requirements for special
budgets and reports.

Be it enacted by the Legislature of West Virginia:

That section five-a, article thirteen-a, 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 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.

(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 the counties and municipalities as provided in this section. 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 the counties and municipalities as provided in this section.

(b) Seventy-five percent of this dedicated tax shall, after appropriation of the tax by the Legislature, be distributed by the state treasurer in the manner specified in this section, 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 referred to in this section as the "oil and gas producing counties". The remaining twenty-five percent of the net proceeds of this additional tax on oil and gas shall be distributed, after appropriation, among all the counties and municipalities of this state in the manner specified in this section.
(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 the dedicated tax on oil and gas to the 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 the dedicated tax on oil and gas to all counties and municipalities of the state, without regard to oil and gas having been produced in those counties or municipalities, 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 the dedicated tax on oil and gas shall be deposited in the "oil and gas county revenue fund" and twenty-five percent of the dedicated tax on oil and gas shall be deposited in the "all counties and municipalities revenue fund", from time to time, as the proceeds are received by the tax commissioner. The moneys in the funds shall, after appropriation of the moneys by the Legislature, be distributed to the respective counties and municipalities entitled to the moneys 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 to the moneys by the state treasurer in the manner specified in this section. 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 to the monies 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 the county or municipality shall issue and a check drawn thereon making payment of the sum shall thereafter be distributed to the 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 the 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 the 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 the 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 the 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 the 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 the latter portion to which each municipality in the county is entitled shall be determined by multiplying the total of the 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 counties with population in excess of two hundred thousand at least seventy-five percent of the 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, the oil and gas 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 the 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 the moneys are to be spent during the subsequent fiscal year. The budget shall be followed in expending the 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 the 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 the 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-j, relating to the establishment of a neighborhood investment program; specifying a short title; setting forth a legislative finding and purpose; defining terms; setting forth requirements for eligibility for tax credits; requiring certification of project plans by the West Virginia development office; requiring payment of a project certification fee to the West Virginia development office; specifying sanctions, procedures, penalties, interest and notice requirements relating to failure to timely pay the project certification fee; creating revolving fund; specifying accumulation and administration of fund; appropriating funds out of general revenue; specifying deemed disapproval for applications not certified by the West Virginia development office within a given time; specifying prompt notification to applicants of certification or denial of certification of project plans; specifying that qualified charitable organizations which receive certification of a project may receive eligible contributions; specifying that taxpayers who make eligible contributions may gain entitlement to the tax credit; specifying that all applications for certification of a project plan filed under the article shall be public information; creating the neighborhood investment program advisory board; specifying powers and duties of the neighborhood investment program advisory board; specifying that the director of the West Virginia development office or the designee thereof shall be the ex officio chairperson of the neighborhood investment program advisory board; specifying qualifications for membership on the neighborhood investment program advisory board; specifying appointment terms for members of the neighborhood investment program advisory board; specifying limitations on selections of appointees to the neighborhood investment program advisory board; specifying terms of members of the neighborhood...
investment program advisory board; specifying the method of selection and appointment for members of the neighborhood investment program advisory board; specifying quorum requirements, meeting requirements and funding requirements for the neighborhood investment program advisory board; requiring that the neighborhood investment program advisory board make an annual report; specifying duties of the neighborhood investment program advisory board; prohibiting assistance by the neighborhood investment program advisory board of project sponsors to solicit support or donations; prohibiting voting by members of the neighborhood investment program advisory board who are affiliated with an applicant for project certification; setting forth criteria for project evaluation of proposed neighborhood investment program project applications by the neighborhood investment program advisory board; specifying requirements for approval or disapproval of a proposed neighborhood investment program project by the neighborhood investment program advisory board; specifying requirements for certification of approved projects by the director of the West Virginia development office; specifying the amount of credit allowed to eligible taxpayers; specifying application of the credit over a period of five years beginning with the tax year of the taxpayer when the contribution is made; specifying annual application of the credit; prohibiting application of the credit against employer withholding taxes; specifying that unused credit shall be forfeited; specifying the manner in which modifications to federal taxable income shall affect application of credit; specifying the method for asserting the credit against tax; setting forth annual filing requirements; specifying that a tax credit reporting schedule be filed; authorizing disallowance of the credit; specifying the total maximum aggregate tax credit; specifying the beginning date for filing and the manner of filing of applications for certification of project plans with the West Virginia development office requiring that such applications be considered for approval or disapproval by the neighborhood investment program advisory board in a timely manner; requiring that when the total amount of credits certified by the West Virginia development office under the article equals the maximum amount of tax credit allowed in any state fiscal year, no further certifications shall be issued for
that fiscal year; specifying that applications for certification of project plans shall be void on the last day of the fiscal year; specifying recapture of the tax credit; specifying the statute of limitations for the issuance of assessments; specifying that the tax commissioner shall annually publish the name and address of every taxpayer asserting the credit on a tax return and the amount of any credit asserted under the article; specifying that statutory information confidentiality provisions do not apply to information which is required to be published; authorizing the performance of audits and examinations by the tax commissioner and performance of joint audits and examinations by the tax commissioner and the West Virginia development office; authorizing the sharing of information between the tax commissioner and the West Virginia development office; requiring program evaluation on or before the thirtieth day of September, one thousand nine hundred ninety-eight, to be presented to the Legislature; specifying review and issuance of a recommendation by the joint committee on governmental operations not later than the first day of March, one thousand nine hundred ninety-nine, as to whether the program should continue; specifying procedures for the continuation of the program; and specifying procedures for taxpayers to obtain entitlement to credit in the event program is discontinued.

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 thirteen-j, to read as follows:

ARTICLE 13J. NEIGHBORHOOD INVESTMENT PROGRAM.

§11-13J-1. Short title.
§11-13J-2. Legislative finding and purpose.
§11-13J-4. Eligibility for tax credits; creation of neighborhood investment fund; certification of project plans by the West Virginia development office.
§11-13J-4a. Neighborhood investment program advisory board.
§11-13J-5. Amount of credit allowed.
§11-13J-6. Application of annual credit allowance.
§11-13J-7. Assertion of the tax credit against tax.
§11-13J-8. Total maximum aggregate tax credit amount.
§11-13J-9. Credit recapture; interest; penalties; additions to tax; statute of limitations.
§11-13J-10. Public information relating to tax credit.
§11-13J-11. Audits and examinations; information sharing.
§11-13J-12. Program evaluation; expiration of credit; preservation of entitlements.

§11-13J-1. Short title.

This article shall be known as the "Neighborhood Investment Program Act".

§11-13J-2. Legislative finding and purpose.

It is the finding of the Legislature that community-based organizations can be a powerful force in community development. However, in West Virginia their effectiveness has historically been weakened by meager resources. Private corporations and individuals in West Virginia possess the resources to aid community-based organizations in their efforts to assist neighborhoods and communities. Due to the lack of clear incentives, the private and not-for-profit sectors have often not taken advantage of opportunities to collaborate with community-based organizations to the full extent possible by investment and participation in local programs.

Therefore, the neighborhood investment program act is hereby enacted with the intent that it provide incentives for contributions to qualifying charitable projects. It is the intent of the Legislature that this act encourage private sector businesses and individuals to contribute capital to community-based organizations which establish projects to assist neighborhoods and local communities through such services as health care, counseling, emergency assistance, crime prevention, education, housing, job training and physical and environmental improvements.


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

(b) Terms defined.

(1) Affiliate. — The terms "affiliate" or "affiliates"
include all concerns which are affiliates of each other
when either directly or indirectly:

(A) One concern controls or has the power to control
the other; or

(B) A third party or third parties control or have the
power to control both. In determining whether concerns
are independently owned and operated and whether or not
affiliation exists, consideration shall be given to all appro-
priate factors, including common ownership, common
management and contractual relationships.

(2) Capacity building. — The term "capacity build-
ing" means to generally enhance the capacity of the com-
munity to achieve improvements and to obtain the com-
munity services described in items (i) through (v), inclus-
ive of the definition of that term, as set forth in subdivi-
sion (4) of this subsection. Capacity building includes,
but is not limited to, improvement of the means, or capaci-
ty, to:

(i) Access, obtain and use private, charitable and gov-
ernmental assistance programs, administrative assistance,
and private, charitable and governmental resources or
funds;

(ii) Fulfill legal, bureaucratic and administrative re-
quirements and qualifications for accessing assistance,
resources or funds; and

(iii) Attract and direct political and community atten-
tion to needs of the community for the purpose of in-
creasing access to and use of assistance, resources or funds
for a given purpose, goal or need.

(3) Commissioner or tax commissioner. — The terms
"commissioner" and "tax commissioner" are used inter-
changeably herein and mean the tax commissioner of the
state of West Virginia, or his or her delegate.
Community services. — "Community services" means services, provided at no charge whatsoever, of:

(i) Providing any type of health, personal finance, psychological or behavioral, religious, legal, marital, educational or housing counseling and advice to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens, or in an economically disadvantaged area; or

(ii) Providing emergency assistance or medical care to economically disadvantaged citizens or to a specifically designated group of economically disadvantaged citizens, or in an economically disadvantaged area; or

(iii) Establishing, maintaining or operating recreational facilities, or housing facilities for economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens, or in an economically disadvantaged area; or

(iv) Providing economic development assistance to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens without regard to whether they are located in an economically disadvantaged area, or to individuals, groups or neighborhood or community organizations, in an economically disadvantaged area; or

(v) Providing community technical assistance and capacity building to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or to individuals, groups or neighborhood or community organizations in an economically disadvantaged area.

Compensation. — The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

Corporation. — The term "corporation" means any corporation, joint-stock company or association, and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

(8) Delegate. — The term "delegate" in the phrase "or his or her delegate", when used in reference to the tax commissioner, means any officer or employee of the tax division of the department of tax and revenue duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article.

(9) Director or director of the West Virginia development office. — The term "director" or "director of the West Virginia development office" means the director of the West Virginia office.

(10) Economically disadvantaged area. — The term "economically disadvantaged area" means:

(A) In a municipality - any area not exceeding fifteen square miles in West Virginia which contains any portion of an incorporated municipality and:

(i) In which area the average annual gross personal income of residents living therein is not more than one hundred twenty-five percent of the federal designated poverty level for personal incomes; and

(ii) That is certified as an economically disadvantaged area by the West Virginia development office.

(B) In a rural area - any area not exceeding twenty-five square miles in West Virginia:

(i) Which area is located in a rural area and which contains no incorporated municipalities or portions thereof;

(ii) In which area the average annual gross personal income of residents living therein is not more than one hundred twenty-five percent of the federal designated poverty level for personal incomes; and

(iii) That is certified as an economically disadvantaged area by the West Virginia development office.
An economically disadvantaged area shall qualify as such only pursuant to a certification issued by the West Virginia development office. Such certifications issued by the West Virginia development office shall expire after the passage of five calendar years, unless specifically limited to a shorter time by specific order of the West Virginia development office, and no area shall hold the status of a certified economically disadvantaged area for a period of time greater than ten years, either consecutively or in the aggregate.

The certification of an economically disadvantaged area shall be made on the basis of current indices of social and economic conditions, which shall include, but not be limited to, the median per capita income of the area in relation to the median per capita income of the state or standard metropolitan statistical area in which the area is located.

No economically disadvantaged area may be certified within twenty-five miles of any other certified economically disadvantaged area. Not more than six economically disadvantaged areas may hold the status of certified economically disadvantaged areas at any one time in this state.

At least a majority of all economically disadvantaged areas holding designations as economically disadvantaged areas at any one time shall be located in rural areas.

Such certification shall be filed with the secretary of state and shall specifically set forth the boundaries of the economically disadvantaged area by both description and map, the date of certification of the area as an economically disadvantaged area, the date on which such certification will terminate and a statement of the director's findings as to the average annual gross personal income of residents living in the certified economically disadvantaged area.

(Economically disadvantaged citizen. — The term "economically disadvantaged citizen" means a natural person, who during the current taxable year has, or during
the immediately preceding taxable year had, an annual
gross personal income not exceeding one hundred
twenty-five percent of the federal designated poverty level
for personal incomes, and who is a domiciliary and resi-
dent of this state.

(12) Education. — "Education" means any type of
scholastic instruction to, or scholarship by, an individual
that enables such individual to prepare for better life op-
portunities. Education does not include courses in physi-
ical training, physical conditioning, physical education,
sports training, sports camps and similar training or condi-
tioning courses (except for physical therapy prescribed by
a physician or other person licensed to prescribe courses
of medical treatment under West Virginia law).

(13) Eligible contribution. —

(A) An eligible contribution consists of cash, tangible
personal property valued at its fair market value, real
property valued at its fair market value or a contribution
of in kind professional services valued at seventy-five
percent of fair market value.

(B) For purposes of this definition, the value of in
kind professional services will not qualify as an eligible
contribution unless the services are:

(i) Reasonably priced and valued, and reasonably
necessary services customarily and normally provided by
the contributor in the normal course of business to cus-
tomers, clients or patients other than those encompassed
by the project plan;

(ii) Not reimbursable, in whole or in part, from sources
other than the tax credit provided under this article; and

(iii) Are services which are not available elsewhere in
the community.

(C) The term "professional services" means only those
services provided directly by a physician licensed to prac-
tice in this state, those services provided directly by a den-
tist licensed to practice in this state, those services provided
directly by a lawyer licensed to practice in this state, those
services provided directly by a registered nurse, licensed practical nurse, dental hygienist, or other health care professional licensed to practice in this state and those services provided directly by a certified public accountant or public accountant licensed to practice in this state.

(D) Minimum contribution. — No contribution of cash, property or professional services or any combination thereof contributed in any tax year by any taxpayer having a fair market value of less than five hundred dollars qualifies as an eligible contribution.

(E) Maximum contribution. — No contribution of cash, property or professional services or any combination thereof contributed in any tax year by any taxpayer having a fair market value in excess of two hundred thousand dollars qualifies as an eligible contribution.

(F) Limitations. — Not more than fifty percent of total eligible contributions to a certified project may be in kind contributions. Not more than twenty-five percent of total eligible contributions made by any taxpayer to any certified project may be in kind contributions.

(14) Eligible taxpayer. —

(A) The term "eligible taxpayer" means any person subject to the taxes imposed by article twenty-one, twenty-three or twenty-four of this chapter which makes an eligible contribution to a qualified charitable organization pursuant to the terms of a certified project plan for the purpose of providing neighborhood assistance, community services, or crime prevention, or for the purpose of providing job training or education for individuals not employed by the contributing taxpayer or an affiliate of the contributing taxpayer or a person related to the contributing taxpayer.

(B) "Eligible taxpayer" also includes an affiliated group of taxpayers if such group elects to file a consolidated corporation net income tax return under article twenty-four of this chapter and if one or more affiliates included in such affiliated group would qualify as an eligible taxpayer under part (A) of this paragraph.
(15) Includes and including. — The terms "includes" and "including", when used in a definition contained in this article, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(16) Job training. — "Job training" means instruction to an individual that enables the individual to acquire vocational skills so as to become employable or to be able to seek a higher grade of employment.

(17) Natural person or individual. — The term "natural person" and the term "individual" mean a human being. The terms "natural person" and "individual" do not mean, and specifically exclude any corporation, limited liability company, partnership, joint venture, trust, organization, association, agency, governmental subdivision, syndicate, affiliate or affiliation, group, unit or any entity other than a human being.

(18) Neighborhood assistance. — "Neighborhood assistance" means either:

(A) Furnishing financial assistance, labor, material and technical advice to aid in the physical or economic improvement of any part or all of an economically disadvantaged area; or

(B) Furnishing technical advice to promote higher employment in an economically disadvantaged area.

(19) Neighborhood organization. — "Neighborhood organization" means any organization:

(A) Which is performing community services, as defined in this section; and

(B) Which is exempt from income taxation under Sections 501(c)(3) or (4) of the Internal Revenue Code.

(20) West Virginia development office. — The term "West Virginia development office" means the West Virginia development office.

(21) Partnership and partner. — The term "partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means
of which any business, financial operation or venture is carried on, and which is not a trust or estate, a corporation or a sole proprietorship. The term "partner" includes a member in such a syndicate, group, pool, joint venture or organization.

(22) Person. — The term "person" includes any natural person, corporation, limited liability company or partnership.

(23) Project transferee. — The term "project transferee" means any neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person that receives an eligible contribution or part of an eligible contribution from an eligible taxpayer for the purpose of directly or indirectly providing neighborhood assistance, community services, or crime prevention, or for the purpose of providing job training or education or other services or assistance pursuant to a project plan. The project transferee is typically the first entity or person receiving eligible contributions from eligible taxpayers under a project plan. However, in the case of eligible contributions of in-kind services or other eligible contributions or portions thereof made pursuant to a certified project plan directly to indigent, disadvantaged or needy persons, economically disadvantaged citizens, or other persons or organizations under the sponsorship or auspices of any neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person as a certified project participant, such eligible contributions shall be deemed to have been made to the entity, organization or person under whose sponsorship or auspices such eligible contributions are made, and that entity, organization or person is deemed to be the project transferee with relation to those eligible contributions. The project transferee is the entity, organization or person that is liable under this article for payment of the project certification fee to the West Virginia development office. The term "project transferee" shall mean and include any deemed project transferee, deemed as such under the provisions of this article.
(24) Qualified charitable organization. — The term "qualified charitable organization" means a neighborhood organization, as defined in this section, which is the sponsor of a project which has received certification by the director of the West Virginia development office pursuant to the requirements of this article: Provided, That no organization may qualify as a qualified organization for purposes of this article if such organization is not registered with this state as required under the solicitation of charitable funds act.

(25) Related person. — The term "related person" or "person related to" a stated taxpayer means:

(A) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by the taxpayer; or

(B) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer; or

(C) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by an individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer; or

(D) A member of the same controlled group as the taxpayer.

For purposes of this article, "control", with respect to a corporation means ownership, directly or indirectly, of stock possessing fifty percent or more of the total combined voting power of all classes of the stock of such corporation which entitles its owner to vote. "Control", with respect to a trust, means ownership, directly or indirectly, of fifty percent or more of the beneficial interest in the principal or income of such trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in Section 267(c),
other than paragraph (3) of such section, of the United States Internal Revenue Code, as amended.

(26) State fiscal year. — "State fiscal year" means a twelve-month period beginning on the first day of July and ending on the thirtieth day of June.

(27) Taxpayer. — The term "taxpayer" means any person subject to the tax imposed by article twenty-one, twenty-three or twenty-four of this chapter (or any one or combination of such articles of this chapter).

(28) Technical assistance. —

(A) The term "technical assistance" means assistance in understanding, using and fulfilling the legal, bureaucratic and administrative requirements and qualifications which must be negotiated for the purpose of effectively accessing, obtaining and using private, charitable, not-for-profit or governmental assistance, resources or funds, and maximizing the value thereof.

(B) "Technical assistance" also means assistance provided by any person holding a license under West Virginia law to practice any licensed profession or occupation, whereby such person, in the practice of such profession or occupation, assists economically disadvantaged citizens or the persons in an economically disadvantaged area by:

(i) Providing any type of health, personal finance, psychological or behavioral, religious, legal, marital, educational or housing counseling and advice to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens, or in an economically disadvantaged area; or

(ii) Providing emergency assistance or medical care to economically disadvantaged citizens or to a specifically designated group of economically disadvantaged citizens, or in an economically disadvantaged area; or

(iii) Establishing, maintaining or operating recreational facilities, or housing facilities for economically disadvantaged citizens or a specifically designated group of
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377 economically disadvantaged citizens, or in an economically-
378 disadvantaged area; or

379 (iv) Providing economic development assistance to
380 economically disadvantaged citizens or a specifically des-
381 ignated group of economically disadvantaged citizens
382 without regard to whether they are located in an economi-
383 cally disadvantaged area, or to individuals, groups or
384 neighborhood or community organizations, in an eco-
385 nomically disadvantaged area; or

386 (v) Providing community technical assistance and
387 capacity building to economically disadvantaged citizens
388 or a specifically designated group of economically disad-
389 vantaged citizens or to individuals, groups or neighbor-
390 hood or community organizations in an economically
391 disadvantaged area.

392 (29) *This code.* — The term "this code" means the
393 code of West Virginia, one thousand nine hundred
394 thirty-one, as amended.

395 (30) *This state.* — The term "this state" means the state
396 of West Virginia.

§11-13J-4. Eligibility for tax credits; creation of neighbor-
hood investment fund; certification of project plans by the West Virginia development office.

(a) A neighborhood organization which seeks to spon-
2 sor a project and have that project certified pursuant to
3 this article shall submit to the director of the West Virginia
4 development office an application for certification of a
5 project plan, in such form as the director shall prescribe,
6 setting forth the project to be implemented, the identity of
7 all project participant organizations, the economically
8 disadvantaged citizens or a specifically designated group
9 of economically disadvantaged citizens, to be assisted by
10 the project or the economically disadvantaged area or
11 areas selected for assistance by the project, the amount of
12 total tax credits to be created by the proposed project
13 pursuant to the receipt of eligible contributions from eligi-
14 ble taxpayers under this article, the amount of the total
estimated eligible contributions to be received pursuant to
the project, and the schedule for implementing the project.

(b) Project certification fee; payment of costs; revolving fund. —

(1) (A) Project certification fee. — Any project trans-
fee that receives eligible contributions under or pursuant
to a certified project plan shall pay to the West Virginia
development office a project certification fee in the
amount of three percent of the amount of the total eligible
contributions received by such project transferee pursuant
to the certified project plan. The project certification fee
shall be paid to the West Virginia development office
within thirty days of the receipt of any eligible contribu-
tion, or portion thereof.

(B) Eligible contributions made through direct service
to end users or recipients, or contributions to end users or
recipients. — In the case of eligible contributions of
in-kind services or other eligible contributions or portions
thereof made pursuant to a certified project plan and con-
tributed or provided directly to indigent, disadvantaged or
needy persons, economically disadvantaged citizens or
other persons or organizations made under the sponsor-
ship or auspices of any neighborhood organization, qualifi-
ced charitable organization, charitable organization or
other organization, entity or person as a certified project
participant, such eligible contributions shall be deemed to
have been made to the entity, organization or person un-
der whose sponsorship or auspices such eligible contribu-
tions are made, and that entity, organization or person is
deemed to be the project transferee with relation to those
eligible contributions. Such deemed project transferee
shall be liable for the project certification fee due for such
eligible contributions.

(C) Computation of fee based on fair market value. —
In the case of eligible contributions consisting of in-kind
services, tangible personal property or realty, the project
transferee shall pay to the West Virginia development
office a project certification fee in the amount of three
percent of the fair market value of eligible contributions
received pursuant to the certified project plan.
Sanctions for failure to timely pay the project certification fee. — Failure to timely pay the project certification fee imposed by this section shall be grounds for imposition of any of the following sanctions, to be imposed by the director of the West Virginia development office at the discretion of the director:

(A) Prospective revocation of the project certification.

No tax credit shall be allowed for any project for which certification has been revoked for periods subsequent to the effective date of revocation. Credit taken by any taxpayer in accordance with this article pursuant to the making of an eligible contribution to a project transferee pursuant to a certified project plan prior to the effective date of revocation of project certification shall not be subject to recapture by reason of revocation of the certification. However, such credit shall otherwise be subject to audit and adjustment or recapture in accordance with the requirements of this article.

(B) Retroactive withdrawal of the project certification.

No tax credit shall be allowed for any project for which certification has been withdrawn. Credit taken by any taxpayer in accordance with this article pursuant to the making of an eligible contribution to a project transferee pursuant to a certified project plan for which certification is later withdrawn pursuant to the provisions of this section shall be subject to recapture upon withdrawal of the certification.

(C) Suspension of the project certification for a stated period of time.

No tax credit shall be allowed for contributions made during the suspension period for a project. Credit taken by any taxpayer in accordance with this article pursuant to the making of an eligible contribution to a project transferee pursuant to a certified project plan prior to or subsequent to the suspension period shall not be subject to recapture by reason of the suspension. However, such credit shall otherwise be subject to audit and adjustment or
recapture in accordance with the requirements of this article.

(D) Temporary or permanent disqualification of one or more project transferees, neighborhood organizations, qualified charitable organizations, charitable organizations or other organizations, entities or persons from participation in a particular specified certified project.

No tax credit shall be allowed under this article for any contribution made during the disqualification period to any project transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person disqualified under this section from participation in a certified project. Tax credit taken by any taxpayer in accordance with this article pursuant to the making of an eligible contribution to any project transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person pursuant to a certified project plan prior to or subsequent to the disqualification period shall not be subject to recapture by reason of the disqualification of the recipient thereof. However, such credit shall otherwise be subject to audit and adjustment or recapture in accordance with the requirements of this article.

(E) Temporary or permanent disqualification of any project transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person, or group thereof, from participation in any and all certified projects currently in existence or to be formed, proposed or certified under this article:

(i) No tax credit shall be allowed under this article for any contribution made during the disqualification period to any project transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person disqualified under this section from participation in any and all certified projects under this article. Tax credit taken by any eligible taxpayer in accordance with this article pursuant to the making of an eligible contribution to the project transfer-
(ii) No certification shall be issued during the disqualification period for any proposed project in which a project transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person disqualified under this section from participation in any and all certified projects is listed as a proposed project participant.

(F) Any combination of the aforementioned sanctions.

(3) Audits and investigations. — The West Virginia development office or the department of tax and revenue, or both, may initiate and carry out investigations or audits of any recipient of any eligible contribution under this article, any eligible taxpayer or any project transferee to determine whether the project certification fee imposed by this section has been paid in accordance with the requirements of this article.

(4) Procedures, failure to timely pay the project certification fee upon written demand. —

(A) Written demand. — The director of the West Virginia development office shall, upon a reasonable belief that a project transferee has failed to timely pay the fee imposed by this section, issue a written demand for payment thereof, plus interest determined at the interest rate prescribed under section seventeen, article ten of this chapter, in such form as the director of the West Virginia development office may specify. The director of the West Virginia development office may also impose a penalty for failure to timely pay the project certification fee in the amount of twenty percent of the amount of the project certification fee due and interest due. Such demand shall
171 notify the project transferee of the opportunity to show
172 that the project certification fee is not due and owing.
173
(B) Failure to pay pursuant to written demand. —
174 Failure of the project transferee to pay any project
175 certification fee due, with interest and penalties, as stated in
176 the written demand for payment of the project certifica-
177 tion fee, within thirty days of service of such demand, and
178 failure of the project transferee to prove to the satisfaction
179 of the director of the West Virginia development office
180 that the fee imposed by this section is not due and owing,
181 shall result in a determination by the director of the West
182 Virginia development office that sanctions shall apply.
183
(C) Notice of pending sanctions. — Upon the making
184 of a determination by the director of the West Virginia
185 development office that sanctions for failure to pay the
186 project certification fee apply, the director of the West
187 Virginia development office shall serve upon the project
188 transferee from which the project certification fee, or some
189 portion thereof, is due and owing, a notice of pending
190 sanctions. If the project transferee from which the certi-
191 fied project fee, or some portion thereof, is due and owing
192 is not the applicant for project certification, then an infor-
193 mational copy of the notice of pending sanctions shall
194 also be served upon the applicant for project certification.
195
(D) Service of notice, content of notice. — The notice
196 of pending sanctions shall be served upon the delinquent
197 project transferee in the same manner as an assessment of
198 tax in accordance with article ten of this chapter. Such
199 notice of pending sanctions shall state the sanctions to be
200 applied in accordance with this section, the effective date
201 or dates of such sanctions, with specific statements of
202 whether any sanction is to be applied retroactively or in
203 part retroactively, and the commencement and termination
204 dates for any suspensions of certification or temporary
205 disqualifications of any program transferee, neighborhood
206 organization, qualified charitable organization, charitable
207 organization or other organization, entity or person to be
208 disqualified under this section from participation in certi-
209 fied projects. The notice of pending sanctions shall state
210 that sanctions shall be imposed sixty days after service of
the notice of pending sanctions upon the delinquent project transferee, unless the delinquent project transferee pays the amount of the project certification fee due and owing, plus interest and penalties.

(E) Appeals. — The project transferee may file an appeal of pending sanctions as if the notice of pending sanctions were an assessment of tax under article ten of this chapter, and the matter on appeal shall be subject to the procedures set forth in article ten of this chapter. On appeal, the burden of proof shall be on the project transferee to prove that the project certification fee and associated interest and penalties are not due and owing. The review on appeal shall be limited to:

(i) The issue of whether a failure to timely pay the project certification fee or any portion thereof has occurred, the time period or periods over which such failure occurred, and whether such failure continues to occur;

(ii) The amount of the project certification fee and interest due; and

(iii) The mathematical and methodological accuracy of the computation of the project certification fee, interest and penalties.

(F) Statutory confidentiality. — No information, document or proceeding brought pursuant to this section, relating to the liability of any project transferee for the project certification fee, interest or penalties imposed under this section is subject to the confidentiality provisions of article ten of this chapter or any other confidentiality provision of this code. However, any proceeding relating to any amount of tax due or the recapture of tax credit taken under this article or any adjustment of the amount of tax credit taken under this article is subject to the provisions of article ten of this chapter, including all statutory confidentiality provisions, and shall be subject to all other applicable statutory tax confidentiality provisions of this code.

(G) Effect of a final determination, waiver of penalties or sanctions. — The notice of pending sanctions shall
become final sixty days after service, unless an appeal is
filed under this section, and shall not be subject to further
appeal by the recipient thereof. When a determination has
become final that a project transferee has failed to timely
pay the project certification fee, or any part thereof, the
sanctions described in the notice of pending sanctions
shall apply, effective as of the date set forth in that notice,
unless the project certification fee, interest and penalties
due are paid to the West Virginia development office with-
in thirty days of the date on which the determination has
become final. The twenty percent penalty authorized
under this section may be imposed, adjusted, withdrawn or
waived, in whole or in part, at the discretion of the director
of the West Virginia development office. However, pay-
ment of the project certification fee and interest due shall
not be subject to waiver. The sanctions for failure to pay
the project certification fee authorized under this section
may be imposed, adjusted, withdrawn or waived, in whole
or in part, at the discretion of the director of the West
Virginia development office.

(c) Within sixty days after the close of the regular
meeting of the neighborhood investment advisory board
next succeeding the date of receipt of a complete applica-
tion for approval of a proposed project, the director of the
West Virginia development office shall certify, or deny
certification of, the proposed project for which such appli-
cation has been filed. Those applications not approved by
the director within sixty days as aforesaid shall be deemed
disapproved by operation of law.

(d) The West Virginia development office shall
promptly notify an applicant as to whether an application
for certification of a project plan has been approved or
disapproved.

(e) Those prospective qualified charitable organiza-
tions which receive certification of a project plan, and
which otherwise comply with the requirements of this
article so as to become qualified charitable organizations,
as defined in section three of this article, may receive eligi-
ble contributions, as defined in said section. Eligible tax-
payers which make eligible contributions shall receive a
tax credit as provided in section five of this article. No tax
credit may be granted under this article for any contribu-
tion except eligible contributions made to a project which
has been certified in accordance with the requirements of
this article prior to the making of the contribution. No tax
credit may be granted under this article for any contribu-
tion which, if allowed, would cause the amount of tax
credit generated by the project to exceed the maximum
amount of tax credit for which the project was certified as
stated in the application for project certification filed with
the West Virginia development office.

(f) All applications for certification of a project filed
with the West Virginia development office, whether such
project is certified or denied certification, are public infor-
mation which may be viewed and copied by the public
and, at the discretion of the West Virginia development
office, published by the West Virginia development office.

(g) Revolving fund. —

(1) For the purpose of permitting payments to be
made and costs to be met for operation of the program
established by this article, there is hereby created a revolv-
ing fund for the West Virginia development office, which
shall be known as the neighborhood investment fund. All
money received by the West Virginia development office
under this article shall be paid into the state treasury, and
shall be deposited to the credit of the neighborhood in-
vestment fund, and shall be expended only for the purpos-
es of defraying the costs of the neighborhood investment
program advisory board and the West Virginia develop-
ment office in administering the program established
pursuant to this article, unless otherwise directed by the
Legislature.

(2) The neighborhood investment fund shall be accu-
mulated and administered as follows:

(A) There shall be appropriated from the general
revenue fund the sum of sixty thousand dollars to be
transferred to the neighborhood investment fund to create
a revolving fund which, together with other payments into
this fund as provided in this article, shall be utilized to
328 defray the costs of the neighborhood investment program
329 advisory board and the West Virginia development office
330 in administering the program established pursuant to this
331 article, unless otherwise directed by the Legislature.
332
(B) Payments received under this article shall be de-
333 posited into the neighborhood investment fund.
334
(C) Any appropriations made to the neighborhood
335 investment fund shall not be deemed to have expired at
336 the end of any fiscal period.

§11-13J-4a. Neighborhood investment program advisory
board.

(a) There is hereby created a neighborhood invest-
ment advisory board, which shall consist of twelve voting
members and the chairperson.

(b) Chairperson. —

(1) The director of the West Virginia development
office, or the designee of the director of the West Virginia
development office, shall be the ex officio chairperson of
the neighborhood investment program advisory board.

(2) The chairperson shall vote on actions of the board
only in the event of a tie vote, in which case the chairper-
son's vote shall be the deciding vote.

(c) Board members. —

(1) Four of the members shall each be officers or
members of the boards of directors of unrelated corpora-
tions which are not affiliated with one another and which
are currently licensed to do business in West Virginia.

(2) Four of the members shall each be executive direc-
tors, officers or members of the boards of directors, of
unrelated not-for-profit organizations which are not affili-
ated with one another, which currently hold charitable
organization status under Section 501(c)(3) of the Internal
Revenue Code and which are currently licensed to do
business in West Virginia.
(3) Four of the members shall be economically disadvantaged citizens of the state:

(i) An appointee will qualify as an economically disadvantaged citizen of this state if the appointee is an economically disadvantaged person who, for the taxable year immediately preceding the year of the member's appointment to the board, had an annual gross personal income that was not more than one hundred twenty-five percent of the federal designated poverty level for personal incomes, and who has been a domiciliary and resident of this state for at least one year at the time of the appointment;

(ii) Continued qualification and reappointment. — An appointee or member appointed under this subdivision is not disqualified from appointment to the board or from completion of the member's ongoing term of service on the board if the appointee's or member's income in the year of appointment or in any year subsequent to the year of appointment exceeds one hundred twenty-five percent of the federal designated poverty level. However, a serving member shall not qualify under this subdivision for reappointment to the board unless such member has had, for the taxable year immediately preceding the year of the member's reappointment to the board, an annual gross personal income that was not more than one hundred twenty-five percent of the federal designated poverty level for personal incomes, and has been a domiciliary and resident of this state for at least one year at the time of the member's reappointment to the board: Provided, That such member may be reappointed pursuant to qualification under subdivision (1) or (2) of this subsection, notwithstanding disqualification under this subdivision, if such member meets the requirements of subdivision (1) or (2), respectively, of this subsection at the time of reappointment.

(d) Limitations; terms of members; appointments. —

(1) Not more than four members (exclusive of the chairperson) shall be appointed from any one congressional district. Not more than seven of the members (exclusive of the chairperson) may belong to the same political party. Members shall be eligible for reappointment.
However, no member may serve for more than three consecutive terms.

(2) Appointment terms.—

(A) Except for initial appointments described under subdivision (3) of this subsection, and except for midterm special appointments made to fill irregular vacancies on the board, members shall be appointed for terms of three years each.

(B) Except for midterm special appointments made to fill irregular vacancies on the board, appointment terms shall begin on the first day of July of the beginning year. All appointment terms, special and regular, shall end on the thirtieth day of June of the ending year.

(3) Initial appointments.—The members first appointed shall be appointed for a term commencing on the first day of July, one thousand nine hundred ninety-six. In order that the terms may be staggered so that four members are appointed each year:

(A) Four of the members first appointed shall, for the first term, be appointed for terms of one year. Those four members shall be appointed so that at least one appointee is appointed from each of the three member appointee groups specified in subdivisions (1), (2) and (3), subsection (c) of this section.

(B) Four of the members first appointed shall, for the first term, be appointed for terms of two years. Those four members shall be appointed so that at least one appointee is appointed from each of the three member appointee groups specified in subdivisions (1), (2) and (3), subsection (c) of this section.

(C) Four of the members first appointed shall, for the first term, be appointed for terms of three years. Those four members shall be appointed so that at least one appointee is appointed from each of the three member appointee groups specified in subdivisions (1), (2) and (3), subsection (c) of this section.
(D) Subsequent appointments of members, except for midterm special appointments made to fill irregular vacancies on the board, shall be for terms of three years in accordance with subdivision (2) of this subsection.

(4) Selection of members. —

(A) For the initial appointment of members under subdivision (3) of this subsection, members shall be selected by the director of the West Virginia development office.

(B) At the end of a member's term, the chairperson shall solicit new member nominations from the board and appoint the most appropriate person to serve, in compliance with the requirements set forth in this section.

(C) Vacancies on the board shall be filled in the same manner as the original appointments for the duration of the unexpired term.

(e) Quorum; meetings; funding. —

(1) The presence of a majority of the members of the board constitutes a quorum for the transaction of business. The board shall elect from among its members a vice chairperson and such other officers as are necessary.

(2) The board shall meet not less than six times during the fiscal year, and additional meetings may be held upon a call of the chairperson or of a majority of the members.

(3) Board members shall be reimbursed by the West Virginia development office for sums necessary to carry out responsibilities of the board and for reasonable travel expenses to attend board meetings.

(f) Annual report. — The board shall make a report to the governor and the Legislature within thirty days of the close of each fiscal year. The report shall include summaries of all meetings of the board, an analysis of the overall progress of the program, fiscal concerns, the relative impact the program is having on the state and any suggestions and policy recommendations that the board may have. The report shall be public information made available to the general public for examination and copying.
The board is authorized to publish the annual report, should the board elect to do so.

(g) **Duties of the board.** —

(1) **Administrative duties.** —

(A) The board shall be responsible for advising the West Virginia development office concerning the administrative obligations of the program.

(B) The board shall approve application forms, tracking systems and program record-keeping systems and methods.

(2) **Project evaluation and approval; prohibition on project promotion.** —

(A) The board shall select and approve projects, which may then be certified by the director of the West Virginia development office pursuant to section four of this article.

(B) Only projects sponsored by qualified charitable organizations, as defined in section three of this article, may be approved by the board or certified by the director of the West Virginia development office. An applicant that does not hold current status as a charitable organization under Section 501(c)(3) of the Internal Revenue Code may not receive project approval from the board, or project certification from the director of the West Virginia development office, for any proposed project. Failure of any applicant to provide convincing documentation proving such status as a charitable organization under Section 501(c)(3) of the Internal Revenue Code shall result in automatic denial of project approval and denial of project certification under this article.

(C) The board may not assist project sponsors or others in their efforts to solicit support or donations from any governmental, corporate or individual source for projects certified under this article.

(3) **Criteria for evaluation.** — In evaluating projects for approval, the board shall give priority to projects based upon the following criteria. A proposed project shall be favored if:
(A) The project is community-based. A project is community-based if:

(i) The project is to be managed locally, without national, state, multi-state or international affiliations;

(ii) The project will benefit local citizens in the immediate geographic area where the project is to operate; and

(iii) The sponsor of the project is a local entity, rather than a statewide, national or international organization or an affiliate of a statewide, national or international organization.

(B) The proposed project will primarily serve low income persons.

(C) The proposed project will serve highly distressed neighborhoods or communities.

(D) The project plan incorporates collaborative partnerships among nonprofit groups, businesses, government organizations and other community organizations.

(E) The applicant or sponsor of the project has demonstrated a proven capacity to deliver the proposed services.

(F) The applicant or sponsor of the project historically maintains low administrative costs.

(G) The applicant produces a strong showing of need for the services which the proposed project would provide, and produces convincing documentation of that need.

(H) The proposed project is innovative, novel, creative or unique in program approach.

(4) In the event that an applicant is directly or indirectly affiliated with one or more board members, those members may discuss the proposals with the board, but may not have a vote when that project is considered for final approval or disapproval.

(5) Project approval by the board. — Proposed projects shall be approved or denied approval by a majority
vote of the board after competitive comparison with proposed projects of other applicants.

(h) Project certification by the director of the West Virginia development office. —

(1) Upon issuance of approval for a project by the board, the approved project shall be certified by the director of the West Virginia development office: Provided, that no certification may issue for any project, even though the project may have been approved by the board, if the issuance of certification for such project will cause the aggregate amount of tax credits certified to exceed the limitation set forth in section eight of this article or elsewhere in this article. No certification may be issued by the director of the West Virginia development office for any project which has not been approved by the board.

(2) The West Virginia development office shall promptly notify applicants of the issuance of certification for their projects, and shall issue tax credit vouchers to certified project applicants in the amount of the tax credit represented by the project.

(3) The West Virginia development office may provide incidental technical support and guidance to projects certified under this article and may monitor the progress of the projects. The West Virginia development office shall make a quarterly report to the board on the progress of certified projects and the program generally.

§11-13J-5. Amount of credit allowed.

(a) Credit allowed. — Eligible taxpayers shall be allowed a credit against taxes imposed by this state, the application of which and the amount of which shall be determined as provided in this article.

(b) Amount of credit. — The amount of credit allowable is fifty percent of the amount of the taxpayer's "eligible contribution".

(c) Application of credit over five years. — The amount of credit allowable must be taken over a five-year period, at the rate of one fifth of the amount thereof per
tax year, beginning with the tax year in which the taxpayer irrevocably transfers its eligible contribution to the project plan transferee. Notwithstanding any other provision of this article to the contrary, the tax credit which a taxpayer receives under this article may not exceed one hundred thousand dollars in any tax year of the eligible taxpayer. A tax credit shall be allowable under this article only for the tax year of the eligible taxpayer in which the eligible contribution is irretrievably transferred to the project plan transferee, and for the next succeeding four tax years.

§11-13J-6. Application of annual credit allowance.

(a) In general. — The aggregate annual credit allowance for a current tax year is an amount equal to the sum of the following:

(1) The one-fifth part allowed under section five of this article for an eligible contribution placed into service or use during a prior tax year; plus

(2) The one-fifth part allowed under section five of this article for an eligible contribution placed into service or use during the current tax year.

(b) Application of current year annual credit allowance. — The amount determined under subsection (a) of this section shall be allowed as a credit for tax years ending on and after the first day of July, one thousand nine hundred ninety-six, as follows:

(1) Business franchise taxes. —

The amount determined under subsection (a) of this section shall be applied to reduce up to fifty percent of the taxes imposed by article twenty-three of this chapter for the tax year (determined after application of the credits against tax provided in section seventeen of said article, but before application of any other allowable credits against tax).

(2) Corporation net income taxes. — After application of subdivision (1) of this subsection, any unused credit shall next be applied to reduce up to fifty percent of the
taxes imposed by article twenty-four of this chapter, for
the tax year (determined before application of allowable
credits against tax).

(3) Personal income taxes.—

(A) If the eligible taxpayer is an electing small busi-
ness corporation (as defined in Section 1361 of the United
States Internal Revenue Code), a limited liability company
treated as a partnership for purposes of the federal income
tax, a partnership or a sole proprietorship, then any un-
used credit (after application of subdivisions (1) and (2)
of this subsection) shall be allowed as a credit against up
to fifty percent of the taxes imposed by article twenty-one
of this chapter on income of proprietors, partners or
shareholders, subject to the limitations set forth in parts
(B) and (C) of this subdivision.

(B) Electing small business corporations, partnerships
and other unincorporated organizations shall allocate the
credit allowed by this article among the members thereof
in the same manner as profits and losses are allocated for
the tax year.

(C) No credit may be allowed under this section
against any tax due under article twenty-one of this chap-
ter on any wage, salary or other compensation paid to any
employee of any electing small business corporation,
limited liability company, partnership, other unincorporat-
ed organization or sole proprietorship or against any
amount of tax due on any wage, salary or other compen-
sation reported on federal form W2.

(c) Unused credit forfeited. — If any annual credit
remains after application of subsections (a) and (b) of this
section, the amount thereof shall be forfeited. No carry-
over to a subsequent tax year or carryback to a prior tax
year shall be allowed for the amount of any unused por-
tion of any annual credit allowance under this article.

(d) Addition of deductions, decreasing adjustments or
decreasing modifications taken in determining taxable
income for which credit is taken. — Any deduction, de-

creasing adjustment or decreasing modification taken by any taxpayer in determining federal taxable income which affects West Virginia taxable income or in determining West Virginia taxable income under article twenty-one or twenty-four of this chapter for the taxable year for any charitable contribution, or payment or portion thereof, which qualifies as an eligible contribution under this article and for which credit is claimed, shall be added to West Virginia taxable income in determining the tax liability of the taxpayer under article twenty-one or twenty-four of this chapter, as appropriate, before application of the credit allowed under this article for the taxable year.

§11-13J-7. Assertion of the tax credit against tax.

(a) Any eligible taxpayer which desires to claim a tax credit as provided in this article shall file with the West Virginia tax commissioner, in such form as the tax commissioner may prescribe, an annual tax credit reporting schedule stating the amount of the eligible contribution which the taxpayer has made. The eligible taxpayer shall file with the tax credit reporting schedule a certificate, issued by the director of the West Virginia development office, evidencing approval of the project plan by the director of the West Virginia development office, pursuant to which the contribution was made.

(b) In the tax credit reporting schedule required under this section, the taxpayer shall provide all information required by the tax commissioner's prescribed form.

(c) The tax credit reporting schedule shall be filed with the annual return for the taxes imposed by article twenty-four of this chapter for the tax year in which the eligible contribution is first irrevocably transferred to a transferee pursuant to a certified project plan: Provided, That, if the eligible taxpayer is not required to file a tax return under article twenty-four of this chapter, then such tax credit reporting schedule shall be filed with the annual return for the taxes imposed by article twenty-three of this chapter for such year: Provided, however, That, if the eligible taxpayer is not required to file a tax return under
article twenty-three or twenty-four of this chapter, then
such tax credit reporting schedule shall be filed with the
annual return for the taxes imposed by article twenty-one
of this chapter for such year.

(d) The tax credit reporting schedule shall be accom-
panied by such proof of payment as the tax commissioner
may prescribe, showing that the amount to be contributed
under the certified project plan has been paid to the trans-
feree designated in the certified plan solely for the certi-
ified project.

(e) The tax commissioner may disallow any credit
claimed under this article for which a properly completed
tax credit reporting schedule or a properly completed and
valid statement or proof of payment of the eligible contri-
bution, or other required documentation, statements or
proofs are not timely filed.

§11-13J-8. Total maximum aggregate tax credit amount.

(a) The amount of tax credits allowed under this arti-
cle may not exceed two million dollars in any state fiscal
year.

(b) Applications for project certification shall be filed
with the West Virginia development office beginning on
and after the first day of July, one thousand nine hundred
ninety-six. The West Virginia development office shall
record the time of filing of each application for certifica-
tion of a project plan required under section four of this
article. All complete and valid applications filed shall be
considered for approval or disapproval in a timely manner
by the neighborhood assistance advisory board at the
regular meeting of the board next succeeding the date
when such applications are filed, and at such continuing
meetings as may be necessary to dispose of business in a
timely manner. The board may, in its discretion, consider
applications for approval or disapproval at special or inter-
im meetings for expedited processing.

(c) When the total amount of tax credits certified un-
der this article equals the maximum amount of tax credits
allowed, as specified in subsection (a) of this section, in any state fiscal year, no further certifications shall be issued in that same fiscal year. Upon approval of a project by the board, the director of the West Virginia development office shall certify the approved project unless certification is prohibited by the limitations and requirements set forth in this article.

(d) All applications filed in any state fiscal year and not certified during the state fiscal year in which they are filed shall be null and void by operation of law on the last day of the state fiscal year in which they are filed, and all applicants which elect to seek certification of a project plan shall file anew on and after the first day of the immediately succeeding state fiscal year without regard to whether such applicants have previously filed and failed to obtain certification for their application, or have never before filed.

§11-13J-9. Credit recapture; interest; penalties; additions to tax; statute of limitations.

If it appears upon audit or otherwise that an eligible taxpayer has not made contribution as represented, or should it appear that contributions made by an eligible taxpayer were made to the direct or indirect benefit of the eligible taxpayer making the contribution or to the direct or indirect benefit of any person related to the eligible taxpayer making the contribution, the credit previously allowed under this article shall be recaptured, and amended returns shall be filed for any tax year for which the credit was taken. Any additional taxes due under this chapter shall be remitted with the amended return or returns filed with the tax commissioner, along with interest, as provided in section seventeen, article ten of this chapter, and a ten percent penalty, which may be waived by the tax commissioner if the taxpayer shows that the overclaimed amount was due to reasonable cause and not due to willful neglect, and such other penalties and additions to tax as may be applicable pursuant to the provisions of article ten of this chapter. Notwithstanding the provisions of article
ten of this chapter, the statute of limitations for the issuance of an assessment of tax by the tax commissioner shall be five years from the date of the filing of any tax return on which this credit was taken or five years from the date of payment of any tax liability calculated pursuant to the assertion of this credit, whichever is later.

§11-13J-10. Public information relating to tax credit.

The tax commissioner shall annually publish in the state register the name and address of every taxpayer asserting this credit on a tax return, and the amount of any credit asserted on a tax return under this article by each such taxpayer, and the confidentiality provisions of section four-a, article one, or section five-d, article ten of this chapter, or of any other provision of this code, do not apply to such information.

§11-13J-11. Audits and examinations; information sharing.

(a) In addition to, or instead of, discretionary audits of eligible taxpayers which may be carried out by the tax commissioner, the tax commissioner may, at the tax commissioner's discretion, perform joint audits or examinations in concert with the West Virginia development office, of, or independently audit or examine, the books and records and other information, as appropriate, of any taxpayer, or of any person, organization or entity which has filed an application for certification of a project plan under section four of this article with the West Virginia development office, or of any taxpayer which has asserted this credit on a tax return, or of any person, organization or entity believed to have relevant information.

(b) For purposes of joint audits, or any administrative or judicial proceeding or procedure relating to any tax credit taken, asserted or sought under this article, the tax commissioner may share such tax information as the tax commissioner may deem appropriate with the West Virginia development office, notwithstanding the provisions of section four-a, article one, or section five-d, article ten
§11-13J-12. Program evaluation; expiration of credit; preservation of entitlements.

On or before the thirtieth day of September, one thousand nine hundred ninety-eight, the board shall secure an independent review of the program created under this article and shall present the findings of that review to the Legislature. Pursuant to this report, and any independent evaluation that the Legislature or the joint committee on government operations may wish to initiate, the joint committee on government operations shall issue a recommendation to the Legislature, not later than the first day of March, one thousand nine hundred ninety-nine, as to whether the program should continue. Should the joint committee on government operations recommend that the program not be terminated, appropriate legislation shall be prepared specifying that the program shall continue in such manner as the joint committee on government operations may recommend, and the same shall be submitted to the Legislature by the joint committee on government operations in a timely manner for consideration by the Legislature during the then ongoing legislative session. Should the joint committee on government operations fail to recommend the continuation of the program, as aforesaid, then, notwithstanding any other provision of this article to the contrary, no entitlement to the tax credit under this article shall result from any contribution made to any certified project after the first day of July, one thousand nine hundred ninety-nine, and no credit shall be available to any taxpayer for any such contribution made after that date. However, taxpayers which have gained entitlement to the credit pursuant to the requirements of this article for eligible contributions made to certified projects prior to the first day of July, one thousand nine hundred ninety-nine, shall retain that entitlement and apply the credit in due course pursuant to the requirements and limitations of this article, and subject to all provisions thereof.
CHAPTER 238

(Com. Sub. for H. B. 4530—By Delegates Kiss, Burke, J. Martin, Mezzatesta, Michael, Ashley and Clements)

[Passed March 9, 1996; in effect July 1, 1996. Approved by the Governor.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirteen-k; to amend article twenty-three of said chapter by adding thereto a new section, designated section twenty-four-a; and to amend article twenty-four of said chapter by adding thereto a new section, designated section twenty-two-a, all relating generally to agricultural products; relating to income tax credits for purchases of qualified agricultural equipment; defining terms; setting forth the amount of credit; providing for legislative rules; setting forth an effective date; providing credits against business franchise tax and corporate net income tax on value added products; and authorizing promulgation of 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 thirteen-k; that article twenty-three of said chapter be amended by adding thereto a new section, designated section twenty-four-a; and that article twenty-four of said chapter be amended by adding thereto a new section, designated section twenty-two-a, all to read as follows:

CHAPTER 11. TAXATION.

Article
13K. Tax Credit for Agricultural Equipment.

ARTICLE 13K. TAX CREDIT FOR AGRICULTURAL EQUIPMENT.
§11-13K-1. Findings and purpose.

The Legislature finds that it is an important public policy to promote environmentally sound practices within the agricultural industry in this state. Therefore, a credit against the taxes imposed by articles twenty-one and twenty-four of this chapter shall be allowed in an amount equaling twenty-five percent of all expenditures for the purchase and installation of agricultural equipment and structures for agricultural operations within this state which serve to protect the environment.


As used in this section the following terms shall have the meanings ascribed in this section:

(a) "Advanced technology pesticide and fertilizer application equipment" means machinery certified by the West Virginia division of environmental protection as providing precise pesticide and fertilizer application. The agriculture commission and the West Virginia division of environmental protection shall provide technical assistance to the tax commissioner to determine appropriate specifications for machinery which would provide for more precise pesticide and fertilizer application to reduce the potential for adverse environmental impacts for purposes of application of the credit provided by this article. The machinery shall include, but not be limited to: (1) Sprayers for pesticides and liquid fertilizers; (2) pneumatic fertilizer applicators; (3) monitors, computer regulators, and heights adjustable booms for sprayers and liquid fertilizer applicators; (4) manure applicators; and (5) tramline adapters.

(b) "Conservation tillage equipment" means a planter or drill commonly known as a "no-till" planter or drill,
designed to minimize disturbance of the soil in planting crops, including such planters or drills which may be attached to equipment already owned by the taxpayer.

(c) "Dead poultry composting facility" is a structure consisting of a roof, an impervious weight bearing foundation, such as concrete and rot resistant building materials such as pressure treated lumber or similar material, which structure is used to biologically treat poultry carcasses by composting.

(d) "Mortality incinerator" means a structure certified by the air pollution control commission which is used for the purpose of burning animal carcasses.

(e) "Nutrient management system" means an established procedure for managing the amount, form, placement, and timing of applications of plant nutrients.

(f) "Qualified agricultural equipment" means advanced technology pesticide and fertilizer application equipment, conservation tillage equipment, dead poultry composting facilities, nutrient management systems, streambank and shoreline protection systems, stream channel stabilization systems, stream crossing or access plans, waste management systems, waste storage facilities, and waste treatment lagoons located on or at agricultural operations in this state and certified by the tax commissioner in accordance with section five of this article.

(g) "Streambank and shoreline protection system" means the consistent use of vegetation or structures to stabilize and protect banks of streams, lakes, estuaries, or excavated channels in order to stabilize or protect banks of streams, lakes, estuaries, or excavated channels for one or more of the following purposes: (1) To prevent the loss of land or damage to utilities, roads, buildings, or other facilities adjacent to the banks; (2) To maintain the capacity of the channel; (3) To control channel meander that would adversely affect downstream facilities; (4) To reduce sediment loads causing downstream damages and pollution; (5) To improve the stream for recreation or as a habitat for fish and wildlife.
(h) "Stream channel stabilization system" means an established structure for the stabilization of the channel of a stream.

(i) "Stream crossing or access plan" means the maintenance of a stabilized area to provide for crossing of a stream by livestock and farm machinery, or to provide access to the stream for livestock water.

(j) "Waste management system" means a planned system in which all necessary components are installed for managing liquid and solid waste, including runoff from concentrated waste areas at an agricultural operation, in a manner that does not degrade air, soil, or water resources.

(k) "Waste storage facility" means a waste impoundment made by constructing an embankment and/or excavating a pit or dugout, or by fabricating a facility for the storage of waste from livestock or poultry.

(l) "Waste treatment lagoon" means an impoundment made by excavation or earthfill for biological treatment of animal or other agricultural waste.

§11-13K-3. Amount of credit.

(a) There shall be allowed to eligible taxpayers who have made investments in qualified agricultural equipment in this state, a credit against taxes imposed by articles twenty-one and twenty-four of this chapter in the amount set forth in subsection (b) of this section.

(b) The amount of credit shall be equal to twenty-five percent of the purchase price of qualified agricultural equipment, but not to exceed two thousand five hundred dollars for purchases during a taxable year or the total amount of tax imposed by articles twenty-one or twenty-four of this chapter, whichever is less, in the year of purchase of qualified agricultural equipment. If the amount of the credit exceeds the taxpayer's tax liability for the taxable year, the amount which exceeds the tax liability may be carried over and applied as a credit against the tax liability of the taxpayer pursuant to article twenty-one or twenty-four of this chapter to each of the next five taxable years unless sooner used.
§11-13K-4. Proration of credit.

1 For purposes of this section, the amount of any credit attributable to the purchase of agricultural equipment by a partnership or electing small business corporation (S corporation) shall be allocated to the individual partners or shareholders in proportion to their ownership or interest in the partnership or S corporation.


1 On or before the thirty-first day of May, one thousand nine hundred ninety-six, the tax commissioner and the agricultural commissioner shall propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code to determine the equipment which shall be certified as qualified agricultural equipment for purposes of application of the credit provided for in this article not inconsistent with the provisions of section two of this article. The tax commissioner shall also propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code regarding the administration of the credit established pursuant to this article.

§11-13K-6. Effective date.

1 The credit shall be allowed for taxable years beginning on or after the first day of July, one thousand nine hundred ninety-seven.

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-24a. Tax credit for value-added products from raw agricultural products; regulations.

1 (a) Effective for taxable years beginning the first day of July, one thousand nine hundred ninety-seven, notwithstanding any provisions of this code to the contrary, any person, newly and solely engaged in the production of value-added products from raw agricultural products shall be allowed a credit, in the amount of one thousand dollars for each taxable year against the tax imposed by this article, for a period of five years from the date the person becomes subject to this article. The credit shall be allowed only against the tax imposed on that
(b) For purposes of this section, "value-added product" means the following products derived from processing a raw agricultural product, whether for human consumption or for other use. The following enterprises qualify as processing raw agricultural products into value-added products: (1) The conversion of lumber into furniture, toys, collectibles and home furnishings; (2) the conversion of fruit into wine; (3) the conversion of honey into wine; (4) the conversion of wool into fabric; (5) the conversion of raw hides into semifinished or finished leather products; (6) the conversion of milk into cheese; (7) the conversion of fruits or vegetables into a dried, canned or frozen product; (8) the conversion of feeder cattle into commonly acceptable marketable retail portions; (9) the conversion of aquatic animals into a dried, canned, cooked or frozen product; and (10) the conversion of poultry into a dried, canned, cooked or frozen product.

(c) The tax commissioner may propose rules for promulgation in accordance with article three, chapter twenty-nine-a as may be necessary to effectuate the purposes of this section.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-22a. Tax credit for value-added products from raw agricultural products; regulations.

(a) Effective for taxable years beginning the first day of July, one thousand nine hundred ninety-seven, notwithstanding any provisions of this code to the contrary, any new corporation engaged solely in the production of value-added products from raw agricultural products shall be allowed a credit, in the amount of one thousand dollars for each taxable year against the tax imposed by this article, for a period of five years from the date the person becomes subject to this article. The credit shall be allowed only against the tax on taxable income which is attributable to the production of value-added products.
(b) Effective for taxable years beginning the first day of July, one thousand nine hundred ninety-seven, any new corporation engaged solely in the production of value-added products in West Virginia shall be allowed a tax credit, according to the schedule herein, for every one hour spent by a new permanent, full-time employee training to learn a skill specific to the production of value-added products as defined in article twenty-one, chapter thirty-one of this code. The tax credit shall be allowed for a maximum of sixty hours, per company, per year.

(c) For purposes of this section, tax credits for hours spent by a new permanent, full-time employee in training shall be allowed as follows:

(1) Corporations which employ up to five new employees shall be allowed a tax credit of two dollars for every one hour spent by a new employee in training as specified herein;

(2) Corporations which employ between six and twenty-five new employees shall be allowed a tax credit of one dollar and fifty cents for every one hour spent by a new employee in training as specified herein;

(3) Corporations which employ between twenty-six and seventy-five new employees shall be allowed a tax credit of one dollar and twenty-five cents for every one hour spent by a new employee in training as specified herein;

(4) Corporations which employ between seventy-six and one hundred and twenty-five new employees shall be allowed a tax credit of one dollar for every one hour spent by a new employee in training as specified herein; and

(5) Corporations which employ more than one hundred twenty-five new employees shall be allowed a tax credit of seventy-five cents for every one hour spent by a new employee in training as specified herein.

(d) For purposes of this section, "value-added product" means the following products derived from processing a raw agricultural product, whether for human
consumption or for other use. The following enterprises qualify as processing raw agricultural products into value-added products: (1) The conversion of lumber into furniture, toys, collectibles and home furnishings; (2) the conversion of fruit into wine; (3) the conversion of honey into wine; (4) the conversion of wool into fabric; (5) the conversion of raw hides into semifinished or finished leather products; (6) the conversion of milk into cheese; (7) the conversion of fruits or vegetables into a dried, canned or frozen product; (8) the conversion of feeder cattle into commonly acceptable marketable retail portions; (9) the conversion of aquatic animals into a dried, canned, cooked or frozen product; and (10) the conversion of poultry into a dried, canned, cooked or frozen product.

(e) The tax commissioner may propose rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code as may be necessary to effectuate the purposes of this article.

 Chapter 239

(S. B. 37—By Senators Craigo, Scott and Plymale)

[Passed March 15, 1996; in effect ninety days from passage. Approved by the Governor.]
with special dyed diesel fuel as a fuel and carried in the fuel tanks; providing for spot check inspections and where such inspections may occur; setting forth who may make these inspections; setting forth civil and criminal penalties; sales tax; exemptions from sales tax; specifying effective dates; creating exemptions from the consumers sales and service tax for services performed by a corporation, partnership or limited liability company for a related corporation, partnership or limited liability company; exempting sales by public and academic libraries; exempting sales of primary opinion research services performed for out-of-state clients; exempting certain purchases by persons making value added agricultural products; exempting sales of musical instructional services by music teachers; exempting charges to members for membership, newsletters, seminars and instructional materials related thereto for members of certain membership organizations which are tax exempt under specified sections of the Internal Revenue Code; repealing separate sections relating to how exemptions from tax are asserted and incorporating these requirements in the section providing the exemptions from tax; exempting commissions received by manufacturers' representatives and numbering the exemptions from sales tax; and specifying effective dates for such exemptions.

Be it enacted by the Legislature of West Virginia:

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

Article
15. Consumers Sales Tax.

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-2. Definitions.
§11-14-5. Exemptions from tax.
§11-14-17. No dyed fuel on highways.
§11-14-17a. Spot check inspections.
§11-14-18. Penalty for refusal to permit inspection.

§11-14-2. Definitions.

For purposes of this article:

(1) "Actual metered gallons" means, in addition to amounts computed by mechanical devices which measure and record directly in digital terms, all amounts computed by other methods of computing quantities commonly employed by persons engaged in the sale of petroleum products, including, but not limited to, tank or barge strappings and other graduated lineal devices.

(2) "Aircraft fuel" means gasoline and special fuel suitable for use in any aircraft engine.

(3) "Commissioner" or "tax commissioner" means the tax commissioner of the state of West Virginia or his or her duly authorized agent.

(4) "Distributor" or "producer" means and includes every person:

(a) Who produces, manufactures, processes or otherwise alters gasoline or special fuel in this state for use or for sale;

(b) Who engages in this state in the sale of gasoline or special fuel for the purpose of resale or for distribution; or

(c) Who receives gasoline or special fuel into the cargo tank of a tank wagon in this state for use or sale by such person.

(5) "Gallon" means two hundred thirty-one cubic inches of liquid measurement, by volume: Provided, That the commissioner may by rule prescribe other measurement or definition of gallon.

(6) "Gasoline" means any product commonly or commercially known as gasoline, regardless of classification, suitable for use as fuel in an internal combustion engine, except special fuel as defined in this section.
"Highway" means every way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel, which is maintained by this state or some taxing subdivision or unit of this state or the federal government or any of its agencies.

"Importer" means every person, resident or nonresident, other than a distributor, who receives gasoline or special fuel outside this state for use, sale or consumption within this state, but shall not include the fuel in the supply tank of a motor vehicle, or a person paying the motor carrier road tax as provided for in article fourteen-a of this chapter.

"Motor carrier" means any passenger vehicle which has seats for more than nine passengers in addition to the driver, or any road tractor, or any tractor truck or any truck having more than two axles which is operated or caused to be operated by any person on any highway in this state.

"Motor vehicle" means automobiles, motor carriers, motor trucks, motorcycles and all other vehicles or equipment, engines or machines which are operated or propelled by combustion of gasoline or special fuel.

"Person" means and includes any individual, firm, partnership, limited partnership, joint venture, association, company, corporation, organization, syndicate, receiver, trust or any other group or combination acting as a unit, in the plural as well as the singular number, and means and includes the officers, directors, trustees or members of any firm, partnership, limited partnership, joint venture, association, company, corporation, organization, syndicate, receiver, trust or any other group or combination acting as a unit, in the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

"Petroleum carrier" means any person who hauls or transports gasoline or special fuel within this state or on any navigable rivers which are within the jurisdiction of this state.
(13) "Purchase" means and includes any acquisition of ownership of property or of a security interest for a consideration.

(14) "Receive" means any acquisition of ownership or possession of gasoline or special fuel.

(15) "Retail dealer" means any person not a distributor or producer who sells gasoline or special fuel from a fixed location in this state to users.

(16) "Sale" means any transfer, exchange, gift, barter or other disposition of any property or security interest for a consideration.

(17) "Special fuel" means any gas or liquid, other than gasoline, used or suitable for use as fuel in an internal combustion engine. The term "special fuel" includes products commonly known as natural or casinghead gasoline, but shall not include any petroleum product or chemical compound such as alcohol, industrial solvent, heavy furnace oil, lubricant, etc., not commonly used nor practically suited for use as fuel in an internal combustion engine.

(18) "Special dyed diesel fuel" means diesel fuel that is required to be dyed under United States environmental protection agency rules for high sulphur diesel fuel or is dyed under internal revenue service rules for low sulphur fuel or pursuant to any other requirements subsequently set by the United States environmental protection agency or internal revenue service including any invisible marker requirements that is sold for the exclusive use or consumption in off-highway equipment and is exempt from excise taxation under federal law.

(19) "Supply tank" means any receptacle on a motor vehicle from which gasoline or special fuel is supplied for the propulsion of the vehicle or equipment located thereon, exclusive of a cargo tank. A supply tank includes a separate compartment of a cargo tank used as a supply tank, and any auxiliary tank or receptacle of any kind from which gasoline or special fuel is supplied for the propulsion of the vehicle, whether or not the tank or re-
(20) "Tank wagon" means and includes any motor vehicle or vessel with a cargo tank or cargo tanks ordinarily used for making deliveries of gasoline or special fuel or both for sale or use.

(21) "Tax" includes, within its meaning, interest, additions to tax and penalties, unless the intention to give it a more limited meaning is disclosed by the context.

(22) "Taxpayer" means any person liable for any tax, interest, additions to tax or penalty under the provisions of this article.

(23) "User" means any person who purchases gasoline or special fuel for use as fuel and uses the fuel in an internal combustion engine owned or operated by that person.

§11-14-5. Exemptions from tax.

There shall be exempted from the excise tax on gasoline or special fuel imposed by this article the following:

(1) All gallons of gasoline or special fuel exported from this state to any other state or nation;

(2) All gallons of gasoline or special fuel sold to and purchased by the United States or any agency of the United States 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 the 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 the 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 of a municipality for use in vehicles or equipment owned and operated by the municipality or agency of a municipality 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; and

(17) All gallons of special dyed diesel fuel.

§11-14-17. No dyed fuel on highways.

No person may operate or maintain a motor vehicle on any public highway in this state with special dyed diesel fuel as the motor fuel contained in the fuel supply tank. This provision does not apply to: (a) Persons operating motor vehicles that have received fuel into their fuel tanks outside of this state in a jurisdiction that permits introduction of dyed taxable motor fuel of that color and type into the motor fuel tank of highway vehicles, and can show proof of such; or (b) uses of dyed fuel on the highway which are lawful under the Internal Revenue Code and regulations under that code, including state and local government vehicles and buses unless otherwise prohibited by this chapter.

Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined ten dollars per gallon of fuel capacity of the fuel tanks or one thousand dollars, whichever is greater, for the first two violations of this section in a calendar year, and a fine of fifteen dollars per gallon of fuel capacity of the fuel tanks or two thousand dollars, whichever is greater, for each subsequent offense in the same calendar year.

§11-14-17a. Spot check inspections.

(a) The tax commissioner or his or her appointees, may stop, inspect and issue citations to operators of motor vehicles for violations of this chapter at sites where fuel is, or may be, produced, stored, or loaded into or consumed by motor vehicles. These sites include, but are not limited to:

(1) A terminal;

(2) A fuel storage facility that is not a terminal, such as a bulk storage facility;

(3) A retail fuel facility;
(4) Highway rest stops; or

(5) A designated inspection area, including any state highway inspection station, weigh station, agricultural inspection station, mobile station or other location designated by the tax commissioner.

(b) Nothing contained in this section may be construed to prohibit the issuance of a citation for the violation of the provisions of this article on the open highway or other than the spot check areas where the violation of this article is discovered where the motor vehicle is lawfully stopped for any other criminal violation of the laws of this state.

§11-14-18. Penalty for refusal to permit inspection.

Any person who refuses to permit the inspection authorized by section seventeen-a of this article is guilty of a violation of the rules of the state tax division and shall pay a civil penalty of five thousand dollars, in addition to any other penalty imposed in this code.

ARTICLE 15. CONSUMERS SALES TAX.


(a) Exemptions for which exemption certificate may be issued. — A person having a right or claim to any exemption set forth in this subsection may, in lieu of paying the tax imposed by this article and filing a claim for refund, execute a certificate of exemption, in such form as the tax commissioner may require, and deliver it to the vendor of the property or service, in such manner as the tax commissioner may require. However, the tax commissioner may, by rule, specify those exemptions authorized in this subsection for which exemptions certificates are not required. The following sales of tangible personal property and/or services are exempt as provided in this subsection:

(1) Sales of gas, steam and water delivered to consumers through mains or pipes and sales of electricity;

(2) Sales of textbooks required to be used in any of the schools of this state or in any institution in this state
which qualifies as a nonprofit or educational institution
subject to the West Virginia department of education and
the arts, the board of trustees of the university system of
West Virginia or the board of directors for colleges locat-
ed in this state;

(3) Sales of property or services to this state, its institu-
tions or subdivisions, governmental units, institutions or
subdivisions of other states: Provided, That the law of the
other state provides the same exemption to governmental
units or subdivisions of this state and to the United States,
including agencies of federal, state or local governments
for distribution in public welfare or relief work;

(4) Sales of vehicles which are titled by the division of
motor vehicles and which are subject to the tax imposed
by section four, article three, chapter seventeen-a of this
code, or like tax;

(5) Sales of property or services to churches who
make no charge whatsoever for the services they render:
Provided, That the exemption granted in this subdivision
applies only to services, equipment, supplies, food for
meals and materials directly used or consumed by these
organizations, and shall not apply to purchases of gasoline
or special fuel;

(6) Sales of tangible personal property or services to a
corporation or organization which has a current registra-
tion certificate issued under article twelve of this chapter, is
exempt from federal income taxes under Section 501(c)
(3) or (c)(4) of the Internal Revenue Code of 1986, as
amended, and is:

(A) A church or a convention or association of
churches as defined in Section 170 of the Internal Reven-
ue Code of 1986, as amended;

(B) An elementary or secondary school which main-
tains a regular faculty and curriculum and has a regularly
enrolled body of pupils or students in attendance at the
place in this state where its educational activities are regu-
larly carried on;
(C) A corporation or organization which annually receives more than one half of its support from any combination of gifts, grants, direct or indirect charitable contributions or membership fees;

(D) An organization which has no paid employees and its gross income from fund raisers, less reasonable and necessary expenses incurred to raise the gross income (or the tangible personal property or services purchased with the net income), is donated to an organization which is exempt from income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended;

(E) A youth organization, such as the girl scouts of the United States of America, the boy scouts of America or the YMCA Indian guide/princess program and the local affiliates thereof, which is organized and operated exclusively for charitable purposes and has as its primary purpose the nonsectarian character development and citizenship training of its members;

(F) For purposes of this subsection:

(i) The term "support" includes, but is not limited to:

(I) Gifts, grants, contributions or membership fees;

(II) Gross receipts from fund raisers which include receipts from admissions, sales of merchandise, performance of services or furnishing of facilities in any activity which is not an unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of 1986, as amended;

(III) Net income from unrelated business activities, whether or not such activities are carried on regularly as a trade or business;

(IV) Gross investment income as defined in Section 509(e) of the Internal Revenue Code of 1986, as amended;

(V) Tax revenues levied for the benefit of a corporation or organization either paid to or expended on behalf of the organization; and
(VI) The value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code of 1986, as amended, to an organization without charge. This term does not include any gain from the sale or other disposition of property which would be considered as gain from the sale or exchange of a capital asset, or the value of an exemption from any federal, state or local tax or any similar benefit;

(ii) The term "charitable contribution" means a contribution or gift to or for the use of a corporation or organization, described in Section 170(c)(2) of the Internal Revenue Code of 1986, as amended;

(iii) The term "membership fee" does not include any amounts paid for tangible personal property or specific services rendered to members by the corporation or organization; or

(G) The exemption allowed by this subdivision (6) does not apply to sales of gasoline or special fuel or to sales of tangible personal property or services to be used or consumed in the generation of unrelated business income as defined in Section 513 of the Internal Revenue Code of 1986, as amended. The provisions of this subdivision apply to sales made after the thirtieth day of June, one thousand nine hundred eighty-nine: Provided, That the exemption granted in this subdivision applies only to services, equipment, supplies and materials used or consumed in the activities for which the organizations qualify as tax exempt organizations under the Internal Revenue Code and shall not apply to purchases of gasoline or special fuel;

(7) An isolated transaction in which any taxable service or any tangible personal property is sold, transferred, offered for sale or delivered by the owner of the property or by his or her representative for the owner's account, the sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of like character by the owner or on his or her ac-
count by the representative: Provided, That nothing con-  
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(8) Sales of tangible personal property or of any taxable services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which will be subject to the tax imposed by this article or which would have been subject to tax under this article: Provided, That sales of tangible personal property and services to be used or consumed in the construction of or permanent improvement to real property and sales of gasoline and special fuel are not exempt: Provided, however, That nails and fencing shall not be considered as improvements to real property;

(9) Sales of tangible personal property to a person for the purpose of resale in the form of tangible personal property: Provided, That sales of gasoline and special fuel by distributors and importers is taxable except when the sale is to another distributor for resale: Provided, however, That sales of building materials or building supplies or other property to any person engaging in the activity of contracting, as defined in this article, which is to be installed in, affixed to or incorporated by that person or his or her agent into any real property, building or structure is not exempt under this subdivision, except that sales of tangible personal property to a person engaging in the activity of contracting pursuant to a written contract with the United States, this state, or with a political subdivision of this state, or with a public corporation created by the Legislature or by another governmental entity pursuant to an act of the Legislature, for a building or structure, or improvement thereto, or other improvement to real property that is or will be owned and used by the governmental
entity for a governmental or proprietary purpose, who incorporates the property in the building, structure or improvement shall, with respect to the tangible personal property, nevertheless be considered to be the vendor of the property to the governmental entity and any person seeking to qualify for and assert this exception must do so pursuant to the legislative rules as the tax commissioner may promulgate and upon such forms as the tax commissioner may prescribe. A subcontractor who, pursuant to a written subcontract with a prime contractor who qualifies for this exception, provides equipment, or materials, and labor to a prime contractor shall be treated in the same manner as the prime contractor is treated with respect to the prime contract under this exception and the legislative rules promulgated by the tax commissioner: Provided further, That the exemption for government contractors in the preceding proviso expires on the first day of October, one thousand nine hundred ninety, subject to the transition rules set forth in section eight-c of this article;

(10) Sales of newspapers when delivered to consumers by route carriers;

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

(12) Sales of radio and television broadcasting time, preprinted advertising circulars and newspaper and outdoor advertising space for the advertisement of goods or services;

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

(14) Casual and occasional sales of property or services not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character by a corporation or organization which is exempt from tax under subdivision (6) of this subsection on its purchases of tangible personal property or services:

(A) For purposes of this subdivision, the term "casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive
transactions of like character" means sales of tangible personal property or services at fund raisers sponsored by a corporation or organization which is exempt, under subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases, when the fund raisers are of limited duration and are held no more than six times during any twelve-month period and "limited duration" means no more than eighty-four consecutive hours;

(B) The provisions of this subdivision apply to sales made after the thirtieth day of June, one thousand nine hundred eighty-nine;

(15) Sales of property or services to a school which has approval from the board of trustees of the university system of West Virginia or the board of directors of the state college system to award degrees, which has its principal campus in this state, and which is exempt from federal and state income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended: Provided, That sales of gasoline and special fuel are taxable;

(16) Sales of mobile homes to be utilized by purchasers as their principal year-round residence and dwelling: Provided, That these mobile homes are subject to tax at the three-percent rate;

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

(18) Leases of motor vehicles titled pursuant to the provisions of article three, chapter seventeen-a of this code to lessees for a period of thirty or more consecutive days. This exemption applies to leases executed on or after the first day of July, one thousand nine hundred eighty-seven, and to payments under long-term leases executed before that date, for months thereof beginning on or after that date;
(19) Sales of propane to consumers for poultry house heating purposes, with any seller to the consumer who may have prior paid the tax in his or her price, to not pass on the same to the consumer, but to make application and receive refund of the tax from the tax commissioner, pursuant to rules which shall be promulgated by the tax commissioner; notwithstanding the provisions of section eighteen of this article or any other provision of this article to the contrary;

(20) Any sales of tangible personal property or services purchased after the thirtieth day of September, one thousand nine hundred eighty-seven, and lawfully paid for with food stamps pursuant to the federal food stamp program codified in 7 U. S. C. §2011 et seq., as amended, or with drafts issued through the West Virginia special supplement food program for women, infants and children codified in 42 U. S. C. §1786;

(21) Sales of tickets for activities sponsored by elementary and secondary schools located within this state;

(22) Sales of electronic data processing services and related software: Provided, That for the purposes of this subdivision "electronic data processing services" means: (A) The processing of another's data, including all processes incident to processing of data such as keypunching, keystroke verification, rearranging or sorting of previously documented data for the purpose of data entry or automatic processing and changing the medium on which data is sorted, whether these processes are done by the same person or several persons; and (B) providing access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to the computer equipment;

(23) Tuition charged for attending educational summer camps;

(24) Dispensing of services performed by one corporation, partnership or limited liability company for another corporation, partnership or limited liability company when the entities are members of the same controlled
group or are related taxpayers as defined in Section 267 of the Internal Revenue Code. "Control" means ownership, directly or indirectly, of stock, equity interests or membership interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation, equity interests of a partnership or membership interests of a limited liability company entitled to vote or ownership, directly or indirectly, of stock, equity interests or membership interests possessing fifty percent or more of the value of the corporation, partnership or limited liability company;

(25) Food for the following are exempt:

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

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

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

(D) Food sold in an occasional sale by a charitable or nonprofit organization including volunteer fire departments and rescue squads, if the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is actually expended for that purpose;
(E) Food sold by any religious organization at a social
or other gathering conducted by it or under its auspices, if
the purpose in selling the food is to obtain revenue for the
functions and activities of the organization and the reve-
uenue obtained from selling the food is actually used in
carrying on those functions and activities: Provided, That
purchases made by the organizations are not exempt as a
purchase for resale;

(26) Sales of food by little leagues, midget football
leagues, youth football or soccer leagues and similar types
of organizations, including scouting groups and church
youth groups, if the purpose in selling the food is to ob-
tain revenue for the functions and activities of the organi-
zation and the revenues obtained from selling the food is
actually used in supporting or carrying on functions and
activities of the groups: Provided, That the purchases
made by the organizations are not exempt as a purchase
for resale;

(27) Charges for room and meals by fraternities and
sororities to their members: Provided, That the purchases
made by a fraternity or sorority are not exempt as a pur-
chase for resale;

(28) Sales of or charges for the transportation of pas-
sengers in interstate commerce;

(29) Sales of tangible personal property or services to
any person which this state is prohibited from taxing un-
der the laws of the United States or under the constitution
of this state;

(30) Sales of tangible personal property or services to
any person who claims exemption from the tax imposed
by this article or article fifteen-a of this chapter pursuant
to the provision of any other chapter of this code;

(31) Charges for the services of opening and closing a
burial lot;

(32) Sales of livestock, poultry or other farm products
in their original state by the producer thereof or a member
of the producer's immediate family who is not otherwise
engaged in making retail sales of tangible personal property; and sales of livestock sold at public sales sponsored
by breeders or registry associations or livestock auction markets: Provided, That the exemptions allowed by this
subdivision apply to sales made on or after the first day of July, one thousand nine hundred ninety, and may be
claimed without presenting or obtaining exemption certificates: Provided, however, That the farmer shall maintain
adequate records;

(33) Sales of motion picture films to motion picture exhibitors for exhibition if the sale of tickets or the charge
for admission to the exhibition of the film is subject to the tax imposed by this article and sales of coin-operated
video arcade machines or video arcade games to a person engaged in the business of providing the machines to the
public for a charge upon which the tax imposed by this article is remitted to the tax commissioner: Provided, That the exemption provided in this subdivision applies to sales made on or after the first day of July, one thousand nine
hundred ninety, and may be claimed by presenting to the seller a properly executed exemption certificate;

(34) Sales of aircraft repair, remodeling and maintenance services when such services are to an aircraft operated
by a certified or licensed carrier of persons or property, or by a governmental entity, or to an engine or other component part of an aircraft operated by a certificated or licensed carrier of persons or property, or by a governmental entity and sales of tangible personal property that is permanently affixed or permanently attached as a component part of an aircraft owned or operated by a certificated or licensed carrier of persons or property, or by a governmental entity, as part of the repair, remodeling or maintenance service and sales of machinery, tools or equipment, directly used or consumed exclusively in the repair, remodeling or maintenance of aircraft, aircraft engines, or aircraft component parts, for a certificated or licensed carrier of persons or property, or for a governmental entity;
(35) Charges for memberships or services provided by health and fitness organizations relating to personalized fitness programs;

(36) Sales of services by individuals who baby-sit for a profit: Provided, That the gross receipts of the individual from the performance of baby-sitting services do not exceed five thousand dollars in a taxable year;

(37) Sales of services after the thirtieth day of June, one thousand nine hundred ninety-seven, by public libraries or by libraries at academic institutions or by libraries at institutions of higher learning;

(38) Commissions received after the thirtieth day of June, one thousand nine hundred ninety-seven, by a manufacturer's representative;

(39) Sales of primary opinion research services after the thirtieth day of June, one thousand nine hundred ninety-seven, when:

(A) The services are provided to an out-of-state client;

(B) The results of the service activities, including, but not limited to, reports, lists of focus group recruits and compilation of data are transferred to the client across state lines by mail, wire or other means of interstate commerce, for use by the client outside the state of West Virginia; and

(C) The transfer of the results of the service activities is an indispensable part of the overall service.

For the purpose of this subdivision the term "primary opinion research" means original research in the form of telephone surveys, mall intercept surveys, focus group research, direct mail surveys, personal interviews and other data collection methods commonly utilized for quantitative and qualitative opinion research studies;

(40) Sales of property or services after the thirtieth day of June, one thousand nine hundred ninety-seven, to persons within the state when those sales are for the purposes of the production of value-added products: Provided—
ed, That the exemption granted in this subdivision applies only to services, equipment, supplies and materials directly used or consumed by such persons engaged solely in the production of value-added products: Provided, however, That this exemption may not be claimed by any one purchaser for more than five consecutive years, except as otherwise permitted in this section.

For the purpose of this subdivision, the term "value-added product" means the following products derived from processing a raw agricultural product, whether for human consumption or for other use: For purposes of this subdivision, the following enterprises qualify as processing raw agricultural products into value-added products: Those engaged in the conversion of:

(A) Lumber into furniture, toys, collectibles and home furnishings;
(B) Fruits into wine;
(C) Honey into wine;
(D) Wool into fabric;
(E) Raw hides into semi-finished or finished leather products;
(F) Milk into cheese;
(G) Fruits or vegetables into a dried, canned or frozen product;
(H) Feeder cattle into commonly accepted slaughter weights;
(I) Aquatic animals into a dried, canned, cooked or frozen product; and
(J) Poultry into a dried, canned, cooked or frozen product;
(41) Sales of music instructional services after the thirtieth day of June, one thousand nine hundred ninety-seven, by a music teacher; and
(42) After the thirtieth day of June, one thousand nine hundred ninety-seven, charges to a member by a member-
ship association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, for membership in the association or organization, including charges to members for newsletters prepared by the association or organization for distribution primarily to its members, charges to members for continuing education seminars, workshops, conventions, lectures or courses put on or sponsored by the association or organization, including charges for related course materials prepared by the association or organization or by the speaker or speakers for use during the continuing education seminar, workshop, convention, lecture or course, but not including any separate charge or separately stated charge for meals, lodging, entertainment or transportation taxable under this article: Provided, That the association or organization pays the tax imposed by this article on its purchases of meals, lodging, entertainment or transportation taxable under this article for which a separate or separately stated charge is not made. A membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, may elect to pay the tax imposed under this article on the purchases for which a separate or separately stated charge could apply and not charge its members the tax imposed by this article or, the association or organization may avail itself of the exemption set forth in subdivision (9) of this subsection relating to purchases of tangible personal property for resale and then collect the tax imposed by this article on those items from its member.

(b) Refundable exemptions. — Any person having a right or claim to any exemption set forth in this subsection shall first pay to the vendor the tax imposed by this article and then apply to the tax commissioner for a refund or credit, or as provided in section nine-d of this article, give to the vendor such person's West Virginia direct pay permit number. The following sales of tangible personal property and/or services are exempt from tax as provided in this subsection:
(1) Sales of property or services to bona fide charitable organizations who make no charge whatsoever for the services they render: Provided, That the exemption granted in this subdivision applies only to services, equipment, supplies, food, meals and materials directly used or consumed by these organizations, and shall not apply to purchases of gasoline or special fuel;

(2) Sales of services, machinery, supplies and materials directly used or consumed in the activities of manufacturing, transportation, transmission, communication, production of natural resources, gas storage, generation or production or selling electric power, provision of a public utility service or the operation of a utility service or the operation of a utility business, in the businesses or organizations named above and shall not apply to purchases of gasoline or special fuel;

(3) Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work: Provided, That sales of gasoline and special fuel are taxable;

(4) Sales and services, fire fighting or station house equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the laws of the state of West Virginia: Provided, That sales of gasoline and special fuel are taxable; and

(5) Sales of building materials or building supplies or other property to an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, which are to be installed in, affixed to or incorporated by the organization or its agent into real property, or into a building or structure which is or will be used as permanent low-income housing, transitional housing, emergency homeless shelter, domestic violence shelter or emergency children and youth shelter if the shelter is owned, managed, developed or operated by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended.
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; and to amend and reenact section twenty-three-f, article twenty-four of said chapter, all relating to the historic buildings preservation tax credit against the personal income tax and corporate net income tax; extending the credit indefinitely; requiring disclosure of certain taxpayer information in accordance with the tax procedures and administration act; and allowing the credit for specific taxable years.

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; and that section twenty-three-f, article twenty-four of said chapter be amended and reenacted, all to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8f. Disclosure of credit applications and grants.

1 The tax commissioner shall require disclosure of information regarding credits granted pursuant to section eight-a of this article in accordance with the provisions of section five-s, article ten of this chapter.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-23f. Credit allowed for specific taxable years.

1 Subject to the provisions of section twenty-three-e of this article, any qualified rehabilitation expenditures made by a taxpayer in the taxable year beginning on the first
4 day of January, one thousand nine hundred ninety-five, shall be allowed against the tax imposed by this article in the taxable year beginning on the first day of January, one thousand nine hundred ninety-six. The tax commissioner shall require disclosure of information regarding the credits allowed in section twenty-three-a of this article in accordance with the provisions of section five-s, article ten of this chapter.

CHAPTER 241

(S. B. 93—By Senators Craigo, Blatnik, Chafin, Dugan, Helmick, Kimble, Love, Macnaughtan, Manchin, Minear, Plymale, Sharpe, Walker and Whitlow)

[Passed February 13, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine and twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to updating meaning of certain terms used in the personal income tax act; making such updating retroactive; preserving law in effect for each prior tax year for such year; defining certain additional terms; making technical corrections in the definition of West Virginia adjusted gross income; deleting obsolete language; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.


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


(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 Janu-
ary, one thousand nine hundred ninety-six, 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-five, 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-six, shall be given any effect. The exception to the
preceding rule is the change in federal income tax law
restoring subsection (l), Section 162 of the Internal Reve-
uue Code for taxable years beginning on or after the first
day of January, one thousand nine hundred ninety-four,
which shall be allowed under this article for taxable years
beginning on or after the first day of January, one thou-
sand nine hundred ninety-four.

(b) Medical savings accounts. — The term "taxable
trust" does not include a medical savings account estab-
lished pursuant to section twenty, article fifteen or section
fifteen, article sixteen, both of chapter thirty-three of this
code. Employer contributions to a medical savings ac-
count established pursuant to said sections, are not "wages"
for purposes of withholding under section seventy-one of
this article.

(c) Surtax. — The term "surtax" means the twenty
percent additional tax imposed on taxable withdrawals
from a medical savings account under section twenty,
article fifteen, chapter thirty-three of this code, and the
twenty percent additional tax imposed on taxable with-
drawals from a medical savings account under section
fifteen, article sixteen of said chapter, which are collected
by the tax commissioner as tax collected under this article.

(d) Effective date. — The amendments to this section
enacted in the year one thousand nine hundred ninety-six
shall be retroactive and shall apply to taxable years begin-
ning on or after the first day of January, one thousand
nine hundred ninety-five, except as otherwise provided in
subsection (a) of this section, 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.

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

(a) General. — The West Virginia adjusted gross in-
come of a resident individual means his federal adjusted
gross income as defined in the laws of the United States
for the taxable year with the modifications specified in this
section.

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

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

(2) Interest or dividend income on obligations or
securities of any authority, commission or instrumentality
of the United States, which the laws of the United States
exempt from federal income tax but not from state in-
come taxes;

(3) Any deduction allowed when determining federal
adjusted gross income for federal income tax purposes for
the taxable year that is not allowed as a deduction under
this article for the taxable year;

(4) Interest on indebtedness incurred or continued to
purchase or carry obligations or securities the income
from which is exempt from tax under this article, to the
extent deductible in determining federal adjusted gross
income;
(5) Interest on a depository institution tax-exempt savings certificate which is allowed as an exclusion from federal gross income under Section 128 of the Internal Revenue Code, for the federal taxable year;

(6) The amount of a lump sum distribution for which the taxpayer has elected under Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for federal income tax purposes; and

(7) Amounts withdrawn from a medical savings account established by or for an individual under section twenty, article fifteen or section fifteen, article sixteen, both of chapter thirty-three of this code, that are used for a purpose other than payment of medical expenses, as defined in those sections.

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

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

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States or of the state of West Virginia to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States or of the state of West Virginia, including federal interest or dividends paid to shareholders of a regulated investment company, under Section 852 of the Internal Revenue Code for taxable years ending after the thirtieth day of June, one thousand nine hundred eighty-seven;

(3) Any amount included in federal adjusted gross income for federal income tax purposes for the taxable year that is not included in federal adjusted gross income under this article for the taxable year;

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

(5) Annuities, retirement allowances, returns of contributions and any other benefit received under the West Virginia public employees retirement system, the West Virginia state teachers retirement system and all forms of military retirement, including regular armed forces, reserves and national guard, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes: Provided, That notwithstanding any provisions in this code to the contrary this modification shall be limited to the first two thousand dollars of benefits received under the West Virginia public employees retirement system, the West Virginia state teachers retirement system and all forms of military retirement including regular armed forces, reserves and national guard, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six; and the first two thousand dollars of benefits received under any federal retirement system to which Title 4 U.S.C. §111 applies: Provided, however, That the total modification under this paragraph shall not exceed two thousand dollars per person receiving retirement benefits and this limitation shall apply to all returns or amended returns filed after the last day of December, one thousand nine hundred eighty-eight;

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

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

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

(ii) Where the total modification under subdivisions (1), (2), (5) and (6) of this subsection is less than eight thousand dollars per person, the total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference between eight thousand dollars and the sum of modifications under subdivisions (1), (2), (5) and (6) of this subsection;

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

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

(ii) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is less than eight thousand dollars per person, the total modification allowed under this subdivision for all gross income received by
that person shall be limited to the difference between eight thousand dollars and the sum of subdivisions (1), (2), (5), (6) and (7) of this subsection;

(9) Contributions from any source to a medical savings account established by or for the individual pursuant to section twenty, article fifteen or section sixteen, chapter thirty-three of this code, plus interest earned on the account, to the extent includable in federal adjusted gross income for federal tax purposes: Provided, That the amount subtracted pursuant to this subdivision for any one taxable year may not exceed two thousand dollars plus interest earned on the account. For married individuals filing a joint return, the maximum deduction is computed separately for each individual; and

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

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

(e) Partners and S corporation shareholders. — The amounts of modifications required to be made under this section by a partner or an S corporation shareholder, which relate to items of income, gain, loss or deduction of a partnership or an S corporation, shall be determined under section seventeen of this article.

(f) Husband and wife. — If husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine their West Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

(g) Effective date. — Changes in the language of this section enacted in the year one thousand nine hundred ninety-six shall apply to taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety-five.
CHAPTER 242

(Com. Sub. for S. B. 17—By Senators Craigo, Tomblin, Mr. President, Chafin, Jackson, Wooton, Bailey, Walker, Wagner, Manchin, Anderson, Plymale, White, Whitlow, Dittmar, Bowman, Macnaughtan, Miller, Helmick, Sharpe, Ross, Schoonover, Love, Blatnik, Grubb, Oliverio, Wiedebusch, Buckalew, Deem, Kimble, Yoder, Boley, Minear, Scott and Dugan)

[Passed January 23, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten; to amend and reenact sections fifty-one and seventy-one of said article; and to amend and reenact section six, article twenty-three of said chapter, all relating generally to reductions in personal income and business franchise taxes; providing a low income exclusion from federal adjusted gross income; increasing threshold for filing certain income tax returns; making technical corrections; reducing the rate of business franchise tax; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That article twenty-one, 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 ten; that sections fifty-one and seventy-one of said article be amended and reenacted; and that section six, article twenty-three of said chapter be amended and reenacted, all to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-10. Low income exclusion.
§11-21-51. Returns and liabilities.
§11-21-71. Requirement of withholding tax from wages.

§11-21-10. Low income exclusion.

1 (a) Earned income exclusion. — In the case of an eligible taxpayer, there shall be allowed as a deduction
from federal adjusted gross income the amount of his or her earned income included therein, not to exceed ten thousand dollars, except that when a husband and wife file separate returns under this article this exclusion shall not exceed five thousand dollars per separate return: Provided, That for the taxable year beginning the first day of January, one thousand nine hundred ninety-six, the exclusion provided for in this section shall apply only to earned income received after the thirtieth day of June, one thousand nine hundred ninety-six, and the amount excluded shall not exceed fifty percent of the annual low income exclusion amounts set forth in this subsection.

(b) "Eligible taxpayer" defined. — The term "eligible taxpayer" means:

(1) Any unmarried individual and any husband and wife filing a joint return under this article who has or have federal adjusted gross income of ten thousand dollars or less for the taxable year; or

(2) Any husband or wife filing a separate return under this article who has federal adjusted gross income of five thousand dollars or less.

(c) "Earned income" defined. —

(1) The term "earned income" means:

(A) Wages, salaries, tips and other employee compensation; plus

(B) The amount of the taxpayer's net earnings from self-employment for the taxable year (within the meaning of Section 1402(a) of the Internal Revenue Code), but such net earnings shall be determined with regard to the deduction allowed to the taxpayer under Section 164 of the Internal Revenue Code.

(2) For purposes of this section:

(A) The earned income of an individual shall be computed without regard to any community property laws;

(B) No amount received as pension or annuity shall be taken into account; and
(C) No amount received for services provided by an individual while the individual is an inmate at a penal institution shall be taken into account.

(d) Taxable year must be full taxable year. — Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowed under this section in the case of a taxable year covering a period of less than twelve months.

§11-21-51. Returns and liabilities.

(a) General. — On or before the fifteenth day of the fourth month following the close of a taxable year, an income tax return under this article shall be made and filed by or for:

(1) Every resident individual required to file a federal income tax return for the taxable year, or having West Virginia adjusted gross income for the taxable year, determined under section twelve of this article in excess of the sum of his or her West Virginia personal exemptions: Provided, That the tax commissioner shall by legislative rule specify circumstances when an individual is not required to file a return as a result of the application of section ten of this article;

(2) Every resident estate or trust required to file a federal income tax return for the taxable year, or having any West Virginia taxable income for the taxable year, determined under section eighteen of this article;

(3) Every nonresident individual having any West Virginia adjusted gross income for the taxable year, determined under section thirty-two of this article, in excess of the sum of his or her West Virginia personal exemptions, except when all of such nonresident individual's West Virginia source income is taxed on a composite return filed under this article for the taxable year; and

(4) Every nonresident estate or trust having items of income or gain derived from West Virginia sources, determined in accordance with the applicable rules of section thirty-two of this article as in the case of a nonresident individual, in excess of its West Virginia exemption.
(b) **Husband and wife.**

(1) If the federal income tax liability of husband or wife is determined on a separate federal income tax return, their West Virginia income tax liabilities and returns shall be separate.

(2) If the federal income tax liabilities of husband and wife other than a husband and wife described in subdivision (3) of this subsection are determined on a joint federal return, or if neither files a federal return:

   (A) They shall file a joint West Virginia income tax return, and their tax liabilities shall be joint and several; or

   (B) They may elect to file separate West Virginia income tax returns on a single or separate form, as may be required by the tax commissioner, if they comply with the requirements of the tax commissioner in setting forth information, and in such event their tax liabilities shall be separate.

(3) If either husband or wife is a resident and the other is a nonresident, they shall file separate West Virginia income tax returns on such single or separate forms as may be required by the tax commissioner, and in such event their tax liabilities shall be separate.

(c) **Decedents.** — The return of any deceased individual shall be made and filed by his or her executor, administrator or other person charged with his or her property.

(d) **Individuals under a disability.** — The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his or her guardian, committee, fiduciary or other person charged with the care of his or her person or property (other than a receiver in possession of only a part of his or her property), by his or her duly authorized agent.

(e) **Estates and trusts.** — The return for an estate or trust shall be made and filed by the fiduciary.

(f) **Joint fiduciaries.** — If two or more fiduciaries are acting jointly, the return may be made by any one of them.
(g) **Tax a debt.** — Any tax under this article, and any increase, interest or penalty thereon, shall, from the time it is due and payable, be a personal debt of the person liable to pay the same, to the state of West Virginia.

(h) **Cross reference.** — For provisions as to information returns by partnerships, employers and other persons, see section fifty-eight of this article. For provisions as to composite returns of nonresidents, see section fifty-one-a of this article. For provisions as to information returns by electing small business corporations, see section thirteen-b, article twenty-four of this chapter.

(i) **Effective date.** — This section, as amended by this act in the year one thousand nine hundred ninety-six, shall apply to all taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety-five.

§11-21-71. **Requirement of withholding tax from wages.**

(a) **General.** — Every employer maintaining an office or transacting business within this state and making payment of any wage taxable under this article to a resident or nonresident individual shall deduct and withhold from such wages for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due under this article resulting from the inclusion in the employee's West Virginia adjusted gross income of wages received during such calendar year. The method of determining the amount to be withheld shall be prescribed by the tax commissioner, with due regard to the West Virginia withholding exemption of the employee and any low income exclusion allowed to such employee under section ten of this article and asserted in good faith by the employee. This section shall not apply to payments by the United States for service in the armed forces of the United States: **Provided,** That the tax commissioner may execute an agreement with the secretary of the treasury, as provided in 5 U. S. C. §5517, for the mandatory withholding of tax under this section on pay to members of the national guard while participating in exercises or performing duty under 32 U. S. C. §502, and on pay to members of the ready reserve while participating in scheduled drills.
or training periods or serving on active duty for training under 10 U. S. C. §270(a).

(b) Withholding exemptions. — For purposes of this section:

(1) An employee shall be entitled to the same number of West Virginia withholding exemptions as the number of withholding exemptions to which he or she is entitled for federal income tax withholding purposes. An employer may rely upon the number of federal withholding exemptions claimed by the employee, except where the employee claims a higher number of West Virginia withholding exemptions.

(2) With respect to any taxable year beginning after the thirty-first day of December, one thousand nine hundred eighty-six, the amount of each West Virginia exemption shall be two thousand dollars whether the individual is a resident or nonresident.

(c) Exception for certain nonresidents. — If the income tax law of another state of the United States or of the District of Columbia results in its residents being allowed a credit under section forty sufficient to offset all taxes required by this article to be withheld from wages of an employee, the tax commissioner may by regulation relieve the employers of such employees from withholding requirements of this article with respect to such employees.

(d) Effective date. — The provisions of this section, as amended in the year one thousand nine hundred ninety-six, shall apply to all taxable years or portions thereof beginning after the thirtieth day of June, one thousand ninety-six.

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-6. Imposition of tax; change in rate of tax.

(a) General. — An annual business franchise tax is hereby imposed on the privilege of doing business in this state and in respect of the benefits and protection conferred. Such tax shall be collected from every domestic corporation, every corporation having its commercial domicile in this state, every foreign or domestic corporation owning or leasing real or tangible personal property
located in this state or doing business in this state and
from every partnership owning or leasing real or tangible
personal property located in this state or doing business in
this state, effective on and after the first day of July, one
thousand nine hundred eighty-seven.

(b) Amount of tax and rate; effective date. —

(1) On and after the first day of July, one thousand
nine hundred eighty-seven, the amount of tax shall be the
greater of fifty dollars or fifty-five one hundredths of one
percent of the value of the tax base, as determined under
this article: Provided, That when the taxpayer's first tax-
able year under this article is a short taxable year, the
taxpayer's liability shall be prorated based upon the ratio
which the number of months in which such short taxable
year bears to twelve: Provided, however, That this subdi-
vision shall not apply to taxable years beginning on or
after the first day of January, one thousand nine hundred
eighty-nine.

(2) Taxable years after December 31, 1988. — For
taxable years beginning on or after the first day of Janu-
ary, one thousand nine hundred eighty-nine, the amount
of tax due under this article shall be the greater of fifty
dollars or seventy-five one hundredths of one percent of
the value of the tax base as determined under this article.

(3) Taxable years after June 30, 1997. — For taxable
years beginning on or after the first day of July, one thou-
sand nine hundred ninety-seven, the amount of tax due
under this article shall be the greater of fifty dollars or
seventy hundredths of one percent of the value of the tax
base as determined under this article.

(c) Short taxable years. — When the taxpayer's tax-
able year for federal income tax purposes is a short tax-
able year, the tax determined by application of the tax rate
to the taxpayer's tax base shall be prorated based upon the
ratio which the number of months in such short taxable
year bears to twelve: Provided, That when the taxpayer's
first taxable year under this article is less than twelve
months, the taxpayer's liability shall be prorated based
upon the ratio which the number of months the taxpayer
was doing business in this state bears to twelve but in no
event shall the tax due be less than fifty dollars.
AN ACT to amend and reenact sections five and six, article twenty-two, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the recordation of instruments transferring real property with the county clerk; permitting documentary stamps reflecting the payment of taxes upon the privilege of transferring real property to be affixed by meter or similar device; providing that such stamps need not be canceled; and providing that those instruments to which documentary stamps are not required to be affixed may not be recorded unless there is tendered with the document a verified sales listing form.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. EXCISE TAX ON PRIVILEGE OF TRANSFERRING REAL PROPERTY.

§11-22-5. Commissioner to provide for sale of stamps; rules and regulations.

§11-22-6. Duties of clerk; declaration of consideration or value; filing of sales listing form for tax commissioner; disposition and use of proceeds.

§11-22-5. Commissioner to provide for sale of stamps; rules and regulations.

1 (a) The commissioner shall prescribe, prepare and furnish adhesive stamps of such denominations and quantities as may be necessary for the payment of the tax imposed and assessed by this article, to the clerks of the various county commissions whose duty it shall be to offer said stamps for sale.
(b) The commissioner is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to:

(1) The method and means to be used in affixing or cancelling of stamps in substitution for or in addition to the method and means provided in this article.

(2) The denominations and sale of stamps.

(3) Any other matter or thing pertaining to the administration and enforcement of the provisions of this article.

(c) In addition to the form of the stamps described in subsection (a) of this section, and the method and means to be used in affixing the stamps heretofore authorized by the commissioner, the commissioner may authorize the clerks of the county commissions to affix stamps by meter or other similar device. Stamps that are affixed by the use of such devices shall be uniform as to size and design and shall be in such form as determined by the commissioner. Notwithstanding the provisions of section four of this article, cancellation of the stamps affixed by the use of such devices is not required.

§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. The 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 executed counterpart of this deed recorded in ____________ County.

Given under my hand this ____________ day of ________________, 19__.

Signed ____________________________ (Indicate whether grantor, grantee, or other interest in conveyance). ____________________________

Address"

The declaration shall be considered by the clerk in ascertaining the correct number of stamps required, and if declaration (d) above 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 ninety-six, the clerk shall not record any docu-
ment with or without 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 to 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 grantor's title is unknown, a description of the property and the name of the person to whom real property taxes are assessed as set forth in the landbook prepared by the assessor. 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
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 landbooks. 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 pursuant to the provisions of chapter eleven-a of this code as a result of the person's interest in the real property;

(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.
AN ACT to amend and reenact sections five-a, nine and twenty-seven, article twenty-three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section nine-a; to amend and reenact sections seven-b, thirteen-a and twenty-four, article twenty-four of said chapter; and to further amend said article by adding thereto a new section, designated section thirty-eight, all relating generally to how financial organizations and other corporations determine tax liability, file returns and pay business franchise and corporation net income taxes; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

Article

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-5a. Special apportionment rules — Financial organizations.
§11-23-27. Credit for franchise tax paid to another state.

§11-23-5a. Special apportionment rules — Financial organizations.
(a) General. — The Legislature hereby finds that the general formula set forth in section five of this article for apportioning the tax base of corporations and partnerships taxable in this state as well as in another state is inappropriate for use by financial organizations due to the particular characteristics of those organizations and the manner in which their business is conducted. Accordingly, the general formula set forth in section five of this article may not be used to apportion the tax base of such financial organizations which shall use only the apportionment formula and methods set forth in this section.

(b) West Virginia financial organizations taxable in another state. — A financial organization that has its commercial domicile in this state and which is taxable in another state may not apportion its tax base as provided in section five of this article, but shall allocate all of its tax base to West Virginia without apportionment: Provided, That such financial organization shall be allowed as a credit against its tax liability under this article the credit described in section twenty-seven of this article.

(c) Out-of-state financial organizations with business activities in this state. — A financial organization that does not have its commercial domicile in this state and which regularly engages in business in this state shall apportion its tax base to this state by multiplying it by the special gross receipts factor calculated as provided in subsection (f) of this section. The product of this multiplication is the portion of its tax base that is attributable to business activity in this state.

(d) Engaging in business — nexus presumptions and exclusions. — A financial organization that has its commercial domicile in another state is presumed to be regularly engaging in business in this state if during any year it obtains or solicits business with twenty or more persons within this state, or if the sum of the value of its gross receipts attributable to sources in this state equals or exceeds one hundred thousand dollars. However, gross receipts from the following types of property (as well as those contacts with this state reasonably and exclusively required to evaluate and complete the acquisition or dis-
41 position of the property, the servicing of the property or the income from it, the collection of income from the property, or the acquisition or liquidation of collateral relating to the property) shall not be a factor in determining whether the owner is engaging in business in this state:

46 (1) An interest in a real estate mortgage investment conduit, a real estate investment trust or a regulated investment company;

49 (2) An interest in a loan backed security representing ownership or participation in a pool of promissory notes or certificates of interest that provide for payments in relation to payments or reasonable projections of payments on the notes or certificates;

54 (3) An interest in a loan or other asset from which the interest is attributed to a consumer loan, a commercial loan or a secured commercial loan, and in which the payment obligations were solicited and entered into by a person that is independent, and not acting on behalf, of the owner;

60 (4) An interest in the right to service or collect income from a loan or other asset from which interest on the loan is attributed as a loan described in the previous paragraph, and in which the payment obligations were solicited and entered into by a person that is independent, and not acting on behalf, of the owner; and

66 (5) Any amounts held in an escrow or trust account with respect to property described above.

(e) Definitions. — For purposes of this section:

69 (1) "Commercial domicile". See section three of this article.

71 (2) "Deposit" means: (A) The unpaid balance of money or its equivalent received or held by a financial organization in the usual course of business and for which it has given or it is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time or thrift account whether or not advance notice is required to withdraw the credit funds, or which is
evidenced by a certificate of deposit, thrift certificate, investment certificate or certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the financial organization, or a letter of credit or a traveler's check on which the financial organization is primarily liable: Provided, That without limiting the generality of the term "money or its equivalent", any such account or instrument must be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the person obtaining any such credit or instrument is primarily or secondarily liable or for a charge against a deposit account or in settlement of checks, drafts or other instruments forwarded to such bank for collection;

(B) Trust funds received or held by such financial organization, whether held in the trust department or held or deposited in any other department of such financial organization;

(C) Money received or held by a financial organization or the credit given for money or its equivalent received or held by a financial organization in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including, without being limited to, escrow funds, funds held as security for an obligation due the financial organization or other (including funds held as dealers' reserves) or for securities loaned by the financial organization, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States government securities, funds held for distribution or purchase of securities, funds held to meet its acceptances or letters of credit and withheld taxes: Provided, That there shall not be included funds which are received by the financial organization for immediate application to the reduction of an indebtedness to the receiving financial organization, or under condition that the receipt thereof immediately reduces or extinguishes such an indebtedness;
(D) Outstanding drafts (including advice or authorization to charge a financial organization's balance in another such organization), cashier's checks, money orders or other officer's checks issued in the usual course of business for any purpose, but not including those issued in payment for services, dividends or purchases or other costs or expenses of the financial organization itself; and

(E) Money or its equivalent held as a credit balance by a financial organization on behalf of its customer if such entity is engaged in soliciting and holding such balances in the regular course of its business.

(3) "Financial organization" means a financial organization as defined in subdivision (13), subsection (b), section three of this article, as well as a partnership which derives more than fifty percent of its gross business income from one or more of the activities enumerated in subparagraphs (1) through (6), paragraph (C) of said subdivision.

(4) "Sales" means: For purposes of apportionment under this section, the gross receipts of a financial organization included in the gross receipts factor described in subsection (f) of this section, regardless of their source.

(f) Special gross receipts factor. — The gross receipts factor is a fraction, the numerator of which is the total gross receipts of the taxpayer from sources within this state during the taxable year and the denominator of which is the total gross receipts of the taxpayer wherever earned during the taxable year: Provided, That neither the numerator nor the denominator of the gross receipts factor shall include receipts from obligations described in paragraphs (A), (B), (C) and (D), subdivision (1), subsection (f), section six, article twenty-four of this chapter.

(1) Numerator. — The numerator of the gross receipts factor shall include, in addition to items otherwise includable in the sales factor under section five of this article, the following:

(A) Gross receipts from the lease or rental of real or tangible personal property (whether as the economic
equivalent of an extension of credit or otherwise) if the property is located in this state;

(B) Interest income and other receipts from assets in the nature of loans which are secured primarily by real estate or tangible personal property if such security property is located in the state. In the event that such security property is also located in one or more other states, such receipts shall be presumed to be from sources within this state, subject to rebuttal based upon factors described in rules to be promulgated by the tax commissioner, including the factor that the proceeds of any such loans were applied and used by the borrower entirely outside of this state;

(C) Interest income and other receipts from consumer loans which are unsecured or are secured by intangible property that are made to residents of this state, whether at a place of business, by traveling loan officer, by mail, by telephone or other electronic means or otherwise;

(D) Interest income and other receipts from commercial loans and installment obligations which are unsecured or are secured by intangible property if and to the extent that the borrower or debtor is a resident of or is domiciled in this state: Provided, That such receipts are presumed to be from sources in this state and such presumption may be overcome by reference to factors described in rules to be promulgated by the tax commissioner, including the factor that the proceeds of any such loans were applied and used by the borrower entirely outside of this state;

(E) Interest income and other receipts from a financial organization's syndication and participation in loans, under the rules set forth in (A) through (D), above;

(F) Interest income and other receipts, including service charges, from financial institution credit card and travel and entertainment credit card receivables and credit card holders' fees if the borrower or debtor is a resident of this state or if the billings for any such receipts are regularly sent to an address in this state;
(G) Merchant discount income derived from financial institution credit card holder transactions with a merchant located in this state. In the case of merchants located within and without this state, only receipts from merchant discounts attributable to sales made from locations within this state shall be attributed to this state. It shall be presumed, subject to rebuttal, that the location of a merchant is the address shown on the invoice submitted by the merchant to the taxpayer;

(H) Gross receipts from the performance of services are attributed to this state if:

(i) The service receipts are loan-related fees, including loan servicing fees, and the borrower resides in this state, except that, at the taxpayer's election, receipts from loan-related fees which are either: (I) "Pooled" or aggregated for collective financial accounting treatment; or (II) manually written as nonrecurring extraordinary charges to be processed directly to the general ledger may either be attributed to a state based upon the borrowers' residences or upon the ratio that total interest sourced to that state bears to total interest from all sources;

(ii) The service receipts are deposit-related fees and the depositor resides in this state, except that, at the taxpayer's election, receipts from deposit-related fees which are either: (I) "Pooled" or aggregated for collective financial accounting treatment; or (II) manually written as nonrecurring extraordinary charges to be processed directly to the general ledger may either be attributed to a state based upon the depositors' residences or upon the ratio that total deposits sourced to that state bears to total deposits from all sources;

(iii) The service receipt is a brokerage fee and the account holder is a resident of this state;

(iv) The service receipts are fees related to estate or trust services and the estate's decedent was a resident of this state immediately before death, or the grantor who either funded or established the trust is a resident of this state; or
(v) The service receipt is associated with the performance of any other service not identified above and the service is performed for an individual resident of, or for a corporation or other business domiciled in, this state and the economic benefit of such service is received in this state;

(I) Gross receipts from the issuance of travelers' checks and money orders if such checks and money orders are purchased in this state; and

(J) All other receipts not attributed by this rule to a state in which the taxpayer is taxable shall be attributed pursuant to the laws of the state of the taxpayer's commercial domicile.

(2) Denominator. — The denominator of the gross receipts factor shall include all of the taxpayer's gross receipts from transactions of the kind included in the numerator, but without regard to their source or situs.

(g) Effective date. — The provisions of this section enacted in chapter one hundred sixty-seven, acts of the Legislature, one thousand nine hundred ninety-one, shall apply to all taxable years beginning on or after the first day of January, one thousand nine hundred ninety-one. The amendments to this section, enacted in the year one thousand nine hundred ninety-six, shall apply to taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety-five.


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

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

(2) The fifteenth day of the fourth month of the next succeeding taxable year if the corporation is a partnership.
The annual return shall include such information as the tax commissioner may require for determining the amount of taxes due under this article for the taxable year.

(b) Special rule for tax exempt organizations with unrelated business taxable income. — Notwithstanding the provisions of subsection (a) of this section, when a business franchise tax return is required from an organization generally exempt from tax under subsection (b), section seven of this article, which has unrelated business taxable income, the annual return shall be filed on or before the fifteenth day of the fifth month following the close of the taxable year.

(c) Effective date. — The amendments to this section, made in the year one thousand nine hundred ninety-six, shall apply to tax returns that become due for taxable years beginning on or after the first day of that year.


(a) Privilege to file consolidated return. — An affiliated group of corporations (as defined for purposes of filing a consolidated federal income tax return) shall, subject to the provisions of this section and in accordance with any regulations prescribed by the tax commissioner, have the privilege of filing a consolidated return with respect to the tax imposed by this article for the taxable year in lieu of filing separate returns. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group are included in such return and consent to the filing of such return. The filing of a consolidated return shall be considered as such consent. When a corporation is a member of an affiliated group for a fractional part of the year, the consolidated return shall include the tax base of such corporation for that part of the year during which it is a member of the affiliated group.

(b) Election binding. — If an affiliated group of corporations elects to file a consolidated return under this article, such election once made shall not be revoked for
any subsequent taxable year without the written approval of the tax commissioner consenting to the revocation.

(c) Consolidated return — financial organizations. — An affiliated group that includes one or more financial organizations may elect under this section to file a consolidated return when that affiliated group complies with all of the following rules:

(1) The affiliated group of which the financial organization is a member must file a federal consolidated income tax return for the taxable year;

(2) All members of the affiliated group included in the federal consolidated return must consent to being included in the consolidated return filed under this article. The filing of a consolidated return under this article is conclusive proof of such consent;

(3) The taxable capital of the affiliated group shall be the sum of:

(A) The pro forma West Virginia taxable capital of all financial organizations having their commercial domicile in this state that are included in the federal consolidated return, as shown on a combined pro forma West Virginia return prepared for such financial organizations; plus

(B) The pro forma West Virginia taxable capital of all financial organizations not having their commercial domicile in this state that are included in the federal consolidated return, as shown on a combined pro forma West Virginia return prepared for such financial organizations; plus

(C) The pro forma West Virginia taxable capital of all other members included in the federal consolidated income tax return, as shown on a combined pro forma West Virginia return prepared for all such nonfinancial organization members, except that the capital, apportionments factors and other items considered when determining tax liability shall not be included in the pro forma return prepared under this paragraph for a member that is totally exempt from tax under section seven of this article, or for a member that is subject to a different special industry
apportionment rule provided for in this article. When a
different special industry apportionment rule applies, the
taxable capital of a member(s) subject to that special in-
dustry apportionment rule shall be determined on a sepa-
rate pro forma West Virginia return for the member(s)
subject to that special industry rule and the taxable capital
so determined shall be included in the consolidated return;

(4) The West Virginia consolidated return is prepared
in accordance with regulations of the tax commissioner
promulgated as provided in article three, chapter
twenty-nine-a of this code; and

(5) The filing of a consolidated return does not distort
the taxable capital of the affiliated group. In any pro-
ceeding, the burden of proof that the taxpayer's method of
filing does not distort taxable capital under this article
shall be upon the taxpayer.

(d) Combined return. — A combined return may be
filed under this article by a unitary group, including a
unitary group that includes one or more financial organi-
zations, only pursuant to the prior written approval of the
tax commissioner. A request for permission to file a com-
bined return must be filed on or before the statutory due
date of the return, determined without inclusion of any
extension of time to file the return. Permission to file a
combined return may be granted by the tax commissioner
only when taxpayer submits evidence that conclusively
establishes that failure to allow the filing of a combined
return will result in an unconstitutional distortion of the
measure of tax under this article. When permission to file
a combined return is granted, combined filing will be
allowed for the year(s) stated in the tax commissioner's
letter. The combined return must be filed in accordance
with regulations of the tax commissioner promulgated in
accordance with article three, chapter twenty-nine-a of this
code.

(e) Method of filing under this article deemed control-
ling for purposes of other business taxes articles. — The
taxpayer shall file on the same basis under article
twenty-four of this chapter as such taxpayer files under
this article for the taxable year.
(f) Regulations. — The tax commissioner shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations filing a consolidated return, or of any unitary group of corporations filing a combined return, and of each corporation in an affiliated or unitary group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected and adjusted, in such manner as the tax commissioner deems necessary to clearly reflect tax liability under this article and the factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability.

(g) Computation and payment of tax. — In any case in which a consolidated or combined return is filed, or required to be filed, the tax due under this article from the affiliated or unitary group shall be determined, computed, assessed, collected and adjusted in accordance with regulations prescribed by the tax commissioner, in effect on the last day prescribed by section nine of this article for the filing of such return, and such affiliated or unitary group, as the case may be, shall be treated as the taxpayer. However, when any member of an affiliated or unitary group that files a consolidated or combined return under this article is allowed to claim credit against its tax liability under this article for payment of any other tax, the amount of credit allowed may not exceed that member's proportionate share of the affiliated or unitary group's precredit tax liability under this article, as shown on its pro forma return.

(h) Consolidated or combined return may be required. — If any affiliated group of corporations has not elected to file a consolidated return, or if any unitary group of corporations has not applied for permission to file a combined return, the tax commissioner may require such corporations to make a consolidated or combined return, as the case may be, in order to clearly reflect taxable capital of such corporations.

(i) Effective date. — This section shall apply to taxable years beginning on or after the first day of January, one thousand nine hundred ninety-six, except that financial
organizations that are part of an affiliated group may elect, after the effective date of this act, to file a consolidated return prepared in accordance with the provisions of this section and subject to applicable statutes of limitation, for taxable years beginning on or after the first day of January, one thousand nine hundred ninety-one, but before the first day of January, one thousand nine hundred ninety-six, notwithstanding provisions then in effect prohibiting out-of-state financial organizations from filing consolidated returns for those years: Provided, That when the statute of limitations on filing an amended return for any of those years expires before the first day of July, one thousand nine hundred ninety-six, the consolidated return for such year, if filed, must be filed by said first day of July.

§11-23-27. Credit for franchise tax paid to another state.

(a) Effective for taxable years beginning on or after the first day of January, one thousand nine hundred ninety-one, and notwithstanding any provisions of this code to the contrary, any financial organization having its commercial domicile in this state shall be allowed a credit against the tax imposed by this article for any taxable year for taxes paid to another state. That credit shall be equal in amount to the lesser of:

(1) The taxes such financial organization shall actually have paid, which payments were made on or before the filing date of the annual return required by this article, to any other state, and which tax was based upon or measured by the financial organization's capital and was paid with respect to the same taxable year; or

(2) The portion of the tax actually paid that the financial organization would have paid if the rate of tax imposed by this article is applied to the tax base determined under the law of such other state.

(b) Any additional payments of such tax to other states, or to political subdivisions thereof, by a financial organization described in this section, and any refunds of such taxes, made or received by such financial organization with respect to the taxable year, but after the due date
of the annual return required by this article for the taxable year, including any extensions, shall likewise be accounted for in the taxable year in which such additional payment is made or such refund is received by the financial organization.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-7b. Special apportionment rules — Financial organizations.


§11-24-24. Credit for income tax paid to another state.

§11-24-38. Deposit of revenue.

§11-24-7b. Special apportionment rules — Financial organizations.

(a) General. — The Legislature hereby finds that the general formula set forth in section seven of this article for apportioning the business income of corporations taxable in this state as well as in another state is inappropriate for use by financial organizations due to the particular characteristics of those organizations and the manner in which their business is conducted. Accordingly, the general formula set forth in section seven of this article may not be used to apportion the business income of such financial organizations, which shall use only the apportionment formula and methods set forth in this section.

(b) West Virginia financial organizations taxable in another state. — The West Virginia taxable income of a financial organization that has its commercial domicile in this state and which is taxable in another state shall be the sum of: (1) The nonbusiness income component of its adjusted federal taxable income for the taxable year which is allocated to this state as provided in subsection (d), section seven of this article; plus (2) the total amount of the business income component of its adjusted federal taxable income for the taxable year, without apportionment, regardless of where such business income was derived: Provided, That such financial organization shall be allowed as a credit against its tax liability under this article the credit described in section twenty-four of this article.
(c) Out-of-state financial organizations with business activities in this state. — The West Virginia taxable income of a financial organization that does not have its commercial domicile in this state but which regularly engages in business in this state shall be the sum of: (1) The nonbusiness income component of its adjusted federal taxable income for the taxable year which is allocated to this state as provided in subsection (d), section seven of this article; plus (2) the business income component of its adjusted federal taxable income for the taxable year which is apportioned to this state as provided in this section.

(d) Engaging in business — nexus presumptions and exclusions. — A financial organization that has its commercial domicile in another state is presumed to be regularly engaging in business in this state if during any year it obtains or solicits business with twenty or more persons within this state, or if the sum of the value of its gross receipts attributable to sources in this state equals or exceeds one hundred thousand dollars. However, gross receipts from the following types of property (as well as those contacts with this state reasonably and exclusively required to evaluate and complete the acquisition or disposition of the property, the servicing of the property or the income from it, the collection of income from the property, or the acquisition or liquidation of collateral relating to the property) shall not be a factor in determining whether the owner is engaging in business in this state:

(1) An interest in a real estate mortgage investment conduit, a real estate investment trust or a regulated investment company;

(2) An interest in a loan backed security representing ownership or participation in a pool of promissory notes or certificates of interest that provide for payments in relation to payments or reasonable projections of payments on the notes or certificates;

(3) An interest in a loan or other asset from which the interest is attributed to a consumer loan, a commercial loan or a secured commercial loan, and in which the payment obligations were solicited and entered into by a per-
son that is independent, and not acting on behalf, of the owner;

(4) An interest in the right to service or collect income from a loan or other asset from which interest on the loan is attributed as a loan described in the previous paragraph, and in which the payment obligations were solicited and entered into by a person that is independent, and not acting on behalf, of the owner; and

(5) Any amounts held in an escrow or trust account with respect to property described above.

(e) Definitions. — For purposes of this section:

(1) "Commercial domicile". See section three-a of this article;

(2) "Deposit" means: (A) The unpaid balance of money or its equivalent received or held by a financial organization in the usual course of business and for which it has given or it is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time or thrift account whether or not advance notice is required to withdraw the credit funds, or which is evidenced by a certificate of deposit, thrift certificate, investment certificate or certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the financial organization, or a letter of credit or a traveler’s check on which the financial organization is primarily liable: Provided, That without limiting the generality of the term "money or its equivalent", any such account or instrument must be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the person obtaining any such credit or instrument is primarily or secondarily liable or for a charge against a deposit account or in settlement of checks, drafts or other instruments forwarded to such bank for collection;

(B) Trust funds received or held by such financial organization, whether held in the trust department or held
or deposited in any other department of such financial organization;

(C) Money received or held by a financial organization or the credit given for money or its equivalent received or held by a financial organization in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including, without being limited to, escrow funds, funds held as security for an obligation due the financial organization or other (including funds held as dealers' reserves) or for securities loaned by the financial organization, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States government securities, funds held for distribution or purchase of securities, funds held to meet its acceptances or letters of credit, and withheld taxes: Provided, That there shall not be included funds which are received by the financial organization for immediate application to the reduction of an indebtedness to the receiving financial organization, or under condition that the receipt thereof immediately reduces or extinguishes such an indebtedness;

(D) Outstanding drafts (including advice or authorization to charge a financial organization's balance in another such organization), cashier's checks, money orders or other officer's checks issued in the usual course of business for any purpose, but not including those issued in payment for services, dividends or purchases or other costs or expenses of the financial organization itself; and

(E) Money or its equivalent held as a credit balance by a financial organization on behalf of its customer if such entity is engaged in soliciting and holding such balances in the regular course of its business;

(3) "Financial organization". See section three-a of this article; and

(4) "Sales" means, for purposes of apportionment under this section, the gross receipts of a financial organization included in the gross receipts factor described in subsection (g) of this section, regardless of their source.
(f) **Apportionment rules.** — A financial organization not having its commercial domicile in this state which regularly engages in business both within and without this state shall apportion the business income component of its federal taxable income, after adjustment as provided in section six of this article, by multiplying the amount thereof by the special gross receipts factor determined as provided in subsection (g) of this section.

(g) **Special gross receipts factor.** — The gross receipts factor is a fraction, the numerator of which is the total gross receipts of the taxpayer from sources within this state during the taxable year and the denominator of which is the total gross receipts of the taxpayer wherever earned during the taxable year: Provided, That neither the numerator nor the denominator of the gross receipts factor shall include receipts from obligations described in paragraphs (A), (B), (C) and (D), subdivision (1), subsection (f), section six of this article.

(1) **Numerator.** — The numerator of the gross receipts factor shall include, in addition to items otherwise includable in the sales factor under section seven of this article, the following:

(A) Receipts from the lease or rental of real or tangible personal property (whether as the economic equivalent of an extension of credit or otherwise) if the property is located in this state;

(B) Interest income and other receipts from assets in the nature of loans which are secured primarily by real estate or tangible personal property if such security property is located in the state. In the event that such security property is also located in one or more other states, such receipts shall be presumed to be from sources within this state, subject to rebuttal based upon factors described in rules to be promulgated by the tax commissioner, including the factor that the proceeds of any such loans were applied and used by the borrower entirely outside of this state;

(C) Interest income and other receipts from consumer loans which are unsecured or are secured by intangible
property that are made to residents of this state, whether at
a place of business, by traveling loan officer, by mail, by
telephone or other electronic means or otherwise;

(D) Interest income and other receipts from commer-
cial loans and installment obligations which are unsecured
or are secured by intangible property if and to the extent
that the borrower or debtor is a resident of or is domiciled
in this state: *Provided*, That such receipts are presumed to
be from sources in this state and such presumption may be
overcome by reference to factors described in rules to be
promulgated by the tax commissioner, including the fac-
tor that the proceeds of any such loans were applied and
used by the borrower entirely outside of this state;

(E) Interest income and other receipts from a finan-
cial organization's syndication and participation in loans,
under the rules set forth in items (A) through (D), above;

(F) Interest income and other receipts, including
service charges, from financial institution credit card and
travel and entertainment credit card receivables and credit
card holders' fees if the borrower or debtor is a resident of
this state or if the billings for any such receipts are regu-
larly sent to an address in this state;

(G) Merchant discount income derived from finan-
cial institution credit card holder transactions with a mer-
chant located in this state. In the case of merchants locat-
ed within and without this state, only receipts from mer-
chant discounts attributable to sales made from locations
within this state shall be attributed to this state. It shall be
presumed, subject to rebuttal, that the location of a mer-
chant is the address shown on the invoice submitted by the
merchant to the taxpayer;

(H) Gross receipts from the performance of services
are attributed to this state if:

(i) The service receipts are loan-related fees, includ-
ing loan servicing fees, and the borrower resides in this
state, except that, at the taxpayer's election, receipts from
loan-related fees which are either: (I) "Pooled" or aggre-
gated for collective financial accounting treatment; or (II)
manually written as nonrecurring extraordinary charges to be processed directly to the general ledger may either be attributed to a state based upon the borrowers' residences or upon the ratio that total interest sourced to that state bears to total interest from all sources;

(ii) The service receipts are deposit-related fees and the depositor resides in this state, except that, at the taxpayer's election, receipts from deposit-related fees which are either: (I) "Pooled" or aggregated for collective financial accounting treatment; or (II) manually written as non-recurring extraordinary charges to be processed directly to the general ledger may either be attributed to a state based upon the depositors' residences or upon the ratio that total deposits sourced to that state bears to total deposits from all sources;

(iii) The service receipt is a brokerage fee and the account holder is a resident of this state;

(iv) The service receipts are fees related to estate or trust services and the estate's decedent was a resident of this state immediately before death, or the grantor who either funded or established the trust is a resident of this state; or

(v) The service receipt is associated with the performance of any other service not identified above and the service is performed for an individual resident of, or for a corporation or other business domiciled in, this state and the economic benefit of such service is received in this state;

(I) Gross receipts from the issuance of travelers' checks and money orders if such checks and money orders are purchased in this state; and

(J) All other receipts not attributed by this rule to a state in which the taxpayer is taxable shall be attributed pursuant to the laws of the state of the taxpayer's commercial domicile.

(2) Denominator. — The denominator of the gross receipts factor shall include all of the taxpayer's gross
receipts from transactions of the kind included in the numerator, but without regard to their source or situs.

(h) **Effective date.** — The provisions of this section enacted as chapter one hundred sixty-seven, acts of the Legislature, one thousand nine hundred ninety-one, shall apply to all taxable years beginning on or after the first day of January, one thousand nine hundred ninety-one. Amendments to this section enacted in the year one thousand nine hundred ninety-six shall apply to taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety-five.


1 (a) **Privilege to file consolidated return.** — An affiliated group of corporations (as defined for purposes of filing a consolidated federal income tax return) shall, subject to the provisions of this section and in accordance with any regulations prescribed by the tax commissioner, have the privilege of filing a consolidated return with respect to the tax imposed by this article for the taxable year in lieu of filing separate returns. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group are included in such return and consent to the filing of such return. The filing of a consolidated return shall be considered as such consent. When a corporation is a member of an affiliated group for a fractional part of the year, the consolidated return shall include the income of such corporation for that part of the year during which it is a member of the affiliated group.

19 (b) **Election binding.** — If an affiliated group of corporations elects to file a consolidated return under this article for any taxable year ending after the thirtieth day of June, one thousand nine hundred eighty-seven, such election once made shall not be revoked for any subsequent taxable year without the written approval of the tax commissioner consenting to the revocation.

26 (c) **Consolidated return — financial organizations.** — An affiliated group that includes one or more financial
organizations may elect under this section to file a consolidated return when that affiliated group complies with all of the following rules:

(1) The affiliated group of which the financial organization is a member must file a federal consolidated income tax return for the taxable year.

(2) All members of the affiliated group included in the federal consolidated return must consent to being included in the consolidated return filed under this article. The filing of a consolidated return under this article is conclusive proof of such consent.

(3) The West Virginia taxable income of the affiliated group shall be the sum of:

(A) The pro forma West Virginia taxable income of all financial organizations having their commercial domicile in this state that are included in the federal consolidated return, as shown on a combined pro forma West Virginia return prepared for such financial organizations; plus

(B) The pro forma West Virginia taxable income of all financial organizations not having their commercial domicile in this state that are included in the federal consolidated return, as shown on a combined pro forma West Virginia return prepared for such financial organizations; plus

(C) The pro forma West Virginia taxable income of all other members included in the federal consolidated income tax return, as shown on a combined pro forma West Virginia return prepared for all such nonfinancial organization members, except that income, income adjustments and exclusions, apportionment factors and other items considered when determining tax liability shall not be included in the pro forma return prepared under this paragraph for a member that is totally exempt from tax under section five of this article, or for a member that is subject to a different special industry apportionment rule provided for in this article. When a different special industry apportionment rule applies, the West Virginia tax-
The West Virginia consolidated return is prepared in accordance with regulations of the tax commissioner promulgated as provided in article three, chapter twenty-nine-a of this code.

(5) The filing of a consolidated return does not distort taxable income. In any proceeding, the burden of proof that taxpayer's method of filing does not distort taxable income shall be upon the taxpayer.

(d) **Combined return.** — A combined return may be filed under this article by a unitary group, including a unitary group that includes one or more financial organizations, only pursuant to the prior written approval of the tax commissioner. A request for permission to file a combined return must be filed on or before the statutory due date of the return, determined without inclusion of any extension of time to file the return. Permission to file a combined return may be granted by the tax commissioner only when taxpayer submits evidence that conclusively establishes that failure to allow the filing of a combined return will result in an unconstitutional distortion of taxable income. When permission to file a combined return is granted, combined filing will be allowed for the year(s) stated in the tax commissioner's letter. The combined return must be filed in accordance with regulations of the tax commissioner promulgated in accordance with article three, chapter twenty-nine-a of this code.

(e) **Method of filing under this article deemed controlling for purposes of other business taxes articles.** — The taxpayer shall file on the same basis under article twenty-three of this chapter as such taxpayer files under this article for the taxable year.

(f) **Regulations.** — The tax commissioner shall prescribe such regulations as he may deem necessary in order
that the tax liability of any affiliated group of corporations filing a consolidated return, or of any unitary group of corporations filing a combined return, and of each corporation in the affiliated or unitary group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected and adjusted, in such manner as the tax commissioner deems necessary to clearly reflect the income tax liability and the income factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability.

(g) Computation and payment of tax. — In any case in which a consolidated or combined return is filed, or required to be filed, the tax due under this article from the affiliated or unitary group shall be determined, computed, assessed, collected and adjusted in accordance with regulations prescribed by the tax commissioner, in effect on the last day prescribed by section thirteen of this article for the filing of such return, and such affiliated or unitary group, as the case may be, shall be treated as the taxpayer. However, when any member of an affiliated or unitary group that files a consolidated or combined return under this article is allowed to claim credit against its tax liability under this article for payment of any other tax, the amount of credit allowed may not exceed that member's proportionate share of the affiliated or unitary group's precredit tax liability under this article, as shown on its pro forma return.

(h) Consolidated or combined return may be required. — If any affiliated group of corporations has not elected to file a consolidated return, or if any unitary group of corporations has not applied for permission to file a combined return, the tax commissioner may require such corporations to make a consolidated or combined return, as the case may be, in order to clearly reflect the taxable income of such corporations.

(i) Effective date. — The amendments to this section made by chapter one hundred seventy-nine, acts of the Legislature in the year one thousand nine hundred ninety, shall apply to all taxable years ending after the eighth day
of March, one thousand nine hundred ninety. Amendments to this article enacted by this act in the year one thousand nine hundred ninety-six, shall apply to taxable years beginning on or after the first day of January, one thousand nine hundred ninety-six, except that financial organizations that are part of an affiliated group may elect, after the effective date of this act, to file a consolidated return prepared in accordance with the provisions of this section, as amended, and subject to applicable statutes of limitation, for taxable years beginning on or after the first day of January, one thousand nine hundred ninety-one, but before the first day of January, one thousand nine hundred ninety-six, notwithstanding provisions then in effect prohibiting out-of-state financial organizations from filing consolidated returns for those years: Provided, That when the statute of limitation on filing an amended return for any of those years expires before the first day of July, one thousand nine hundred ninety-six, the consolidated return for such year, if filed, must be filed by said first day of July.

§11-24-24. Credit for income tax paid to another state.

(a) Effective for taxable years beginning on or after the first day of January, one thousand nine hundred ninety-one, and notwithstanding any provisions of this code to the contrary, any financial organization, the business activities of which take place, or are deemed to take place, entirely within this state, shall be allowed a credit against the tax imposed by this article for any taxable year for taxes paid to another state. That credit shall be equal in amount to the lesser of:

(1) The taxes such financial organization shall actually have paid, which payments were made on or before the filing date of the annual return required by this article, to any other state, and which tax was based upon or measured by the financial organization's net income and was paid with respect to the same taxable year; or

(2) The amount of such tax the financial organization would have paid if the rate of tax imposed by this
article is applied to the tax base determined under the laws
of such other state.

(b) Any additional payments of such tax to other
states, or to political subdivisions thereof, by a financial
organization described in this section, and any refunds of
such taxes, made or received by such financial organiza-
tion with respect to the taxable year, but after the due date
of the annual return required by this article for the taxable
year, including any extensions, shall likewise be accounted
for in the taxable year in which such additional payment is
made or such refund is received by the financial organiza-

§11-24-38. Deposit of revenue.

(a) Section thirteen of this article authorizes the tax
commissioner to combine into one form the annual re-
turns due under this article and article twenty-three of this
chapter. To facilitate combining returns, reports and decl-
larations for these two taxes, and to allow a taxpayer to
pay both taxes with one remittance, the amount of taxes
collected under this article and article twenty-three of this
chapter, including any additions to tax, penalties or inter-
est collected with respect to such taxes, pursuant to a com-
bined return, report or declaration shall be deposited in
one account: Provided, That the tax commissioner shall
keep such records as may be necessary to separately ac-
count for the amount of each tax collected, including
additions to tax, penalties or interest collected with respect
to each tax, during each fiscal year of the state.

(b) Overpayments of the tax imposed by article
twenty-three of this chapter may be applied against tax
due under this article for same taxable year, and
overpayments of the tax imposed by this article may be
applied against underpayment of the tax imposed by arti-
cle twenty-three of this chapter for the same taxable year.

(c) The provisions of this section shall take effect
upon passage.
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-four; 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-six, 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-five, 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-six, 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-six shall be retroactive and shall apply to taxable years beginning on or after the first day of January, one thousand nine hundred ninety-five, 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-five, the law in effect for each of those years shall be fully preserved as to such year.

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CHAPTER 246

(Com. Sub. for S. B. 388—By Senators Dittmar and Anderson)

[Passed March 7, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article one, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to accounts to be kept by sheriffs on taxes; allowing sheriffs to maintain a
permanent record on an electronic data processing system; manner of keeping the accounts and inspection of accounts; and promulgation of rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.

§11A-1-13. Accounts to be kept by sheriff.

1 The sheriff shall keep separate accounts in a permanent book or in a permanent record on an electronic data processing system, in form prescribed by the tax commissioner, of all the taxes received and disbursed by him or her, for the different purposes for which the taxes were levied. Each of the accounts shall be kept so as to show the total receipts and disbursements up to the close of business on each day; and in a separate column opposite the totals the sheriff shall ascertain and note in figures, at the close of each day's transactions, the balance due from or to him or her, as the case may be, on account of the funds. The account book or a printout of the permanent record on the electronic data processing system is subject to inspection at any time by the tax commissioner, members of the county commission, the clerk of the county commission, the prosecuting attorney, the mayor or treasurer of any municipality or the treasurer of the county board of education. The tax commissioner shall promulgate rules in accordance with article three, chapter twenty-nine-a of this code requiring that printouts of the permanent record on the electronic data processing system be made on a periodic basis and that those printouts be stored in a safe and secure manner, so that they are protected from fire damage.
AN ACT to amend chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-four, relating to establishing the technology-related assistance revolving loan fund for individuals with disabilities and the technology-related assistance revolving loan fund for individuals with disabilities board; providing short title, defining certain terms; providing for the membership of the technology-related assistance revolving loan fund for individuals with disabilities board and its powers, duties and compensation; allowing a nonprofit, consumer-driven organization as contracted by the board and other related associations to develop criteria for funds; providing for disbursement of the revolving loan fund money; setting forth the minimum amount of interest the board may charge; including a provision regarding funding; setting a cap on the maximum amount which may be expended from the fund for administrative expenses; and specifying maximum time such loans may be outstanding.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. TECHNOLOGY-RELATED ASSISTANCE REVOLVING LOAN FUND FOR INDIVIDUALS WITH DISABILITIES ACT.

§29-24-1. Legislative findings and declarations.
§29-24-2. Terms defined.
§29-24-3. Board created, membership, terms, officers and staff.
§29-24-1. Legislative findings and declarations.

Individuals with disabilities comprise a significant and increasing percentage of West Virginia's population. The Legislature finds and declares that action is necessary to assist these individuals in their homes, schools, employment and communities to become more independent citizens of the state. Many of these individuals require technology-related devices and technology-related services in order to perform functions, such as caring for themselves, performing manual tasks, mobility, seeing, hearing, speaking, breathing and learning in order to have the ability to more independently participate in society and the workforce. In order to meet present and increasing needs of West Virginians for technology-related devices and technology-related services, it is necessary for the state to provide funds that neither supplant nor replace existing state or federal funds for the technology-related revolving loan fund for individuals with disabilities.

§29-24-2. Terms defined.

As used in this article, the term:

(a) "Board" means the technology-related assistance revolving loan fund for individuals with disabilities board.

(b) "Individual with disability" means any individual, of any age who, for the purposes of state or federal law, is considered to have a disability or handicap, injuries and chronic health conditions, whether congenital or acquired; and who is or would be enabled by technology-related devices or technology-related services to maintain or improve his or her ability to function in society and the workplace.

(c) "Qualifying borrower" means any individual with disabilities and their family members, guardians, autho-
rized representatives or nonprofit entity who demonstrates that such a loan will improve their independence or become more productive members of the community. The individual must demonstrate credit worthiness and repayment abilities to the satisfaction of the board. No more than twenty-percent of all loan funds are to be provided to nonprofit entities in a single year.

(d) "Technology-related assistance" means either the provision of technology-related devices or technology-related services to improve the independence, quality of life or productive involvement in the community of individuals with disabilities.

(e) "Technology-related device" means any item, piece of equipment or product system, whether acquired commercially off-the-shelf, modified or customized, that is used to increase, maintain or improve functional capabilities of individuals with disabilities.

(f) "Technology-related service" means any service that directly assists an individual with a disability in the selection, acquisition or use of a technology-related device, including:

(1) The evaluation of the needs of an individual with a disability, including a functional evaluation in the individual's customary environment;

(2) Purchasing, leasing or otherwise providing for the acquisition of technology-related devices by individuals with disabilities;

(3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing technology-related devices;

(4) Coordinating and using other therapies, interventions or services with technology-related devices, such as those associated with existing education and rehabilitation plans and programs; and

(5) Training or technical assistance for individuals or the family of an individual with disabilities.
1958 TECHNOLOGY-RELATED
ASSISTANCE REVOLVING LOAN FUND

§29-24-3. Board created, membership, terms, officers and staff.

(a) There is established the technology-related assistance revolving loan fund for individuals with disabilities board that shall contract to a nonprofit, consumer-driven organization for administrative purposes only.

(b) The board shall consist of seven members of which at least three must be individuals with disabilities and appointed by the secretary of education and the arts as follows:

(1) Director of division of rehabilitation services or his or her designee;

(2) A representative of the banking industry;

(3) A representative of the medical profession;

(4) A certified public accountant; and

(5) Three additional members from the public-at-large shall be consumers. Members shall be appointed by the governor, by and with the advice and consent of the Senate, for terms of three years, their initial appointments, however, being three for three-year terms, two for two-year terms and two for one-year terms: Provided, That the governor may not appoint any members to this board until the Legislature has made an appropriation in a sufficient amount to cover the expenses of this board. State officers or employees may be appointed to the board unless otherwise prohibited by law. To be eligible for appointment to the board, the citizen members shall demonstrate knowledge in the area of technology-related assistance as users or providers of the rehabilitative services to the extent practicable. The board shall approve all pro-
posed rules and the established nonprofit consumer-driven
organization shall then promulgate and implement same.

(c) In the event a board member fails to attend
twenty-five percent of the scheduled meetings in a
twelve-month period, the board may elect to remove that
member after written notification to that member and the
secretary of education and the arts.

(d) In the event of death, resignation, disqualification
or removal for any reason of any member of the board,
the vacancy shall be filled in the same manner as the origi-
nal appointment and the successor shall serve for the un-
expired term.

(e) The initial terms for all members shall be on the
first day of July, one thousand nine hundred ninety-seven.

(f) Membership on the board does not constitute pub-
lic office and no member shall be disqualified from hold-
ing public office by reason of his or her membership.

(g) The board shall elect from its membership a chair-
person, treasurer and secretary as well as any other officer
as appropriate. The term of the "chairperson" is for two
years in duration and he or she cannot serve more than
two consecutive terms.

(h) The board has the power and authority to establish
an appeals process with regard to the administration of the
fund. The selected nonprofit, consumer-driven organiza-
tion contracted by the board shall submit to the board
proposed rules governing the operation of the fund in-
cluding, but not limited to, eligibility of receipt of funds
and all other matters consistent with and necessary to ac-
complishing the purpose of this fund.

(i) The board may contract to a nonprofit entity to be
the authority to carry out the purposes of this article. The
compensation of personnel shall be paid from moneys in
the loan fund. Board personnel may be members of the
state civil service system. The board shall utilize existing
state resources and staff of participating departments
whenever practicable. Personnel expenses and other costs
66 authorized in this subsection shall be paid from moneys in
67 the revolving loan fund. Administrative costs are not to
68 exceed ten percent of the revolving loan funds yearly
69 budget.


1 Members of the board shall receive a compensation in
2 an amount not to exceed the state per diem for each day
3 the member of the board is in attendance at a meeting of
4 the board, plus either reimbursement for actual transportation
5 cost while traveling by public carrier or the same
6 mileage allowance for use of a personal car in connection
7 with such attendance as members of the Legislature receive. Members with disabilities shall be compensated for
8 costs associated with personal assistance, interpreters and
9 disability related accommodations for the purpose of
10 conducting the business of the board. Expense allowances
11 and other costs authorized in this section shall be paid
12 from moneys in the loan fund.

§29-24-5. Power, duties and responsibilities of the board; loans.

1 (a) The board shall do all of the following:
2 (1) Meet at such times (minimum of four times each
3 fiscal year) and at places as it determines necessary or
4 convenient to perform its duties. The board shall also
5 meet on the call of the chairperson or secretary of education and the arts;
6 (2) Maintain written minutes of its meetings;
7 (3) Adopt rules for the transaction of its business;
8 (4) Promulgate rules to carry out the purposes of this
9 chapter, which ensure that individuals, profit and nonprofit
10 corporations and partnerships are eligible for loans;
11 (5) Receive, administer and disburse funds to support
12 purposes established by this chapter and contract with
13 nonprofit, consumer-based groups dealing with individuals with disabilities to assist in administering programs
14 established by this chapter;
(6) Maintain detailed records of all expenditures of the board, funds received as gifts and donations and disbursements made from the revolving loan fund;

(7) During the first three years of operation of the fund, the contracted nonprofit consumer-driven organization shall submit to the secretary of education and the arts and the board annually a summary report concerning programmatic and financial status of the technology revolving loan fund. Future year annual reports will be provided to the board;

(8) Develop and implement a comprehensive set of financial standards to ensure the integrity and accountability of all funds received as well as loan funds disbursed; and

(9) Conform to the standards and requirements prescribed by the state auditor.

(b) The board shall enter into loan agreements with any qualifying borrower, who demonstrates that:

(1) The loan will assist one or more individuals with disabilities in improving their independence, productivity and full participation in the community; and

(2) The applicant has the ability to repay the loan. Any necessary loan limitation shall be determined by the board. All loans must be repaid within such terms and at such interest rates as the board may determine to be appropriate. However, no loan may extend beyond sixty months from date of award and may be paid off anytime without prepayment penalty. The board shall determine the interest rate to be charged on loans made pursuant to this article, but in no event may the interest rate on any such loans be less than four per centum per annum.

(c) The board may authorize loans up to ninety percent of the cost of an item or items.

(d) The board may award loans to qualifying borrowers for purposes, including, but not limited to, the following:
(1) To assist one or more individuals with disabilities to improve their independence through the purchase of technology-related devices; and

(2) To assist one or more individuals with disabilities to become more independent members of the community and improve such individuals quality of life within the community through the purchase of technology-related devices.

(e) In the event of the failure of the borrower to repay the loan balance due and owing, the board shall seek to recover the loan balance by such legal or administrative action available to it. Persons or representatives of persons who default on a loan are not eligible for a new loan. The board shall retain ownership of all property, equipment or devices until the borrower's loan is paid-in-full.

(f) A new loan may not be issued to, or on behalf of, a disabled person if a previous loan made to, or on behalf of, such person remains unpaid.

(g) The board may charge a fee for loan applications and processing. All funds generated by fee charges shall be directly placed into the revolving loan fund to off-set the costs of application processing.

The board may accept federal funds granted by Congress or executive order for the purposes of this chapter as well as gifts and donations from individuals, private organizations or foundations. The acceptance and use of federal funds does not commit state funds and does not place an obligation upon the Legislature to continue the purposes for which the federal funds are made available. All funds received in the manner described in this article shall be deposited in the revolving loan fund to be disbursed as other moneys in the revolving loan fund.

§29-24-6. Disbursements.

Loans may be made for amounts ranging from a minimum of five hundred dollars to a maximum of five thousand dollars. The loan must be used to purchase essential equipment or directly related services that will
assist the person with a disability to overcome barriers in daily living.

§29-24-7. Fund created.

The technology-related assistance revolving loan fund for individuals with disabilities is created as a separate fund and placed with a selected bank or credit union. The revolving loan fund may be expended only as provided in this chapter. All amounts in this fund shall be expended only upon appropriation by the Legislature, and nothing contained herein may be construed to require any level of funding by the Legislature.

§29-24-8. Deposits created by the board.

The board shall credit to the revolving loan fund all amounts paid, appropriated or donated to the revolving loan fund. All funds shall be deposited with, maintained and administered by a commercial bank or credit union and shall contain appropriations provided for that purpose, interest accrued on loan balances, fees charged and funds received in repayment of loans.


The moneys collected in the revolving loan fund shall be used only for the following purposes:

(a) Implementing revolving loan program for technology-related devices;

(b) Providing technology-related devices to individuals with severe disabilities who meet economic criteria established by the board;

(c) Providing support for technology-related assistance;

(d) Providing technology-related and disability prevention education and research;

(e) Disseminating public information;

(f) Conducting program evaluation and needs assessment;
(g) Operating the board;
(h) Conducting research and demonstration projects, including new and future uses of technology-related services; and
(i) Developing a strategic plan.

All unexpended moneys contained in this fund at the end of the fiscal year shall be carried forward from year to year.

CHAPTER 248

(H. B. 4659—By Delegates J. Martin, Varner, Love, Given, Nichols, Fantasia and Everson)

[Passed March 7, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article five, chapter twenty of said code, all relating to transferring responsibilities for the state's telemarketing initiative to the tourism commission.

Be it enacted by the Legislature of West Virginia:

That section nine, article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section two, article five, chapter twenty of said code be amended and reenacted, all to read as follows:

Chapter

20. Natural Resources.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

(a) The commission shall develop a comprehensive tourism promotion and development strategy for West Virginia. "Comprehensive tourism promotion and development 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 tourism 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, 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;

(5) To promote and disseminate information related to the attractions of the state through the operation of the state's telemarketing initiative, which telemarketing initiative shall include a centralized reservation and information system for state parks and recreational facilities; and

(6) 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.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 5. PARKS AND RECREATION.

§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
recreation program of the state and shall organize and
staff the section of parks and recreation for the orderly,
efficient 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 resources to employ up to six additional
unclassified personnel 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
agreement; 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 personal, 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 transfer of property for the purposes of
completing land acquisitions 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 privatization of any
park may occur without statutory authority;

(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
development of tourism, pursuant to subsection (j), section
eighteen, article twenty-two, chapter twenty-nine of this
code; and (ii) funds authorized for expenditure from the
tourism promotion fund for purposes of direct advertising,
pursuant to section twelve, article two, chapter five-b of
this code and section ten, article twenty-two-a, chapter
twenty-nine of this code, to effectively promote and
market the state's parks, state forests, state recreation areas
and wildlife recreational resources;
(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 waiver is granted may use the picnic shelter for one reserved day or the cabin for one reserved week during each calendar year until the amount of the donation equals the amount of the loss of revenue from the waiver or until the individual dies or the group ceases to exist, whichever first occurs. The waiver is not transferable. The director shall permit free use of picnic shelters or cabins to individuals or groups who have contributed materials and labor for construction of picnic shelters or cabins prior to the effective date of this section. The director shall promulgate a legislative rule in accordance with the provisions of chapter twenty-nine-a of
this code governing the free use of picnic shelters or cabins provided for in this section, the eligibility for free use, determining the value of the donations of labor and materials, the appropriate definitions of a group and the maximum time limit for such use; and

(j) Provide within the parks a market for West Virginia arts, crafts and products, which shall permit gift shops within the parks to offer for sale items purchased on the open market from local artists, artisans, craftsmen and suppliers and local or regional crafts cooperatives.

CHAPTER 249

(H. B. 4858—By Delegates Tillis, Manuel, Collins, Jenkins, Kime, Smirl and Greear)

[Passed March 9, 1996; in effect July 1, 1996. Approved by the Governor.]

AN ACT to repeal articles three and four, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact article two of said chapter, all relating generally to trademark and service mark registration in this state; definitions; marks which may not be registered; procedures for applying for registration of a mark; requirements for registration; certificate of registration; duration and renewal of registration; current registrations; assignments and changes of name; recordation of related instruments; public records; cancellation of registration; classification of goods and services; liability for fraudulent registration and infringement; injunctive remedies; liability for injuries and dilution; venue for actions; service of process; effect upon common law rights; applicable fees; duties of secretary of state; and legislative intent.

Be it enacted by the Legislature of West Virginia:

That articles three and four, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as
amended, be repealed; and that article two of said chapter be amended and reenacted, all to read as follows:

ARTICLE 2. TRADEMARKS IN GENERAL.

§47-2-1. Definitions.
§47-2-2. Registrability.
§47-2-3. Application for registration.
§47-2-4. Filing of applications.
§47-2-5. Certificate of registration.
§47-2-6. Duration and renewal.
§47-2-7. Assignments, changes of name and other instruments.
§47-2-10. Classification.
§47-2-11. Fraudulent registration.
§47-2-12. Infringement.
§47-2-13. Injury to business reputation; dilution.
§47-2-15. Forum for actions regarding registration; service on out-of-state registrants.
§47-2-17. Fees.
§47-2-19. Time of taking effect — repeal of prior articles; intent of article.

§47-2-1. Definitions.

As used in this article:

1. The term "trademark" means any word, name, symbol, or device or any combination thereof used by a person to identify and distinguish the goods of such person, including a unique product, from those manufactured and sold by others, and to indicate the source of the goods, even if that source is unknown.

2. The term "service mark" means any word, name, symbol, or device or any combination thereof used by a person, to identify and distinguish the services of one person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person, and other distinctive features of radio or television programs may be registered as service marks notwith-
standing that they, or the programs, may advertise the goods of the sponsor.

(3) The term "mark" includes any trademark or service mark, entitled to registration under this article whether registered or not.

(4) The term "trade name" means any name used by a person to identify a business or vocation of such person.

(5) The term "person" and any other word or term used to designate the applicant or other party entitled to a benefit or privilege or rendered liable under the provisions of this article includes a juristic person as well as a natural person. The term "juristic person" includes a firm, partnership, corporation, union, association, or other organization capable of suing and being sued in a court of law.

(6) The term "applicant" embraces the person filing an application for registration of a mark under this article, and the legal representatives, successors, or assigns of such person.

(7) The term "registrant" as used herein embraces the person to whom the registration of a mark under this article is issued, and the legal representatives, successors, or assigns of such person.

(8) The term "use" means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For the purposes of this article, a mark shall be deemed to be in use (A) on goods when it is placed in any manner on the goods or other containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and the goods are sold or transported in commerce in this state, and (B) on services when it is used or displayed in the sale or advertising of services and the services are rendered in this state.

(9) A mark shall be deemed to be "abandoned" when either of the following occurs:
(A) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall constitute prima facie evidence of abandonment.

(B) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark.

(10) The term "secretary" means the secretary of the state or the designee of the secretary charged with the administration of this article.

(11) The term "dilution" means the lessening of the capacity of registrant's mark to identify and distinguish goods or services, regardless of the presence or absence of (A) competition between the parties, or (B) likelihood of confusion, mistake, or deception.

§47-2-2. Registrability.

A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

(1) Consists of or comprises immoral, deceptive or scandalous matter;

(2) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute;

(3) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof;

(4) Consists of or comprises the name, signature or portrait identifying a particular living individual, except by the individual's written consent;

(5) Consists of a mark which, (A) when used on or in connection with the goods or services of the applicant, is
merely descriptive or deceptively misdescriptive of them, or (B) when used on or in connection with the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or (C) is primarily merely a surname. Provided, That nothing in this subdivision shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods or services. The secretary may accept as evidence that the mark has become distinctive, as used on or in connection with the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this state for the five years before the date on which the claim of distinctiveness is made; or

(6) Consists of or comprises a mark which so resembles a mark registered in this state or a mark or trade name previously used by another and not abandoned, as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake or to deceive.

§47-2-3. Application for registration.

(a) Subject to the limitations set forth in this article, any person who uses a mark may file in the office of the secretary, in a manner complying with the requirements of the secretary, an application for registration of that mark setting forth, but not limited to, the following information:

(1) The name and business address of the person applying for such registration; and, if a corporation, the state of incorporation, or if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary;

(2) The goods or services on or in connection with which the mark is used and the mode or manner in which the mark is used on or in connection with such goods or services and the class in which such goods or services fall;

(3) The date when the mark was first used anywhere and the date when it was first used in this state by the applicant or a predecessor in interest; and
A statement that the applicant is the owner of the mark, that the mark is in use, and that, to the knowledge of the person verifying the application, no other person has registered, either federally or in this state, or has the right to use such mark either in the identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods or services of such other person, to cause confusion, or to cause mistake, or to deceive.

(b) The secretary may also require a statement as to whether an application to register the mark, or portions or a composite thereof, has been filed by the applicant or a predecessor in interest in the United States Patent and Trademark Office; and, if so, the applicant shall provide full particulars with respect thereto including the filing date and serial number of each application, the status thereof and, if any application was finally refused registration or has otherwise not resulted in a registration, the reasons therefor.

(c) The secretary may also require that a drawing of the mark, complying with such requirements as the secretary may specify, accompany the application.

(d) The application shall be signed and verified before a notary public by the applicant or by a member of the firm or an officer of the corporation or association applying.

(e) The application shall be accompanied by three specimens showing the mark as actually used.

(f) The application shall be accompanied by the application fee payable to the secretary of state.

§47-2-4. Filing of applications.

(a) Upon the filing of an application for registration and payment of the application fee, the secretary may cause the application to be examined for conformity with this article.

(b) The applicant shall provide any additional pertinent information requested by the secretary including a description of a design mark and may make, or authorize
the secretary to make, such amendments to the application as may be reasonably requested by the secretary or deemed by applicant to be advisable to respond to any rejection or objection.

(c) The secretary may require the applicant to disclaim an unregisterable component of a mark otherwise registerable, and an applicant may voluntarily disclaim a component of a mark sought to be registered. No disclaimer shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or the applicant's or registrant's rights of registration on another application if the disclaimed matter be or shall have become distinctive of the applicant's or registrant's goods or services.

(d) Amendments may be made by the secretary upon the application submitted by the applicant upon applicant's agreement, or, the secretary may require that an amended application be filed.

(e) If the applicant is found not to be entitled to registration, the secretary shall advise the applicant thereof and of the reasons therefor. The applicant shall have a reasonable period of time specified by the secretary in which to reply or to amend the application, in which event the application shall then be reexamined. This procedure may be repeated until (1) the secretary finally refuses registration of the mark, or (2) the applicant fails to reply or amend within the specified period, whereupon the application shall be deemed to have been abandoned.

(f) If the secretary finally refuses registration of the mark, the applicant may seek a writ of mandamus to compel such registration. Such writ may be granted, but without costs to the secretary, on proof that all the statements in the application are true and that the mark is otherwise entitled to registration.

(g) In the instance of applications concurrently being processed by the secretary seeking registration of the same or confusingly similar marks for the same or related goods or services, the secretary shall grant priority to the
applications in order of filing. If a prior-filed application is granted a registration, the other application or applications shall then be rejected. Any rejected applicant may bring an action for cancellation of the registration upon grounds of prior or superior rights to the mark, in accordance with the provisions of section nine of this article.

§47-2-5. Certificate of registration.

(a) Upon compliance by the applicant with the requirements of this article, the secretary shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the secretary and the seal of the state, and it shall show the name and business address and, if a corporation, the state of incorporation, or if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary, of the person claiming ownership of the mark, the date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this state, the class of goods or services and a description of the goods or services on or in connection with which the mark is used, a reproduction of the mark, the registration date and the term of the registration.

(b) Any certificate of registration issued by the secretary under the provisions hereof or a copy thereof duly certified by the secretary shall be admissible in evidence as competent and sufficient proof of the registration of such mark in any actions or judicial proceedings in any court of this state.

§47-2-6. Duration and renewal.

(a) A registration of mark hereunder shall be effective for a term of ten years from the date of registration and, upon application filed within six months prior to the expiration of such term, in a manner complying with the requirements of the secretary, the registration may be renewed for a like term from the end of the expiring term. A renewal fee, payable to the secretary, shall accompany the application for renewal of the registration.
(b) A registration may be renewed for successive periods of ten years in like manner.

(c) Any registration in force on the date on which this article becomes effective shall continue in full force and effect for the unexpired term thereof or for a term of five years from the effective date of this section, whichever shall first expire, and may be renewed by filing an application for renewal with the secretary complying with the requirements of the secretary and paying the aforementioned renewal fee therefor within six months prior to the expiration of the registration.

(d) All applications for renewal under this article, whether of registrations made under this article or of registrations effected under any prior article, shall include a verified statement that the mark has been and is still in use and include a specimen showing actual use of the mark on or in connection with the goods or services.

§47-2-7. Assignments, changes of name and other instruments.

(a) Any mark and its registration hereunder shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing duly executed and may be recorded with the secretary upon the payment of the recording fee payable to the secretary who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this article shall be void as against any subsequent purchaser for valuable consideration without notice, unless it is recorded with the secretary within three months after the date thereof or prior to such subsequent purchase.

(b) Any registrant or applicant effecting a change of the name of the person to whom the mark was issued or for whom an application was filed may record a certificate of change of name of the registrant or applicant with the secretary upon the payment of the recording fee. The
secretary may issue in the name of the assignee a certificate of registration of an assigned application. The secretary may issue in the name of the assignee, a new certificate or registration for the remainder of the term of the registration or last renewal thereof.

(c) Other instruments which relate to a mark registered or application pending pursuant to this article, such as, by way of example, licenses, security interests or mortgages, may be recorded in the discretion of the secretary, provided that such instrument is in writing and duly executed.

(d) Acknowledgment shall be prima facie evidence of the execution of an assignment or other instrument and, when recorded by the secretary, the record shall be prima facie evidence of execution.

(e) A photocopy of any instrument referred to in subsections (a), (b) or (c) of this section shall be accepted for recording if it is certified by any of the parties thereto, or their successors, to be a true and correct copy of the original.


The secretary shall keep for public examination a record of all marks registered or renewed under this article, as well as a record of all documents recorded pursuant to section seven of this article.


The secretary shall cancel from the register, in whole or in part:

(1) Any registration concerning which the secretary shall receive a voluntary request for cancellation thereof from the registrant or the assignee of record;

(2) All registrations granted under this article and not renewed in accordance with the provisions hereof;

(3) Any registration concerning which a court of competent jurisdiction shall find:
(A) That the registered mark has been abandoned;
(B) That the registrant is not the owner of the mark;
(C) That the registration was granted improperly;
(D) That the registration was obtained fraudulently;
(E) That the mark is or has become the generic name for the goods or services, or a portion thereof, for which it has been registered;
(F) That the registered mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person in the United States Patent and Trademark Office prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned: Provided, That, should the registrant prove that the registrant is the owner of a concurrent registration of a mark in the United States Patent and Trademark Office covering an area including this state, the registration hereunder shall not be cancelled for such area of the state; or

(4) When a court of competent jurisdiction orders cancellation of a registration on any ground.

§47-2-10. Classification.

The secretary shall, by legislative rule promulgated in accordance with the provisions of chapter twenty-nine-a of this code, establish a classification of goods and services for convenience of administration of this article, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used indicating the appropriate class or classes of goods or services. When a single application includes goods or services which fall within multiple classes, the secretary may require payment of a fee for each class. To the extent practical, the classification of goods and services should conform to the classification adopted by the United States Patent and Trademark Office. Until approved by the Legislature, the secretary may effect the purposes of this section by emergency rule.
§47-2-11. Fraudulent registration.

Any person who shall for himself or herself, or on behalf of any other person, procure the filing or registration of any mark in the office of the secretary under the provisions hereof, by knowingly making any false or fraudulent representation or declaration, orally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction.

§47-2-12. Infringement.

Subject to the provisions of section sixteen of this article, any person who shall:

(1) Use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this article in connection with the sale, distribution, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source of origin of such goods or services; or

(2) Reproduce, counterfeit, copy or colorably imitate any such mark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution in this state of such goods or services; then, such person shall be liable in a civil action by the registrant for any and all of the remedies provided in section fourteen of this article, except that under subdivision (b) of said section, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with the intent to cause confusion or mistake or to deceive.

§47-2-13. Injury to business reputation; dilution.

(a) The owner of a mark which is famous in this state shall be entitled, subject to the principles of equity, to an injunction against another's use of a mark, commencing after the owner's mark becomes famous, which causes
dilution of the distinctive quality of the owner's mark, and
to obtain such other relief as is provided in this section. In
determining whether a mark is famous, a court may con-
sider factors such as, but not limited to:

(1) The degree of inherent or acquired distinctiveness
of the mark in this state;

(2) The duration and extent of use of the mark in
connection with the goods and services;

(3) The duration and extent of advertising and public-
ity of the mark in this state;

(4) The geographical extent of the trading area in
which the mark is used;

(5) The channels of trade for the goods or services
with which the owner's mark is used;

(6) The degree of recognition of the owner's mark in
its and in the other's trading areas and channels of trade in
this state; and

(7) The nature and extent of use of the same or similar
mark by third parties.

(b) The owner shall be entitled only to injunctive
relief in this state in an action brought under this section,
unless the subsequent user wilfully intended to trade on
the owner's reputation or to cause dilution of the owner's
mark. If such wilful intent is proven, the owner shall also
be entitled to the remedies set forth in this chapter, subject
to the discretion of the court and the principles of equity.


(a) Any owner of a mark registered under this article
may proceed by suit to enjoin the manufacture, use, dis-
play or sale of any counterfeits or imitations thereof and
any court of competent jurisdiction may grant injunctions
to restrain such manufacture, use, display or sale as may
be by the said court deemed just and reasonable, and may
require the defendants to pay to such owner all profits
derived from and/or all damages suffered by reason of
such wrongful manufacture, use, display or sale; and such
court may also order that any such counterfeits or imita-
tions in the possession or under the control of any defen-
dant in such case be delivered to an officer of the court, or
to the complainant, to be destroyed. The court, in its dis-
cretion, may enter judgment for an amount not to exceed
three times such profits and damages and/or reasonable
attorneys' fees of the registrant in such cases where the
court finds the other party committed such wrongful acts
with knowledge or in bad faith or otherwise as according
to the circumstances of the case.

(b) The enumeration of any right or remedy herein
shall not affect a registrant's right to prosecute under any
penal law of this state.

§47-2-15. Forum for actions regarding registration; service
on out-of-state registrants.

(a) Actions to require cancellation of a mark regis-
tered pursuant to this article or in mandamus to compel
registration of a mark pursuant to this article shall be
brought in the circuit court of Kanawha County. In an
action in mandamus, the proceeding shall be based solely
upon the record before the secretary. In an action for
cancellation, the secretary shall not be made a party to the
proceeding but shall be notified of the filing of the com-
plaint by the clerk of the court in which it is filed and shall
be given the right to intervene in the action.

(b) In any action brought against a nonresident regis-
trant, service may be effected by service upon the regis-
trant in accordance with the provisions of this code and
the rules of civil procedure which prescribe the manner in
which service upon nonresidents may be obtained.


Nothing herein shall adversely affect the rights or the
enforcement of rights in marks acquired in good faith at
any time at common law.

§47-2-17. Fees.

(a) The secretary shall charge the following fees for
services provided pursuant to the provisions of this article:
(1) For an application fee and for a renewal fee, fifty dollars; and

(2) For recording any instrument specified in section seven of this article, twenty-five dollars.

(b) All fees shall be deposited in a special account in the state treasury. Expenditures from said account 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-seven, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. Amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.


If any provision hereof, or the application of such provision to any person or circumstance is held invalid, the remainder of this article shall not be affected thereby.

§47-2-19. Time of taking effect — repeal of prior articles; intent of article.

(a) This article is effective the first day of July, one thousand nine hundred ninety-six, but shall not affect any suit, proceeding or appeal then pending.

(b) The intent of this article is to provide a system of state trademark registration and protection substantially consistent with the federal system of trademark registration and protection under the "Trademark Act Of 1946," as the same has been amended on the effective date of this article. To that end, the construction given the federal act should be examined as persuasive authority for interpreting and construing this article.
AN ACT to amend and reenact section three, article thirteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to stopping, standing and parking violations; prohibiting stopping, standing and parking a vehicle in a fire lane.

Be it enacted by the Legislature of West Virginia:

That section three, article thirteen, 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 13. STOPPING, STANDING AND PARKING.

§17C-13-3. Stopping, standing or parking prohibited in specified places.

(a) No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic-control device, in any of the following places:

(1) On a sidewalk;

(2) In front of a public or private driveway;

(3) Within an intersection;

(4) Within fifteen feet of a fire hydrant;

(5) In a properly designated fire lane;

(6) On a crosswalk;

(7) Within twenty feet of a crosswalk at an intersection;
Within thirty feet upon the approach to any
flashing beacon, stop sign or traffic-control signal located
at the side of a roadway;

(9) Between a safety zone and the adjacent curb or
within thirty feet of points on the curb immediately
opposite the ends of a safety zone, unless a different
length is indicated by signs or markings;

(10) Within fifty feet of the nearest rail of a railroad
crossing;

(11) Within twenty feet of the driveway entrance to
any fire station and on the side of a street opposite the
entrance to any fire station within seventy-five feet of the
entrance (when properly signposted);

(12) Alongside or opposite any street excavation or
obstruction when stopping, standing or parking would
obstruct traffic;

(13) On the roadway side of any vehicle stopped or
parked at the edge or curb of a street;

(14) On any bridge or other elevated structure on a
highway or within a highway tunnel;

(15) At any place where official signs prohibit
stopping;

(16) Within twenty feet of any mail receptacle served
regularly by a carrier using a motor vehicle for daily
deliveries, if the parking interferes with or causes delay in
the carrier's schedule;

(17) On any controlled-access highway;

(18) At any place on any highway where the safety
and convenience of the traveling public is thereby
endangered.

(b) No person shall move a vehicle not lawfully under
his or her control into any prohibited area or away from a
curb such distance as is unlawful.
CHAPTER 251

(H. B. 4151—By Delegates Williams, Mezzatesia, Ryan and Collins)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article fourteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections nineteen and twenty-nine, article fifteen of said chapter, all relating to school bus lighting equipment; rules adopted by the board of education with the advice of the commissioner of motor vehicles; authority of division of highways with reference to lighting devices; and requiring that school buses have two back-up lights with fifty candle-power intensity.

Be it enacted by the Legislature of West Virginia:

That section twelve, article fourteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended be amended and reenacted; and that sections nineteen and twenty-nine, article fifteen of said chapter, be amended and reenacted, all to read as follows:

Article
15. Equipment.

ARTICLE 14. MISCELLANEOUS RULES.

§17C-14-12. School bus rules.

(a) The West Virginia board of education by and with the advice of the motor vehicle commissioner shall adopt and enforce rules consistent with this chapter, including the provisions of subsection (c), section nineteen, article fifteen of this chapter, to govern the design and operation of all school buses used for the transportation of school children when owned and operated by any county board of education or privately owned and operated under contract with any county board of education in this state and these rules shall by reference be made a part of any such contract with a county board of education. Every county
board of education, its officers and employees, and every
person employed under contract by a county board of
education shall be subject to these rules.

(b) Any officer or employee of any county board of
education who violates any of said rules or who fails to
include the obligation to comply with said rules in any
contract executed by him or her on behalf of a county
board of education is guilty of misconduct and subject to
removal from office or employment. Any person operat-
ing a school bus under contract with a county board of
education who fails to comply with any of said rules is
guilty of breach of contract and the contract shall be can-
celed after notice and hearing by the responsible officers
of the county board of education.

ARTICLE 15. EQUIPMENT.

§17C-15-19. Additional lighting equipment.

§17C-15-29. Authority of division of highways with reference to lighting
devices.

§17C-15-19. Additional lighting equipment.

(a) Any motor vehicle may be equipped with not more
than two side cowl or fender lamps which shall emit an
amber or white light without glare.

(b) Any motor vehicle may be equipped with not
more than one runningboard courtesy lamp on each side
thereof which shall emit a white or amber light without
glare.

(c) Except for school buses as provided in this subsec-
tion, any motor vehicle may be equipped with not more
than two back-up lamps either separately or in combina-
tion with other lamps, but any such back-up lamp shall not
be lighted when the motor vehicle is in forward motion.

School buses used for the transportation of school chil-
dren in this state, whether owned and operated by a county
board of education or privately owned and operated under
contract with a county board of education, shall be
equipped with two back-up lamps, one on each side of the
rear door, with white lens or reflectors, capable of lighting
the roadway and objects to the rear of the bus for safe
backing during darkness, and which, at the option of the
county board of education, may each provide fifty candle-power in illumination intensity instead of thirty-two candle-power.

(d) Any vehicle may be equipped with lamps which may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing, and when so equipped may display such warning in addition to any other warning signals required by this article. The lamps used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously flashing white or amber lights, or any shade of color between white and amber. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing amber or red lights, or any shade of color between amber and red.

(e) Vehicles used by "rural mail carriers" in carrying or delivering mail in rural areas may be equipped with amber flashing lights. Such lights shall be on the front and rear of the vehicle and may be activated when the vehicle is stopped or decreasing speed in order to stop in the course of carrying, delivering or picking up mail along the route.

§17C-15-29. Authority of division of highways with reference to lighting devices.

(a) The division of highways is hereby authorized to approve or disapprove lighting devices and to issue and enforce rules establishing standards and specifications for the approval of such lighting devices, their installation, adjustment and aiming, and adjustment when in use on motor vehicles. Such rules shall correlate with and, so far as practicable, conform to or exceed the then current standards and specifications of the society of automotive engineers applicable to such equipment.

(b) The division of highways is hereby required to approve or disapprove any lighting device, of a type on which approval is specifically required in this chapter,
within a reasonable time after such device has been submitted.

(c) The division of highways is further authorized to set up the procedure which shall be followed when any device is submitted for approval.

(d) The division of highways, upon approving any such lamp or device, shall issue to the applicant a certificate of approval together with any instructions determined by him or her.

(e) The division of highways shall publish lists of all lamps and devices by name and type which have been approved by him or her.

CHAPTER 252

(Com. Sub. for H. B. 4862—By Delegates Givens, Johnson, Thomas and Greear)

[Passed March 7, 1996; in effect from passage. Approved by the Governor.]

AN ACT to repeal section three, article one, and section nine-a, article nine, both of chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said chapter by adding thereto a new article, designated article one-a; to amend and reenact section six, article two of said chapter; to amend said article by adding thereto a new section, designated section six-c; to amend and reenact sections two, three, three-b, four, ten-b, sixteen, seventeen and twenty, article five of said chapter; to amend and reenact sections ten and fifteen, article six of said chapter; to further amend said article by adding thereto a new section, designated section one-c; to amend and reenact section fifteen, article eight, section nine, article nine, and section seventeen, article ten, all of said chapter, all relating generally to unemployment compensation and other payments due the commissioner of the bureau of employment programs, definitions, powers of the commissioner, allowing for rules to restrict certain delinquent employers from having authority to conduct business, criminal penalties, rates of
reorganized employers, enhancements to ability of commis-
sioner to collect payments due, interest rate and penalty for
past due payments, updating weekly benefit table, voluntary
withholding of tax payments from unemployment compen-
sation benefits, payment of funds from unemployment trust
fund and Reed Act appropriation.

Be it enacted by the Legislature of West Virginia:

That section three, article one, and section nine-a, article nine,
both of chapter twenty-one-a of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, be repealed; that
said chapter be further amended by adding thereto a new article,
designated article one-a; that section six, article two of said chap-
ter be amended and reenacted; that said article be further amend-
ed by adding thereto a new section, designated section six-c; that
sections two, three, three-b, four, ten-b, sixteen, seventeen and
twenty, article five of said chapter be amended and reenacted;
that sections ten and fifteen, article six of said chapter be amend-
ed and reenacted; that said article be further amended by adding
thereto a new section, designated section one-c; and that section
fifteen, article eight, section nine, article nine, and section seven-
teen, article ten, all of said chapter, be amended and reenacted, all
to read as follows:

CHAPTER 21A. BUREAU OF
EMPLOYMENT PROGRAMS.

Article

1A. Definitions.
2. The Commissioner of the Bureau of Employment Programs.
5. Employer Coverage and Responsibility.
6. Employee Eligibility; Benefits.
8. Unemployment Compensation Fund.

ARTICLE 1A. DEFINITIONS.

§21A-1A-3. Annual payroll.
§21A-1A-4. Average annual payroll.
§21A-1A-10. Board.
§21A-1A-17. Employment does not include.
§21A-1A-27. Total and partial employment.
§21A-1A-29. Week.
§21A-1A-31. Year.


1 The terms and phrases defined by this article have the
2 stated meanings when used in this chapter unless the con-
3 text clearly requires otherwise.


1 "Administration fund" means the employment security
2 administration fund, from which the administrative ex-
3 penses under this chapter shall be paid.

§21A-1A-3. Annual payroll.

1 "Annual payroll" means the total amount of wages for
2 employment paid by an employer during a twelve-month
3 period ending with the thirtieth day of June of any calen-
4 dar year.

§21A-1A-4. Average annual payroll.
"Average annual payroll" means the average of the last three annual payrolls of an employer.


"Base period" means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual’s benefit year.


"Base period employer" means any employer who in the base period for any benefit year paid wages to an individual who filed claim for unemployment compensation within such benefit year.


"Base period wages" means wages paid to an individual during the base period by all the individual’s base period employers.


"Benefit year" with respect to an individual means the fifty-two-week period beginning with the first day of the calendar week in which a valid claim is effective, and thereafter the fifty-two-week period beginning with the first day of the calendar week in which such individual next files a valid claim for benefits after the termination of his or her last preceding benefit year: Provided, That if a claim is effective on the first day of a quarter, the benefit year will be fifty-three weeks in order to prevent an overlapping of the base period wages: Provided, however, That for any benefit year beginning on or after the first day of January, one thousand nine hundred ninety-five, if a claim is effective on the second day of a quarter and the benefit year includes the twenty-ninth day of February, the benefit year will be fifty-three weeks in order to prevent an overlapping of the base period wages. An initial claim for benefits filed in accordance with the provisions of this chapter is a valid claim within the purposes of this definition if the individual has been paid wages in his or her base period sufficient to make him or her eligible for benefits under the provisions of this chapter.
1 "Benefits" means the money payable to an individual
2 with respect to his or her unemployment.

§21A-1A-10. Board.
1 "Board" means board of review.

1 "Calendar quarter" means the period of three consecutive
2 calendar months ending on the thirty-first day of
3 March, the thirtieth day of June, the thirtieth day of Sep-
4 tember, the thirty-first day of December or the equivalent
5 thereof as the commissioner may by rule prescribe.

1 "Commissioner" means the bureau of employment
2 programs' commissioner.

1 "Computation date" means the thirtieth day of June the
2 year immediately preceding the first day of January on
3 which an employer's contribution rate becomes effective.

1 "Employing unit" means an individual, or type of
2 organization, including any partnership, association, trust,
3 estate, joint-stock company, insurance company, corpora-
4 tion (domestic or foreign), state or political subdivision
5 thereof, or their instrumentalities, as provided in paragraph
6 (B), subdivision (9) of the definition of "employment" in
7 this article institution of higher education, or the receiver,
8 trustee in bankruptcy, trustee or successor thereof, or the
9 legal representative of a deceased person, which has in its
10 employ one or more individuals performing service within
11 this state.

1 "Employer" means:
2 (1) Any employing unit which for some portion of a
3 day, not necessarily simultaneously, in each of twenty
4 different calendar weeks, which weeks need not be consec-
utive, within either the current calendar year, or the pre-
ceding calendar year, has had in employment four or
more individuals irrespective of whether the same individ-
uals were or were not employed on each of such days;

(2) Any employing unit which is or becomes a liable
employer under any federal unemployment tax act;

(3) Any employing unit which has acquired or ac-
quires the organization, trade or business, or substantially
all the assets thereof, of an employing unit which at the
time of such acquisition was an employer subject to this
chapter;

(4) Any employing unit which, in any one calendar
quarter, in any calendar year, has in employment four or
more individuals and has paid wages for employment in
the total sum of five thousand dollars or more, or which,
after such date, has paid wages for employment in any
calendar year in the sum total of twenty thousand dollars
or more;

(5) Any employing unit which, in any three-week
period, in any calendar year, has in employment ten or
more individuals;

(6) For the effective period of its election pursuant to
section three, article five of this chapter, any employing
unit which has elected to become subject to this chapter;

(7) Any employing unit which: (A) In any calendar
quarter in either the current or preceding calendar year
paid for service in employment wages of one thousand
five hundred dollars or more; or (B) for some portion of a
day in each of twenty different calendar weeks, whether or
not such weeks were consecutive, in either the current or
the preceding calendar year had in employment at least
one individual (irrespective of whether the same individual
was in employment in each such day) except as provided
in subdivisions (10) and (11) of this section;

(8) Any employing unit for which service in emplo-
ment, as defined in subdivision (9) of the definition of
"employment" in this article is performed;
(9) Any employing unit for which service in employment, as defined in subdivision (10) of the definition of "employment" in this article is performed;

(10) Any employing unit for which agricultural labor, as defined in subdivision (12) of the definition of "employment", is performed; or

(11) Any employing unit for which domestic service in employment, as defined in subdivision (13) of the definition of "employment", is performed.


"Employment", subject to the other provisions of this article, means:

(1) Service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied;

(2) Any service performed by an employee, as defined in Section 3306(i) of the federal Unemployment Tax Act, including service in interstate commerce;

(3) Any service performed, including service in interstate commerce, by any officer of a corporation;

(4) An individual's entire service, performed within or both within and without this state if: (A) The service is localized in this state; or (B) the service is not localized in any state but some of the service is performed in this state and: (i) The base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state;

(5) Service not covered under subdivision (4) of this section and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, is employment subject to this chapter if the individual performing such
services is a resident of this state and the commissioner approves the election of the employing unit for whom such services are performed that the entire service of such individual is employment subject to this chapter;

(6) Service is localized within a state, if: (A) The service is performed entirely within such state; or (B) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within this state, as, for example, is temporary or transitory in nature or consists of isolated transactions;

(7) Services performed by an individual for wages are employment subject to this chapter unless and until it is shown to the satisfaction of the commissioner that: (A) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact; and (B) such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and (C) such individual is customarily engaged in an independently established trade, occupation, profession or business;

(8) All service performed by an officer or member of the crew of an American vessel (as defined in Section 305 of an act of Congress entitled Social Security Act Amendment of 1946, approved the tenth day of August, one thousand nine hundred forty-six), on or in connection with such vessel, provided that the operating office, from which the operations of such vessel operating on navigable waters within and without the United States is ordinarily and regularly supervised, managed, directed and controlled, is within this state;

(9) (A) Service performed by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state: Provided, That such service is excluded from "employment" as defined in the
federal Unemployment Tax Act solely by reason of Section 3306(c)(7) of that act and is not excluded from "employment" under subdivision (11), section seventeen of this article;

(B) Service performed in the employ of this state or any of its instrumentalities or political subdivisions thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any foregoing and one or more other states or political subdivisions: Provided, That such service is excluded from "employment" as defined in the federal Unemployment Tax Act by Section 3306(c)(7) of that act and is not excluded from "employment" under subdivision (15), section seventeen of this article; and

(C) Service performed in the employ of a nonprofit educational institution which is not an institution of higher education;

(10) Service performed by an individual in the employ of a religious, charitable, educational or other organization but only if the following conditions are met:

(A) The service is excluded from "employment" as defined in the federal Unemployment Tax Act solely by reason of Section 3306(c)(8) of that act; and

(B) The organization had four or more individuals in employment for some portion of a day in each of twenty different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time;

(11) Service of an individual who is a citizen of the United States, performed outside the United States after the thirty-first day of December, one thousand nine hundred seventy-one (except in Canada and in the case of the Virgin Islands after the thirty-first day of December, one thousand nine hundred seventy-one, and before the first day of January, the year following the year in which the secretary of labor approves for the first time an unemployment insurance law submitted to him or her by the Virgin Islands for approval) in the employ of an Ameri-
can employer (other than service which is considered "employment" under the provisions of subdivision (4), (5) or (6) of this section or the parallel provisions of another state's law) if:

(A) The employer's principal place of business in the United States is located in this state; or

(B) The employer has no place of business in the United States, but: (i) The employer is an individual who is a resident of this state; or (ii) the employer is a corporation which is organized under the laws of this state; or (iii) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(C) None of the criteria of paragraphs (A) and (B) of this subdivision is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

(D) An "American employer", for purposes of this subdivision, means a person who is: (i) An individual who is a resident of the United States; or (ii) a partnership if two thirds or more of the partners are residents of the United States; or (iii) a trust, if all of the trustees are residents of the United States; or (iv) a corporation organized under the laws of the United States or of any state;

(12) Service performed by an individual in agricultural labor as defined in subdivision (5), section seventeen of this article when:

(A) Such service is performed for a person who: (i) During any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor including labor performed by an alien referred to in paragraph (B) of this subdivision; or (ii) for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor, including labor performed
by an alien referred to in paragraph (B) of this subdivision, ten or more individuals, regardless of whether they were employed at the same moment of time;

(B) Such service is not performed in agricultural labor if performed before the first day of January, one thousand nine hundred ninety-five, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to Sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act;

(C) For the purposes of the definition of employment, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader: (i) If such crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and (ii) if such individual is not an employee of such other person within the meaning of subdivision (7) of the definition of employer;

(D) For the purposes of this subdivision, in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under paragraph (C) of this subdivision: (i) Such other person and not the crew leader shall be treated as the employer of such individual; and (ii) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his or her own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person; and

(E) For the purposes of this subdivision, the term "crew leader" means an individual who: (i) Furnishes individuals to perform service in agricultural labor for any other person; (ii) pays (either on his or her own behalf or on behalf of such other person) the individuals so fur-
lished by him or her for the service in agricultural labor
performed by them; and (iii) has not entered into a written
agreement with such other person under which such indi-

(13)(A) The term "employment" includes domestic
service in a private home, local college club or local chap-
ter of a college fraternity or sorority performed for a
person who paid cash remuneration of one thousand dol-
lars or more in any calendar quarter in the current calen-
dar year or the preceding calendar year to individuals
employed in such domestic service.

(B) Notwithstanding the foregoing definition of "em-
ployment", if the services performed during one half or
more of any pay period by an employee for the person
employing him or her constitute employment, all the ser-
VICES of such employee for such period are employment;
but if the services performed during more than one half of
any such pay period by an employee for the person em-
ploying him or her do not constitute employment, then
none of the services of such employee for such period are
employment.

§21A-1A-17. Employment does not include.

The term "employment" does not include:

(1) Service performed in the employ of this state or
any political subdivision thereof, or any instrumentality of
this state or its subdivisions, except as otherwise provided
herein;

(2) Service performed directly in the employ of an-
other state, or its political subdivisions, except as otherwise
provided in paragraph (A), subdivision (9) of the defini-
tion of "employment";

(3) Service performed in the employ of the United
States or any instrumentality of the United States exempt
under the constitution of the United States from the pay-
ments imposed by this law, except that to the extent that
the Congress of the United States shall permit states to
require any instrumentalities of the United States to make
payments into an unemployment fund under a state un-
employment compensation law, all of the provisions of
this law shall be applicable to such instrumentalities and to
service performed for such instrumentalities in the same
manner, to the same extent and on the same terms as to all
other employers, employing units, individuals and serv-
ices: Provided, That if this state is not certified for any year
by the secretary of labor under Section 1603(c) of the
federal Internal Revenue Code, the payments required of
such instrumentalities with respect to such year shall be
refunded by the commissioner from the fund in the same
manner and within the same period as is provided in sec-
tion nineteen, article five of this chapter, with respect to
payments erroneously collected;

(4) Service performed with respect to which unem-
ployment compensation is payable under the Railroad
Unemployment Insurance Act and service with respect to
which unemployment benefits are payable under an un-
employment compensation system for maritime employ-
ees established by an act of Congress. The commissioner
may enter into agreements with the proper agency estab-
lished under such an act of Congress to provide reciprocal
treatment to individuals who, after acquiring potential
rights to unemployment compensation under an act of
Congress, or who have, after acquiring potential rights to
unemployment compensation under an act of Congress,
acquired rights to benefit under this chapter. Such agree-
ment shall become effective ten days after such publica-
tions which shall comply with the general rules of the
department;

(5) Service performed by an individual in agricultural
labor, except as provided in subdivision (12) of the defini-
tion of "employment" in this article. For purposes of this
subdivision, the term "agricultural labor" includes all ser-
ices performed:

(A) On a farm, in the employ of any person, in con-
nection with cultivating the soil, or in connection with
raising or harvesting any agricultural or horticultural com-
modity, including the raising, shearing, feeding, caring for,
training and management of livestock, bees, poultry and
fur-bearing animals and wildlife;
(B) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(C) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section fifteen (g) of the Agricultural Marketing Act, as amended, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(D) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one half of the commodity with respect to which such service is performed; or (ii) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subparagraph (i) of this paragraph, but only if such operators produced more than one half of the commodity with respect to which such service is performed; but the provisions of subparagraphs (i) and (ii) of this paragraph are not applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(E) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer. As used in this subdivision, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, truck farms, plantations, ranches, greenhouses, ranges and nurseries, or
other similar land areas or structures used primarily for
the raising of any agricultural or horticultural commodi-
ties;

(6) Domestic service in a private home except as pro-
vided in subdivision (13) of the definition of "employ-
ment" in this article;

(7) Service performed by an individual in the employ
of his or her son, daughter or spouse;

(8) Service performed by a child under the age of
eighteen years in the employ of his or her father or moth-
er;

(9) Service as an officer or member of a crew of an
American vessel, performed on or in connection with such
vessel, if the operating office, from which the operations
of the vessel operating on navigable waters within or with-
out the United States are ordinarily and regularly super-
vised, managed, directed and controlled, is without this
state;

(10) Service performed by agents of mutual fund
broker-dealers or insurance companies, exclusive of in-
dustrial insurance agents, or by agents of investment com-
panies, who are compensated wholly on a commission
basis;

(11) Service performed: (A) In the employ of a
church or convention or association of churches, or an
organization which is operated primarily for religious
purposes and which is operated, supervised, controlled or
principally supported by a church or convention or asso-
ciation of churches; or (B) by a duly ordained, commis-
sioned or licensed minister of a church in the exercise of
his or her ministry or by a member of a religious order in
the exercise of duties required by such order; or (C) in a
facility conducted for the purpose of carrying out a pro-
gram of rehabilitation for individuals whose earning ca-
pacity is impaired by age or physical or mental deficiency
or injury or providing remunerative work for individuals
who because of their impaired physical or mental capacity
cannot be readily absorbed in the competitive labor mar-
et by an individual receiving such rehabilitation or remu-
(D) as part of an unemployment work-relief or work-training program assisted or financed, in whole or in part, by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or (E) by an inmate of a custodial or penal institution;

(12) Service performed in the employ of a school, college or university, if such service is performed: (A) By a student who is enrolled and is regularly attending classes at such school, college or university; or (B) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that: (i) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college or university; and (ii) such employment will not be covered by any program of unemployment insurance;

(13) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subdivision does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(14) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital, as defined in this article; and

(15) Service in the employ of a governmental entity referred to in subdivision (9) of the definition of "employment" in this article if such service is performed by an individual in the exercise of duties: (A) As an elected official; (B) as a member of a legislative body, or a member of the judiciary, of a state or political subdivision; (C) as a member of the state national guard or air national
guard; (D) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency; (E) in a position which, under or pursuant to the laws of this state, is designated as: (i) A major nontenured policymaking or advisory position; or (ii) a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week.

Notwithstanding the foregoing exclusions from the definition of "employment", services, except agricultural labor and domestic service in a private home, are in employment if with respect to such services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund, or which as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act are required to be covered under this chapter.


"Employment office" means a free employment office or branch thereof, operated by this state, or any free public employment office maintained as a part of a state controlled system of public employment offices in any other state.


"Fund" means the unemployment compensation fund established by this chapter.


"Hospital" means an institution which has been licensed, certified or approved by the state department of health as a hospital.


"Institution of higher education" means an educational institution which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;
6 (2) Is legally authorized in this state to provide a program of education beyond high school;
7 (3) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or provides a program of postgraduate or postdoctoral studies, or provides a program of training to prepare students for gainful employment in a recognized occupation; and
8 (4) Is a public or other nonprofit institution.
9 Notwithstanding any of the foregoing provisions of this definition all colleges and universities in this state are institutions of higher education.

1 "Payments" means the money required to be paid or that may be voluntarily paid into the state unemployment compensation fund as provided in article five of this chapter.

1 "Reorganized employer" means: (1) An employer that alters its legal status, including changing from a sole proprietorship or a partnership to a corporation; or (2) an employer that otherwise changes its trade name or business identity while remaining under substantially the same ownership.

1 "Separated from employment" means, for the purposes of this chapter, the total severance, whether by quitting, discharge or otherwise, of the employer-employee relationship.

1 "State" includes, in addition to the states of the United States, Puerto Rico, District of Columbia and the Virgin Islands.

"Successor employer" means an employer that acquires, by sale or otherwise, the entire organization, trade or business, or substantially all the assets thereof of another employer.


"Total and partial unemployment" means:

(1) An individual is totally unemployed in any week in which such individual is separated from employment for an employing unit and during which he or she performs no services and with respect to which no wages are payable to him or her.

(2) An individual who has not been separated from employment is partially unemployed in any week in which due to lack of full-time work wages payable to him or her are less than his or her weekly benefit amount plus sixty dollars: Provided, That said individual must have earnings of at least sixty-one dollars.


(a) "Wages" means all remuneration for personal service, including commissions, gratuities customarily received by an individual in the course of employment from persons other than the employing unit, as long as such gratuities equal or exceed an amount of not less than twenty dollars each month and which are required to be reported to the employer by the employee, bonuses, and the cash value of all remuneration in any medium other than cash except for agricultural labor and domestic service.

(b) The term "wages" does not include:

(1) That part of the remuneration which, after remuneration equal to eight thousand dollars is paid during a calendar year to an individual by an employer or his or her predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For
the purposes of this section, the term "employment" in-  
cludes service constituting employment under any unem-  
ployment compensation law of another state; or which as a  
condition for full tax credit against the tax imposed by the  
Federal Unemployment Tax Act is required to be covered  
under this chapter; and, except that for the purposes of  
sections one, ten, eleven and thirteen, article six of this  
chapter, all remuneration earned by an individual in em-  
ployment shall be credited to the individual and included  
in his or her computation of base period wages: Provided,  
The remuneration paid to an individual by an em-  
ployer with respect to employment in another state or  
other states upon which contributions were required of  
and paid by such employer under an unemployment com-  
pensation law of such other state or states shall be included  
as a part of the remuneration equal to the amounts of  
eight thousand dollars herein referred to. In applying  
such limitation on the amount of remuneration that is  
taxable, an employer shall be accorded the benefit of all  
or any portion of such amount which may have been paid  
by its predecessor or predecessors: Provided, however,  
That if the definition of the term "wages" as contained in  
Section 3306(b) of the Internal Revenue Code of 1954, as  
amended, is amended to include remuneration in excess of  
eight thousand dollars, paid to an individual by an em-  
ployer under the federal Unemployment Tax Act during  
any calendar year, wages for the purposes of this defini-  
tion shall include remuneration paid in a calendar year to  
an individual by an employer subject to this chapter or his  
or her predecessor with respect to employment during any  
calendar year up to an amount equal to the amount of  
remuneration taxable under the federal Unemployment  
Tax Act;

(2) The amount of any payment made (including any  
amount paid by an employer for insurance or annuities, or  
into a fund, to provide for any such payment), to, or on  
behalf of, an individual in its employ or any of his or her  
dependents, under a plan or system established by an  
employer which makes provision for individuals in its  
employ generally (or for such individuals and their de-  
pendents), or for a class or classes of such individuals (or
for a class or classes of such individuals and their dependents), on account of: (A) Retirement; or (B) sickness or accident disability payments made to an employee under an approved state workers' compensation law; or (C) medical or hospitalization expenses in connection with sickness or accident disability; or (D) death;

(3) Any payment made by an employer to an individual in its employ (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(4) Any payment made by an employer on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, to, or on behalf of, an individual in its employ after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(5) Any payment made by an employer to, or on behalf of, an individual in its employ or his or her beneficiary: (A) From or to a trust described in Section 401(a) which is exempt from tax under Section 501(a) of the federal Internal Revenue Code at the time of such payments unless such payment is made to such individual as an employee of the trust as remuneration for services rendered by such individual and not as a beneficiary of the trust; or (B) under or to an annuity plan which, at the time of such payment, is a plan described in Section 403(a) of the federal Internal Revenue Code;

(6) The payment by an employer of the tax imposed upon an employer under Section 3101 of the federal Internal Revenue Code with respect to remuneration paid to an employee for domestic service in a private home or the employer of agricultural labor;

(7) Remuneration paid by an employer in any medium other than cash to an individual in its employ for service not in the course of the employer's trade or business;

(8) Any payment (other than vacation or sick pay) made by an employer to an individual in its employ after the month in which he or she attains the age of sixty-five,
if he or she did not work for the employer in the period
for which such payment is made;

(9) Payments, not required under any contract of hire,
made to an individual with respect to his or her period of
training or service in the armed forces of the United States
by an employer by which such individual was formerly
employed; and

(10) Vacation pay, severance pay or savings plans
received by an individual before or after becoming totally
or partially unemployed but earned prior to becoming
totally or partially unemployed: Provided, That the term
totally or partially unemployed does not include: (A)
Employees who are on vacation by reason of the request
of the employees or their duly authorized agent, for a
vacation at a specific time, and which request by the em-
ployees or their agent is acceded to by their employer; (B)
employees who are on vacation by reason of the employ-
er's request provided they are so informed at least ninety
days prior to such vacation; or (C) employees who are on
vacation by reason of the employer's request where such
vacation is in addition to the regular vacation and the
employer compensates such employee at a rate equal to or
exceeding their regular daily rate of pay during the vaca-
tion period.

(c) The reasonable cash value of remuneration in any
medium other than cash shall be estimated and determined
in accordance with rules prescribed by the commissioner,
except for remuneration other than cash for services per-
formed in agricultural labor and domestic service.

§21A-1A-29. Week.

"Week" means a calendar week, ending at midnight
Saturday, or the equivalent thereof, as determined in ac-
cordance with the rules prescribed by the commissioner.


"Weekly benefit rate" means the maximum amount of
benefit an eligible individual will receive for one week of
total unemployment.

§21A-1A-31. Year.
"Year" means a calendar year or the equivalent thereof, as determined by the commissioner.

ARTICLE 2. THE COMMISSIONER OF THE BUREAU OF EMPLOYMENT PROGRAMS.


The commissioner is the executive and administrative head of the bureau and has the power and duty to:

1. Exercise general supervision of and make rules for the government of the bureau;
2. Prescribe uniform rules pertaining to investigations, departmental hearings, and promulgate rules;
3. Supervise fiscal affairs and responsibilities of the bureau;
4. Prescribe the qualifications of, appoint, remove, and fix the compensation of the officers and employees of the bureau, subject to the provisions of section ten, article four of this chapter, relating to the board of review;
5. Organize and administer the bureau so as to comply with the requirements of this chapter and chapter twenty-three of this code and to satisfy any conditions established in applicable federal legislation;
6. Make reports in such form and containing such information as the United States department of labor may from time to time require, and comply with such provisions as the United States department of labor may from time to time find necessary to assure the correctness and verification of such reports;
7. Make available to any agency of the United States charged with the administration of public works or assistance through public employment, upon its request, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of the recipient's rights to further compensation under this chapter;
(8) Keep an accurate and complete record of all bureau proceedings; record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the bureau;

(9) Sign and execute in the name of the state, by "The Bureau of Employment Programs", any contract or agreement with the federal government, its agencies, other states, their subdivisions, or private persons;

(10) Prescribe a salary scale to govern compensation of appointees and employees of the bureau;

(11) Make the original determination of right in claims for benefits;

(12) Make recommendations and an annual report to the governor concerning the condition, operation, and functioning of the bureau;

(13) Invoke any legal or special remedy for the enforcement of orders or the provisions of this chapter and chapter twenty-three of this code;

(14) Exercise any other power necessary to standardize administration, expedite bureau business, assure the establishment of fair rules and promote the efficiency of the service;

(15) Keep an accurate and complete record and prepare a monthly report of the number of persons employed and unemployed in the state, which report shall be made available upon request to members of the public and press;

(16) Provide at bureau expense a program of continuing professional, technical and specialized instruction for the personnel of the bureau;

(17) In addition to the authority granted to the commissioner by section eighteen of this article and notwithstanding anything to the contrary elsewhere in this code, utilize any attorney regularly employed by the bureau or the office of the attorney general to represent the commissioner, the bureau or any of its divisions in any matter. In addition, the commissioner, with the approval of the compensation programs performance council, is authorized to
retain counsel for any purpose in the administration of this chapter or in the administration of chapter twenty-three of this code relating to the collection of any amounts due from employers to the bureau or any of its divisions. The compensation programs performance council shall solicit proposals from counsel who are interested in representing the commissioner, the bureau or any of its divisions under the terms of this subdivision. Thereafter, the compensation programs performance council shall select such attorneys as it determines necessary to pursue the collection objectives of this subdivision.

(A) Payment to any such retained counsel may either be by hourly or other fixed fee, or as determined by the court or administrative law judge as provided for below. A contingency fee payable from the amount recovered by judgment or settlement for the commissioner, the bureau or any of its divisions is only permitted, to the extent not prohibited by federal law, when the assets of a defendant or respondent are depleted so that a full recovery plus attorneys' fees is not possible.

(B) In the event that any collections action, other than a collections action against a claimant, initiated either by retained counsel or other counsel on behalf of the commissioner, the bureau or any of its divisions results in a judgment or settlement in favor of the commissioner, the bureau or any of its divisions, then the court or, if there was no judicial component to the action, the administrative law judge, shall determine the amount of attorneys' fees that shall be paid by the defendants or respondents to the retained or other counsel representing the commissioner, the bureau or any of its divisions. If the court is to determine the amount of attorneys' fees, it shall include in its determination the amount of fee that should be paid for the representation of the commissioner, the bureau or its divisions in pursuing the administrative component, if any, of the action. The amount so paid shall be fixed by the court or the administrative law judge in an amount no less than twenty percent of its recovery. Any additional amount of attorneys' fees shall be determined by use of the following factors:
(i) The counsel's normal hourly rate or, if the counsel is an employee of the bureau or is an employee of the office of the attorney general, such hourly rate as the court or the administrative law judge shall determine to be customary based upon the attorney's experience and skill level;

(ii) The number of hours actually expended on the action;

(iii) The complexity of the issues involved in the action;

(iv) The degree of risk involved in the case with regard to the probability of success or failure;

(v) The overhead costs incurred by counsel with regard to the use of paralegals and other office staff, experts, and investigators; and

(vi) The public purpose served or public objective achieved by the attorney in obtaining the judgment or settlement on behalf of the commissioner, the bureau or any of its divisions.

(C) Notwithstanding the provisions of paragraph (B) of this subdivision, if the commissioner, bureau or any of its divisions and the defendants or respondents to any administrative or judicial action settle the action, then the parties may negotiate a separate settlement of attorneys' fees to be paid by the defendants or respondents above and beyond the amount recovered by the commissioner, the bureau or any of its divisions. In the event that such a settlement of attorneys' fees is made, it must be submitted to the court or administrative law judge for approval.

(D) Any attorney regularly employed by the bureau or by the office of the attorney general may not receive any remuneration for his or her services other than such attorney's regular salary. Any attorneys' fees awarded for such an employed attorney shall be payable to the commissioner;

(18) With the approval of the compensation programs performance council created pursuant to section one, article three of this chapter, to promulgate rules under
which agencies of this state shall not grant, issue, or renew any contract, license, permit, certificate, or other authority to conduct a trade, profession, or business to or with any employing unit whose account is in default with the commissioner with regard to the administration of this chapter and with regard to the administration of chapter twenty-three of this code. The term "agency" includes any unit of state government such as officers, agencies, divisions, departments, boards, commissions, authorities, or public corporations. An employing unit is not in default if it has entered into repayment agreements with the appropriate divisions of the bureau and remains in compliance with its obligations under the repayment agreements.

The rules shall provide that, before granting, issuing, or renewing any contract, license, permit, certificate, or other authority to conduct a trade, profession, or business to or with any employing unit, the designated agencies shall review a list or lists, provided by the appropriate divisions of the bureau, of employers that are in default. If the employing unit’s name is not on the list, the agency, unless it has actual knowledge that the employing unit is in default with a division of the bureau, may grant, issue, or renew the contract, license, permit, certificate, other authority to conduct a trade, profession, or business. The list may be provided to the agency in the form of a computerized database or databases that the agency can access. Any objections to such refusal to issue or renew shall be reviewed under the appropriate provisions of this chapter or of chapter twenty-three of this code, or both, whichever is applicable. The rules provided for by this subdivision shall be promulgated pursuant to the provisions of subdivisions (b) and (c), section seven, article three of this chapter as if they were rules being promulgated for the purposes of chapter twenty-three of this code. The prohibition against granting, issuing, or renewing any contract, license, permit, certificate, or other authority under this subdivision are not operative until the rules are promulgated and are in effect, except as provided in subdivision (6), section eight, article three, chapter twenty-two or otherwise by law.

The rules may be promulgated or implemented in phases so that specific agencies or specific types of con-
tracts, licenses, permits, certificates, or other authority to conduct trades, professions, or businesses will be subject to the rules beginning on different dates. The presumptions of ownership or control contained in the division of environmental protection's surface mining reclamation regulations promulgated under the provisions of article three, chapter twenty-two of this code are not applicable or controlling in determining the identity of employing units who are in default for the purposes of this subdivision. The rules shall also provide a procedure allowing any agency or interested person, after being covered under the rules for at least one year, to petition the council to be exempt from the provisions of the rules. Rules subjecting all applicable agencies and contracts, licenses, permits, certificates, or other authority to conduct trades, professions, or businesses to the requirements of this subdivision shall be promulgated no later than the first day of January, two thousand; and

(19) Deposit to the credit of the appropriate special revenue account or fund, notwithstanding any other provision of this code and to the extent allowed by federal law, all amounts of delinquent payments or overpayments, interest and penalties thereon, and attorneys' fees and costs collected under the provisions of this chapter and chapter twenty-three of this code. The amounts collected shall not be treated by the auditor or treasurer as part of the general revenue of the state.

§21A-2-6c. Payment withholding and interception.

(a) All state, county, district and municipal officers and agents making contracts on behalf of the state of West Virginia or any political subdivision thereof shall withhold payment in the final settlement of such contracts until the receipt of a certificate from the commissioner to the effect that all payments, interest and penalties thereon accrued against the contractor under this chapter and under chapter twenty-three of this code have been paid or that provisions satisfactory to the commissioner have been made for payment. Any official violating this subsection is guilty of a misdemeanor and, on conviction thereof, shall be fined not more than one thousand dollars or county im-
prisoned for not more than one year in the jail, or both
fined and imprisoned.

(b) Any agency of the state, for the limited purpose
of intercepting, pursuant to section sixteen, article five of
this chapter and pursuant to section five-a of article two,
chapter twenty-three of this code, any payment by or
through the state to an employer who is in default in pay-
ment of contributions, premiums, deposits, interest, or
penalties under the provisions of this chapter or of chapter
twenty-three of this code, shall assist the commissioner in
collecting the payment that is due. For this purpose, dis-
losure of joint delinquency and default lists of employers
with respect to unemployment compensation and workers’
compensation contributions, premiums, interest, deposits,
or penalties is authorized. The lists may be in the form of
a computerized database to be accessed by the auditor, the
department of tax and revenue, the department of admin-
istration, the division of highways, or other appropriate
state agency or officer.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-3. Voluntary coverage; elective coverage by political subdivi-
sions.
§21A-5-3b. Financing benefits paid to employees of governmental entities; liability of governmental entities for payments.
§21A-5-4. Required payments; failure to make required payments; criminal penalties.
§21A-5-17. Interest and rate on past-due payments; penalties for late pay-
ment and reporting.
§21A-5-20. Qualifying wages for regular benefits of newly covered workers during transition period on the basis of previously uncovered services.


Except as otherwise provided in section three of this
article, an employing unit, with the exception of any em-
ploying unit for which service in employment is defined
in subdivision (10), section sixteen, article one-a of this chapter, shall cease to be an employer subject to this chapter only as of the first day of any calendar year and only if it files with the commissioner not later than January thirty-first of such year, a written application for termination of coverage, as of such first day of January, and the commissioner finds that within the preceding calendar year the employing unit did not pay wages of one thousand five hundred dollars or more in any calendar quarter for employment subject to this chapter and during that calendar year no service was performed for it with respect to which it was liable for any tax against which credit may be taken for contributions required to be paid into the unemployment compensation fund of this state; and any employing unit for which service in employment is defined in subdivision (10), section sixteen, article one-a of this chapter, shall cease to be an employer subject to this chapter only as of the first day of any calendar year and only if it files with the commissioner not later than January thirty-first of such year, a written application for termination of coverage, as of such first day of January, and the commissioner finds that there were no twenty different days, each day being in a different calendar week within the preceding calendar year, within which such employing unit had four or more individuals in employment subject to this chapter: Provided, That the commissioner may for good cause extend the time for filing application for termination of coverage, effective as of the first day of the next succeeding quarter after the application is approved.

§21A-5-3. Voluntary coverage; elective coverage by political subdivisions.

(a) An employing unit, not otherwise subject to the provisions of this chapter, which files with the commissioner its written election to become an employer subject hereto for not less than two calendar years, shall, with the written approval of such election by the commissioner, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January one of
any calendar year subsequent to such two calendar years, only if during January of such year it has filed with the commissioner a written notice to that effect.

(b) Any employing unit for which services that do not constitute employment as defined in this chapter are performed, may file with the commissioner a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business are employment for all the purposes of this chapter for not less than two calendar years. Upon the written approval of such election by the commissioner, such services are employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January first of any calendar year subsequent to such two calendar years, only if during January of such year such employing unit has filed with the commissioner a written notice to that effect.

(c) An employing unit which is or becomes an employer subject to this chapter within any calendar year is subject to this chapter during the whole of such calendar year.

(d) Any political subdivision of this state may elect to cover under this chapter service performed by employees in all of the hospitals and institutions of higher education, as defined in sections twenty and twenty-one, article one-a of this chapter, operated by such political subdivision. Any such election of coverage is to be made by filing with the commissioner a notice of such election at least thirty days prior to the effective date of such election. Any political subdivision electing coverage under this subsection shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided with respect to nonprofit organizations in section three-a of this article. The provisions of section fifteen, article six of this chapter with respect to benefit rights based on service for state and nonprofit institutions of higher education are applicable also to service covered by
an election under this subsection. The amounts required to be paid in lieu of contributions by any political subdivision under this subsection shall be billed and payment made as provided in section thirteen of this article with respect to similar payments by nonprofit organizations. An election under this subsection may be terminated, by filing with the commissioner written notice not later than thirty days preceding the last day of the calendar year in which the termination is to be effective. Such termination becomes effective as of the first day of the next ensuing calendar year with respect to services performed after that date.

§21A-5-3b. Financing benefits paid to employees of governmental entities; liability of governmental entities for payments.

Benefits paid to employees of governmental entities referred to in paragraph (B), subdivision (9), section sixteen, article one-a of this chapter, shall be financed in the same manner and in accordance with the provisions of section three-a, article five of this chapter; except that for extended benefits reimbursement shall be one hundred percent of the benefits paid.

Any governmental entity which, pursuant to the provisions of this chapter, is, or becomes, subject to this chapter, is liable for payments and shall pay contributions in accordance with the provisions of this article and of this chapter, unless it elects to make payments in lieu of contributions as set forth in section three-a.

Governmental entities electing to make payments in lieu of contributions are liable for the full amount of extended benefits paid for weeks of unemployment.

§21A-5-4. Required payments; failure to make required payments; criminal penalties.

(a) An employer is liable for payments in respect to wages paid for employment occurring during each year in which he or she is subject to this chapter.
(b) Any person, firm, partnership, company, corporation, or association who, as an employer, is subject to the provisions of this chapter, and 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 an offense as follows:

(1) Any employer who knowingly and willfully fails to make any payment or file a report within the time period specified by law for two calendar quarters, which quarters need not be consecutive but are within twenty-five quarters of each other, is guilty of a misdemeanor and:

(A) Upon a first conviction under this subdivision, shall be fined not less than five hundred dollars nor more than one thousand dollars; or

(B) Upon a second conviction under this subdivision, shall be fined not less than one thousand dollars nor more than five thousand dollars, imprisoned for not longer than thirty days or both fined and imprisoned.

(2) Any employer who, having been twice convicted of the offense specified in subdivision (1) of this subsection, knowingly and willfully fails to make any payment or file a report as required by the provisions of this chapter within the time period specified by law for two calendar quarters, which quarters need not be consecutive but are within twenty-five quarters of each other, is guilty of a felony and, upon conviction thereof, shall be fined not less than five thousand dollars nor more than ten thousand dollars, or imprisoned in the penitentiary for a definite term of imprisonment which is not less than one year nor more than two years, or both fined and imprisoned.

(3) Any employer who knowingly and willfully fails to make any payment or file a report within the time period specified by law for four calendar quarters, which quarters need not be consecutive but are within thirty-six quarters of each other, is guilty of a felony and, upon conviction thereof, shall be fined not less than five thousand dollars nor more than twenty-five thousand dollars, or imprisoned in the penitentiary for a definite term of
(c) In charging a person with a second or subsequent offense under the provisions of paragraph (B), subdivision (1), subsection (b) of this section or under subdivision (2), subsection (b) of this section, 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. 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.


If a subject employer transfers his or her entire organization, trade or business, or substantially all the assets thereof, to another employer, the commissioner shall combine the contribution records and the benefit experience records of the transferring and acquiring employers. The acquiring employer's contribution rate for the remainder of the calendar year shall not be affected by the transfer but such rate shall apply to the whole of his or her business, including the portion acquired by the transfer, through the following thirty-first day of December. If a subject employer makes such transfer to an employing unit which is not an employer on the date of the transfer, such subject employer's rate continues as the rate of the acquiring employing unit until the next effective rate date. If an employing unit acquires simultaneously the entire organization, trade or business, or substantially all the assets thereof, of two or more covered employers, the successor shall be assigned as a contribution rate the then current rate of the transferring employer which had, in the calendar quarter immediately preceding the date of the transfer, the higher or highest payroll. If a subject employer transfers his or her entire organization, trade or
business, or substantially all the assets thereof, to two or 
more employers or employing units, apportionment of the 
contribution records and benefit experience records of the 
transferring employer shall be made between the acquir- 
ing units in accordance with the ratio that the total assets 
acquired by each transferee bears to the total assets trans- 
ferred by the transferring employer as of the date of the 
transfers. The current contribution rate of the transferring 
employer continues as the rate of each transferee who or 
which is an employing unit until the next effective rate 
date; the current contribution rate of each transferee who 
or which is an employer continues as his or her or its rate 
until the next effective rate date. For the succeeding cal- 
endar year the rate of each transferee shall be determined 
as provided in section ten of this article. As to any trans- 
fers which occur prior to the thirty-first day of July of the 
current calendar year such rate remains effective for the 
balance of that calendar year: Provided, That if the trans- 
fers occur subsequent to the thirty-first day of July such 
rate remains effective for the balance of that calendar year 
and the rate for the succeeding calendar year shall, not- 
withstanding anything to the contrary provided in section 
seven of this article, be recomputed on the basis of the 
combined experience of the transferring employers as of 
the thirty-first day of July of the year in which the trans- 
fers occur. In case the transferring employer is delinquent 
in the payment of contributions or interest thereon the 
acquiring employer is not entitled to any benefit of the 
contribution record of the transferring employer unless 
payment of such delinquent contributions and interest 
thereon is assumed by the acquiring employer. The com- 
misssioner shall upon joint request of the transferor and 
transferee furnish the transferee a statement of the amount 
of any contribution and interest due and unpaid by the 
transferor. A statement so furnished is controlling for the 
purposes of the foregoing proviso.

The provisions of this section do not apply to any 
employer which is established through the assistance of 
any state economic development agency irrespective of 
the contribution rate of any related predecessor.
A reorganized employer keeps the contribution rate of the employing unit before the reorganization until the thirty-first day of December immediately following the date of reorganization and is liable for all contributions, interest and penalties owed by the employing unit. Effective with the first day of January of the calendar year immediately following reorganization, a reorganized employer will have his or her contribution rate based on all of his or her experience with the fund in accordance with section ten of this article. If the predecessor does not remain in business after the transfer of all or part of the assets, business, organization, or trade of the predecessor employer: (1) The successor employer is liable for all contributions, interest and penalties owed by the predecessor employer at the time of the transfer; and (2) if two or more successor employers receive the transfer, the successor employers are liable in the same proportion as the assets of the unit being transferred is to the total assets of the predecessor employer.


(a) The commissioner in the name of the state may commence a civil action against an employer who, after due notice, defaults in any payment, interest or penalty thereon required by this chapter. Civil actions under this section shall be given preference on the calendar of the court over all other civil actions except petitions for judicial review under article seven of this chapter and cases arising under the workers' compensation law. Upon prevailing in any such civil action, the commissioner is entitled to recover attorneys' fees and costs of action from the employer.

(b) Any payment, interest and penalty thereon due and unpaid under this chapter is a debt due the state in favor of the commissioner. It is a personal obligation of the employer immediately due and owing and is, in addition thereto, a lien that 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.
provided in article ten-c, chapter thirty-eight of this code.

(c) In addition to all other civil remedies prescribed herein the commissioner may in the name of the state, after giving appropriate notice as required by due process, distraint upon any personal property, including intangibles, of any employer delinquent for any payment, interest and penalty thereon. If the commissioner 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, he or she may likewise distract in the name of the state before such delinquency occurs. For purposes of effecting a distraint under this subsection, the commissioner may require the services of a sheriff of any county in the state in levyng distress in the county in which the sheriff is an officer and in which the employer's personal property is situated. A sheriff so collecting any payments, interest and penalties thereon is entitled to compensation as provided by law for his or her services in the levy and enforcement of executions. Upon prevailing in any distraint action, the commissioner is entitled to recover his or her attorney 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 is 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 provision, so far as the assets in administration will permit, for the regular payment of such payments 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 another state and
admitted to do business in this state, until notified by the
commissioner that all payments, interest and penalties
thereon against any such corporation which is an employ­
er under this chapter have been paid or that provision
satisfactory to the commissioner has been made for pay­
ment.

(f) In any case where an employer defaults in pay­
ments, interest or penalties thereon, for as many as two
calendar quarters, which quarters need not be consecutive,
and remains delinquent after due notice, the commissio­
er may bring action in the circuit court of Kanawha Coun­
ty to enjoin that employer from continuing to carry on
the business in which such liability was incurred: 
Provided,
That the commissioner may as an alternative to this
action require 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 payments, interest and penalties due.

(g) Amounts of payments and penalties collected
under this section shall be deposited to the credit of the
unemployment compensation trust fund. Amounts of
interest, attorneys' fees and costs collected under this
section shall be paid into the employment security special
administration fund. Any such amounts are not to be
treated by the auditor or treasurer as part of the general
revenue of the state.

§21A-5-17. Interest and rate on past-due payments; penalties
for late payment and reporting.

(a) Payments, including penalties, unpaid on the date
on which due and payable, as prescribed by the commis­sioner, shall bear interest at the rate of one percent per
month until payment plus accrued interest is received by
the commissioner. Interest shall be compounded quarter­ly until payment plus accrued interest is received by the
commissioner.

Interest collected pursuant to this section shall be paid
into the employment security special administration fund.
(b) Each employer who fails to timely pay, in whole or in part, the contribution due with any report for any quarter commencing on and after the first day of July, one thousand nine hundred ninety-six, shall pay a late payment penalty of the greater of fifty dollars or ten percent of the contribution due, but not to exceed five hundred dollars. Such late penalty is due immediately along with the payment of the outstanding amount of contribution. Penalties collected pursuant to this section shall be paid into the unemployment compensation trust fund.

§21A-5-20. Qualifying wages for regular benefits of newly covered workers during transition period on the basis of previously uncovered services.

Wages for insured work includes wages paid for previously uncovered service. For the purposes of this section, the term "previously uncovered services" means services:

(1) Which were not employment as defined in section sixteen, article one-a of this chapter, or by election pursuant to section three, article five of this chapter, at any time during the one-year period ending December thirty-one, one thousand nine hundred seventy-five; and

(2) Which (A) Are agricultural labor, or domestic services as defined in subdivisions (12) and (13), section sixteen, article one-a of this chapter or (B) are services performed by an employee of this state or a political subdivision thereof, or a nonprofit educational institution as provided in paragraphs (B) and (C), subdivision (9), section sixteen, article one-a of this chapter; except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-1c. Voluntary withholding program.
§21A-6-10. Benefit rate — Total unemployment; annual computation and publication of rates.
§21A-6-15. Benefit payments for service with nonprofit organizations, state hospitals, institutions of higher education, educational institutions and governmental entities.

§21A-6-1c. Voluntary withholding program.

1 (a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, be advised by the appropriate bureau employee that:

2 (1) Unemployment compensation is subject to federal income tax;

3 (2) Requirements exist pertaining to estimated tax payments;

4 (3) The individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in the federal internal revenue code; and

5 (4) The individual may change a previously elected withholding status.

6 (b) Amounts deducted and withheld from unemployment compensation shall remain in the unemployment fund until transferred to the federal taxing authority as payment of income tax.

7 (c) The commissioner shall follow all procedures specified by the United States department of labor and the federal internal revenue service pertaining to the deducting and withholding of income tax.

8 (d) Amounts shall be deducted and withheld in accordance with the priorities established in rules developed by the commissioner.

9 (e) This section shall not be effective prior to payments made after the thirty-first day of December, one thousand nine hundred and ninety-six.

§21A-6-10. Benefit rate — Total unemployment; annual computation and publication of rates.
Each eligible individual who is totally unemployed in any week shall be paid benefits with respect to that week at the weekly rate appearing in Column (C) in the benefit table in this section, on the line on which in Column (A) there is indicated the employee's wage class, except as otherwise provided under the term "total and partial unemployment" in section twenty-seven, article one-a of this chapter. The employee's wage class shall be determined by his or her base period wages as shown in Column (B) in the benefit table. The right of an employee to receive benefits shall not be prejudiced nor the amount thereof be diminished by reason of failure by an employer to pay either the wages earned by the employee or the contribution due on such wages. An individual who is totally unemployed but earns in excess of sixty dollars as a result of odd-job or subsidiary work, or is paid a bonus in any benefit week shall be paid benefits for such week in accordance with the provisions of this chapter pertaining to benefits for partial unemployment.

The maximum benefit for each wage class shall be equal to twenty-six times the weekly benefit rate.

The maximum benefit rate shall be sixty-six and two-thirds percent of the average weekly wage in West Virginia.

On the first day of July of each year, the commissioner shall determine the maximum weekly benefit rate upon the basis of the formula set forth above and shall establish wage classes as are required, increasing or decreasing the amount of the base period wages required for each wage class by one hundred fifty dollars, establishing the weekly benefit rate for each wage class by rounded dollar amount to be fifty-five percent of one fifty-second of the median dollar amount of wages in the base period for such wage class, and establishing the maximum benefit for each wage class as an amount equal to twenty-six times the weekly benefit rate. The maximum weekly benefit rate, when computed by the commissioner, in accordance with the foregoing provisions, shall be rounded to the next lowest multiple of one dollar.
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Note: The benefit rate is based on the highest wages earned in the base period, but the actual weekly benefit is capped at a maximum of $624.00.
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After he or she has established such wage classes, the commissioner shall prepare and publish a table setting forth such information.

Average weekly wage shall be computed by dividing the number of employees in West Virginia earning wages in covered employment into the total wages paid to employees in West Virginia in covered employment, and by further dividing said result by fifty-two, and shall be determined from employer wage and contribution reports for the previous calendar year which are furnished to the department on or before the first day of June following such calendar year. The average weekly wage, as determined by the commissioner, shall be rounded to the next higher dollar.

The computation and determination of rates as afore-said shall be completed annually before the first day of July, and any such new wage class, with its corresponding wages in base period, weekly benefit rate, and maximum benefit in a benefit year established by the commissioner in the foregoing manner effective on the first day of July, shall apply only to a new claim established by a claimant on and after said first day of July, and does not apply to continued claims of a claimant based on his or her new claim established before said first day of July.

§21A-6-15. Benefit payments for service with nonprofit organizations, state hospitals, institutions of higher education, educational institutions and governmental entities.
(a) Benefits based on service in employment as defined in subdivisions (9) and (10), section sixteen, article one-a of this chapter, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this chapter; except that benefits based on service in an instructional, research or principal administrative capacity in an institution of higher education shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services, in any such capacity for any institution or institutions of higher education for both such academic years or both such terms.

(b) Benefits based on service in employment defined in subdivisions (9) and (10), section sixteen, article one-a of this chapter, are payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this chapter, except that:

(1) With respect to services in an instructional, research or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week commencing during the period between two successive academic years or terms, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms or after such holiday or vacation period.

(2) With respect to services in any other capacity for an educational institution, benefits shall not be paid on the basis of such services to any individual for any week
which commences during a period between two successive
academic years or terms if such individual performs such
services in the first of such academic years or terms and
there is a reasonable assurance that such individual will
perform such services in the second of such academic
years or terms, except that if compensation is denied to
any individual under this subsection and such individual
was not offered an opportunity to perform such services
for the educational institution for the second of such aca-
demic years or terms, such individual is entitled to a retro-
active payment of compensation for each week for which
the individual filed a timely claim for compensation and
for which compensation was denied solely by reason of
this clause.

(3) With respect to services described in subdivisions
(1) and (2) of this subsection, benefits shall not be paid
to any individual for any week which commences during
an established and customary vacation period or holiday
recess if such individual performs such services in the
period immediately before such vacation period or holi-
day recess, and there is a reasonable assurance that such
individual will perform such services in the period imme-
diately following such vacation period or holiday recess.

(4) Benefits payable on the basis of services in any
such capacities as specified in subdivisions (1) and (2) of
this subsection shall be denied as specified in subdivisions
(1), (2) and (3) of this subsection to any individual who
performed such services in an educational institution while
in the employ of an educational service agency. For pur-
poses of this subdivision the term "educational service
agency" means a governmental agency or governmental
entity which is established and operated exclusively for the
purpose of providing such services to one or more educa-
tional institutions.

ARTICLE 8. UNEMPLOYMENT COMPENSATION FUND.

§21A-8-15. Administrative use of money credited to account of
state in unemployment trust fund pursuant to
§903 of Social Security Act.
(a) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section nine hundred three of the Social Security Act, as amended, may not be requisitioned from this state's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of this chapter. Such money may be requisitioned pursuant to section ten of this article for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of this chapter but only pursuant to a specific appropriation by the Legislature and only if the expenses are incurred and the money requisitioned after the enactment of an appropriation law which specifies the purposes for which such money is appropriated and the amounts appropriated therefor. Such appropriation is subject to the following conditions:

(1) The period within which such money may be obligated is limited to a period ending not more than two years after the effective date of the appropriation law; and

(2) The amount which may be obligated is limited to an amount which does not exceed the amount by which (A) the aggregate of the amounts transferred to the account of this state pursuant to section 903 of the social security act exceeds, (B) the aggregate of the amounts used by this state pursuant to this chapter and charged against the amounts transferred to the account of this state.

(b) For purposes of subdivision (2) of subsection (a), amounts obligated for administrative purposes pursuant to an appropriation shall be chargeable against transferred amounts at the exact time the obligation is entered into. The appropriation, obligation, and expenditure or other disposition of money appropriated under subdivision (2) shall be accounted for in accordance with standards established by the United States secretary of labor.

(c) Money requisitioned for the payment of expenses of administration pursuant to this section shall be deposited in the employment security administration fund, but, until expended, shall remain a part of the unemployment compensation fund. The commissioner shall maintain a
separate record of the deposit, obligation, expenditure, and return of funds so deposited. If any money so deposited is, for any reason, not to be expended for the purpose for which it was appropriated, or, if it remains unexpended at the end of the period specified by the law appropriating such money, it shall be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

ARTICLE 9. UNEMPLOYMENT COMPENSATION ADMINISTRATION FUND.


(a) There is hereby appropriated out of funds made available to this state under section 903 of the Social Security Act, as amended, the sum of four hundred thirty-four thousand five hundred seventy-four dollars and eighty-four cents, or so much thereof as may be necessary, to be used, for the purpose of property improvements and/or automation enhancements of the unemployment insurance or job service activities within the bureau of employment programs.

(b) No part of the money hereby appropriated may be obligated after the ninth day of March, one thousand nine hundred ninety-eight.

(c) The amount obligated pursuant to this section shall not exceed at any time the amount by which (1) the aggregate of the amounts transferred to the account of this state pursuant to section 903 of the Social Security Act exceeds (2) the aggregate of the amounts obligated for administration and paid out for benefits and required by law to be charged against the amounts transferred to the account of this state.

(d) This section is effective on and after the ninth day of March, one thousand nine hundred ninety-six.

ARTICLE 10. GENERAL PROVISIONS.

§21A-10-17. Right to amend or repeal chapter; application of certain provisions.
The Legislature reserves the right to amend or repeal all or any part of this chapter and no private rights shall vest against any legislative amendment or change or repeal. All rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the Legislature to amend or repeal this chapter at any time.
§51-1A-3. Power to answer.
§51-1A-4. Power to amend question.
§51-1A-5. Certification order; record.
§51-1A-6. Contents of certification order.
§51-1A-7. Notice; preference.
§51-1A-8. Procedures.
§51-1A-10. Cost of certification.
§51-1A-11. Severability.
§51-1A-12. Construction.

§51-1A-1. Definitions.

As used in this article:

1 (1) "State" means a state of the United States, the Dis-
2 trict of Columbia, the Commonwealth of Puerto Rico or
3 any territory or insular possession subject to the jurisdic-
4 tion of the United States.
5
6 (2) "Tribe" means a native American tribe, band or
7 village recognized by federal law or formally acknowled-
8 ged by a state.

§51-1A-2. Power to certify.

The supreme court of appeals of West Virginia, on the
motion of a party to a pending cause or its own motion,
may certify a question of law to the highest court of an-
other state or of a tribe or of Canada, a Canadian province
or territory, Mexico or a Mexican state if:

1 (1) The pending cause involves a question to be decid-
2 ed under the law of the other state or of the tribe or of
3 Canada, the Canadian province or territory, Mexico or the
4 Mexican state;
5
6 (2) The answer to the question may be determinative
7 of an issue in the pending cause; and
8
9 (3) The question is one for which no answer is provid-
10 ed by a controlling appellate decision, constitutional pro-
11 vision or statute of the other state or of the tribe or of
12 Canada, the Canadian province or territory, Mexico or the
13 Mexican state.
§51-1A-3. Power to answer.

The supreme court of appeals of West Virginia may answer a question of law certified to it by any court of the United States or by the highest appellate court or the intermediate appellate court of another state or of a tribe or of Canada, a Canadian province or territory, Mexico or a Mexican state, if the answer may be determinative of an issue in a pending cause in the certifying court and if there is no controlling appellate decision, constitutional provision or statute of this state.

§51-1A-4. Power to amend question.

The supreme court of appeals of West Virginia may reformulate a question certified to it.

§51-1A-5. Certification order; record.

The court certifying a question shall issue a certification order and shall forward it to the designated receiving court. Before responding to a certified question, the receiving court may require the certifying court to deliver its record, or any portion of the record, to the receiving court.

§51-1A-6. Contents of certification order.

(a) A certification order must contain:

(1) The question of law to be answered;

(2) The facts relevant to the question, showing fully the nature of the controversy out of which the question arose;

(3) A statement acknowledging that the receiving court may reformulate the question; and

(4) The names and addresses of counsel of record and unrepresented parties.

(b) If the parties cannot agree upon a statement of facts, then the certifying court shall determine the relevant facts and shall state them as a part of its certification order.

§51-1A-7. Notice; preference.

The supreme court of appeals of West Virginia, acting as the receiving court, shall notify the certifying court of
its acceptance or rejection of the question; and in accordance with notions of comity and fairness, it shall respond to an accepted certified question as soon as practicable.

§51-1A-8. Procedures.

1 After the supreme court of appeals of West Virginia has accepted a certified question, proceedings are governed by the rules and statutes of this state governing briefs, arguments and other appellate procedures. Procedures for certification from this state to a receiving court shall be those provided in the rules and statutes of the receiving forum.


1 The supreme court of appeals of West Virginia shall state in a written opinion the law answering the certified question and send a copy of the opinion to the certifying court, to counsel of record and to unrepresented parties.

§51-1A-10. Cost of certification.

1 Fees and costs are the same as in civil appeals docketed before the supreme court of appeals of West Virginia and shall be equally divided between the parties unless otherwise ordered by the certifying court.

§51-1A-11. Severability.

1 If any provision of this article or its application to any person, court or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

§51-1A-12. Construction.

1 This article shall be construed as to effectuate its general purpose to make uniform the law of those jurisdictions which enact it.


1 This article may be cited as the "Uniform Certification of Questions of Law Act".
AN ACT to amend and reenact section one hundred five, article one, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section five hundred twelve, article two of said chapter; to amend and reenact article five of said chapter; and to amend and reenact sections one hundred three, one hundred four, one hundred five, one hundred six, three hundred four and three hundred five, article nine of said chapter, all relating to letters of credit generally; general provisions; applicable law; sales; payment by buyer before inspection; short title; definitions; scope of provisions; formal requirements; consideration; issuance, amendment, cancellation and duration of letters of credit; rights and obligations of confirmer, nominated person and adviser; rights and obligations of issuer; forged or fraudulent document; warranties; remedies; transfer of letter of credit; transfer by operation of law; assignment of proceeds; statute of limitations; choice of law and forum; subrogation rights of issuer, applicant and nominated person; effective date; applicability; savings provisions; secured transactions; perfection of security interests in multiple state transactions; excluded transactions; definitions and index of definitions; expanded definitions; perfecting security interest in written letter of credit; when possession of collateral perfects security interest; and conforming amendments.

Be it enacted by the Legislature of West Virginia:

That section one hundred five, 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 five hundred twelve, article two of said chapter be amended and reenacted; that article five of said chapter be amended and reenacted; that sections one hundred three, one hundred four, one hundred five, one hundred six, three hundred four and three
hundred five, article nine of said chapter be amended and reenacted, all to read as follows:

Article
2. Sales.
5. Letters of Credit.

ARTICLE 1. GENERAL PROVISIONS.

*§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.

2. (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) so specified:

1. Sections 2A-105 and 2A-106, applicability of the article on leases.
2. Section 2-402, rights of creditors against sold goods.
3. Section 4-102, applicability of the article on bank deposits and collections.
4. Section 5-116, letters of credit.
5. Section 8-106, applicability of the article on investment securities.
6. Section 9-103, perfection provisions of the article on secured transactions.

ARTICLE 2. SALES.

§46-2-512. Payment by buyer before inspection.

*Clerk's Note: This section was also amended by H. B. 4371 (Chapter 160), which passed prior to this act.
Where the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless:

(a) The nonconformity appears without inspection; or

(b) Despite tender of the required documents the circumstances would justify injunction against honor under this chapter (section 5-109(b)).

Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

ARTICLE 5. LETTERS OF CREDIT.

§46-5-102. Definitions.
§46-5-103. Scope.
§46-5-104. Formal requirements.
§46-5-105. Consideration.
§46-5-106. Issuance, amendment, cancellation and duration.
§46-5-107. Confirmer, nominated person and adviser.
§46-5-108. Issuer's rights and obligations.
§46-5-109. Fraud and forgery.
§46-5-110. Warranties.
§46-5-111. Remedies.
§46-5-112. Transfer of letter of credit.
§46-5-113. Transfer by operation of law.
§46-5-117. Subrogation of issuer, applicant and nominated person.
§46-5-118. Effective date.
§46-5-119. Applicability.
§46-5-120. Savings clause.


This article may be cited as "Uniform Commercial Code-Letters of Credit".

§46-5-102. Definitions.

(a) In this article:
(1) "Adviser" means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended;

(2) "Applicant" means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer;

(3) "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit;

(4) "Confirmer" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another;

(5) "Dishonor" of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit;

(6) "Document" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion (i) which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in section 5-108(e) and (ii) which is capable of being examined for compliance with the terms and conditions of the letter of credit. A document may not be oral;

(7) "Good faith" means honesty in fact in the conduct or transaction concerned;

(8) "Honor" of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, "honor" occurs:

   (i) Upon payment,
(ii) If the letter of credit provides for acceptance, upon
acceptance of a draft and, at maturity, its payment, or

(iii) If the letter of credit provides for incurring a
delayed obligation, upon incurring the obligation and, at
maturity, its performance;

(9) "Issuer" means a bank or other person that issues a
letter of credit, but does not include an individual who
makes an engagement for personal, family, or household
purposes;

(10) "Letter of credit" means a definite undertaking
that satisfies the requirements of section-104 by an issuer
to a beneficiary at the request or for the account of an
applicant or, in the case of a financial institution, to itself
or for its own account, to honor a documentary presenta-
tion by payment or delivery of an item of value;

(11) "Nominated person" means a person whom the
issuer (i) designates or authorizes to pay, accept, negotiate,
or otherwise give value under a letter of credit and (ii)
undertakes by agreement or custom and practice to reim-
burse;

(12) "Presentation" means delivery of a document to
an issuer or nominated person for honor or giving of
value under a letter of credit;

(13) "Presenter" means a person making a presentation
as or on behalf of a beneficiary or nominated person;

(14) "Record" means information that is inscribed on a
tangible medium, or that is stored in an electronic or other
medium and is retrievable in perceivable form; and

(15) "Successor of a beneficiary" means a person who
succeeds to substantially all of the rights of a beneficiary
by operation of law, including a corporation with or into
which the beneficiary has been merged or consolidated, an
administrator, executor, personal representative, trustee in
bankruptcy, debtor in possession, liquidator, and receiver.

(b) Definitions in other articles applying to this article
and the sections in which they appear are:

"Accept" or "Acceptance" Section 3-409.
"Value" Sections 3-303, 4-211.

(c) Article 1 contains certain additional general definitions and principles of construction and interpretation applicable throughout this article.

§46-5-103. Scope.

(a) This article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(b) The statement of a rule in this article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this article.

(c) With the exception of this subsection, subsections (a) and (d), sections 5-102(a)(9) and (10), 5-106(d), and 5-114(d), and except to the extent prohibited in sections 1-102(3) and 5-117(d), the effect of this article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this article.

(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

§46-5-104. Formal requirements.

A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated (i) by a signature or (ii) in accordance with the agreement of the parties or the standard practice referred to in section 5-108(e).

§46-5-105. Consideration.

Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation.
§46-5-106. Issuance, amendment, cancellation and duration.

(a) A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

(b) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

(c) If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one year after its stated date of issuance or, if none is stated, after the date on which it is issued.

(d) A letter of credit that states that it is perpetual expires five years after its stated date of issuance, or if none is stated, after the date on which it is issued.

§46-5-107. Confirmer, nominated person and adviser.

(a) A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

(b) A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

(c) A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate,
the letter of credit, confirmation, or amendment is enforceable as issued.

(d) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection (c). The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies.

§46-5-108. Issuer's rights and obligations.

(a) Except as otherwise provided in section 5-109, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (e), appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in section 5-113 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

(b) An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:

(1) To honor,

(2) If the letter of credit provides for honor to be completed more than seven business days after presentation, to accept a draft or incur a deferred obligation, or

(3) To give notice to the presenter of discrepancies in the presentation.

(c) Except as otherwise provided in subsection (d), an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

(d) Failure to give the notice specified in subsection (b) or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in section
5-109(a) or expiration of the letter of credit before presentation.

(e) An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

(f) An issuer is not responsible for:

(1) The performance or nonperformance of the underlying contract, arrangement, or transaction;

(2) An act or omission of others; or

(3) Observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection (e).

(g) If an undertaking constituting a letter of credit under section 5-102(a)(10) contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

(h) An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

(i) An issuer that has honored a presentation as permitted or required by this article:

(1) Is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;

(2) Takes the documents free of claims of the beneficiary or presenter;

(3) Is precluded from asserting a right of recourse on a draft under sections 3-414 and 3-415;

(4) Except as otherwise provided in sections 5-110 and 5-117, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and
(5) Is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged.

§46-5-109. Fraud and forgery.

(a) If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:

(1) The issuer shall honor the presentation, if honor is demanded by (i) A nominated person who has given value in good faith and without notice of forgery or material fraud, (ii) a confirmer who has honored its confirmation in good faith, (iii) a holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person, or (iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and

(2) The issuer, acting in good faith, may honor or dishonor the presentation in any other case.

(b) If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

(1) The relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;

(2) A beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;
(3) All of the conditions to entitle a person to the relief under the law of this state have been met; and

(4) On the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under subsection (a)(1).

§46-5-110. Warranties.

(a) If its presentation is honored, the beneficiary warrants:

(1) To the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in section 5-109(a); and

(2) To the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

(b) The warranties in subsection (a) are in addition to warranties arising under articles 3, 4, 7, and 8 because of the presentation or transfer of documents covered by any of those articles.

§46-5-111. Remedies.

(a) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer
has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

(b) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

(c) If an adviser or nominated person other than a confirmer breaches an obligation under this article or an issuer breaches an obligation not covered in subsection (a) or (b), a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections (a) and (b).

(d) An issuer, nominated person, or adviser who is found liable under subsections (a), (b), or (c) shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.

(e) Reasonable attorney’s fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this article.

(f) Damages that would otherwise be payable by a party for breach of an obligation under this article may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated.

§46-5-112. Transfer of letter of credit.

(a) Except as otherwise provided in section 5-113, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.

(b) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:
(1) The transfer would violate applicable law; or
(2) The transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in section 5-108(e) or is otherwise reasonable under the circumstances.

§46-5-113. Transfer by operation of law.
(a) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.
(b) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection (e), an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in section 5-108(e) or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.
(c) An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.
(d) Honor of a purported successor's apparently complying presentation under subsections (a) or (b) has the consequences specified in section 5-108(i) even if the purported successor is not the successor of a beneficiary.
Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of section 5-109.
(e) An issuer whose rights of reimbursement are not covered by subsection (d) or substantially similar law and
any confirmer or nominated person may decline to recognize a presentation under subsection (b).

(f) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section.


(a) In this section, "proceeds of a letter of credit" means the cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

(b) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.

(c) An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.

(d) An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

(e) Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

(f) Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's
rights to proceeds is governed by Article 9 or other law.
Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by Article 9 or other law.


An action to enforce a right or obligation arising under this article must be commenced within one year after the expiration date of the relevant letter of credit or one year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.


(a) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in section 5-104 or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(b) Unless subsection (a) applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

(c) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is gov-
25 erned by any rules of custom or practice, such as the uni-
26 form customs and practice for documentary credits, to
27 which the letter of credit, confirmation, or other undertak-
28 ing is expressly made subject. If (i) this article would
29 govern the liability of an issuer, nominated person, or
30 adviser under subsection (a) or (b), (ii) the relevant undertak-
31 ing incorporates rules of custom or practice, and (iii)
32 there is conflict between this article and those rules as
33 applied to that undertaking, those rules govern except to
34 the extent of any conflict with the nonvariable provisions
35 specified in section 5-103(c).
36 (d) If there is conflict between this article and articles
37 3, 4, 4A, or 9, this article governs.
38 (e) The forum for settling disputes arising out of an
39 undertaking within this article may be chosen in the man-
40 ner and with the binding effect that governing law may be
41 chosen in accordance with subsection (a).

§46-5-117. Subrogation of issuer, applicant and nominated person.

1 (a) An issuer that honors a beneficiary's presentation is
2 subrogated to the rights of the beneficiary to the same
3 extent as if the issuer were a secondary obligor of the
4 underlying obligation owed to the beneficiary and of the
5 applicant to the same extent as if the issuer were the sec-
6 ondary obligor of the underlying obligation owed to the
7 applicant.
8 (b) An applicant that reimburses an issuer is subrogat-
9 ed to the rights of the issuer against any beneficiary, pre-
10 senter, or nominated person to the same extent as if the
11 applicant were the secondary obligor of the obligations
12 owed to the issuer and has the rights of subrogation of the
13 issuer to the rights of the beneficiary stated in subsection
14 (a).
15 (c) A nominated person who pays or gives value
16 against a draft or demand presented under a letter of cred-
17 it is subrogated to the rights of:
(1) The issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;

(2) The beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and

(3) The applicant to same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

(d) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections (a) and (b) do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection (c) do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse.

§46-5-118. Effective date.

The reenactment of this article shall become effective on the first day of July, one thousand nine hundred ninety-six.

§46-5-119. Applicability.

This article applies to a letter of credit that is issued on or after the effective date of the reenactment of this article.

This article does not apply to a transaction, event, obligation, or duty arising out of or associated with a letter of credit that was issued before the first day of July, one thousand nine hundred ninety-six.

§46-5-120. Savings clause.

A transaction arising out of or associated with a letter of credit that was issued before the effective date of the reenactment of this article in the year one thousand nine hundred ninety-six and the rights, obligations, and interests flowing from that transaction are governed by any statute or other law amended by the reenactment of this article as if the amendment had not occurred and may be
terminated, completed, consummated, or enforced under that statute or other law.

ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER.


§46-9-104. Transactions excluded from article.

§46-9-105. Definitions and index of definitions.

§46-9-106. Definitions: "Account"; "general intangibles".

§46-9-304. Perfection of security interest in instruments, documents, proceeds of a written letter of credit, 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.


1 (1) Documents, instruments, letters of credit, and ordinary goods. —

2 (a) This subsection applies to documents, instruments, rights to proceeds of written letters of credit, and 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 understand 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 interest from the time it attaches until thirty days after the debtor or receives possession of the goods and thereafter if the
(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 removed, the security interest remains perfected, but if action is required by Part 3 of this article to perfect the security interest:

(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 consumer 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 condition 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
(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) subsection (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 the United States in which the debtor has its major exec-
utive 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 resi-
dence. If, however, the debtor is a foreign air carrier un-
der 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 debt-
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 represented thereby are governed by the local law of that jurisdiction.

(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 interme-
diary and commodity customer does not specify the gov-
erning 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 interme-
diary and commodity customer does not specify a juris-
diction as provided in paragraphs (i) or (ii) of this subdivi-
sion, 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 interme-
diary and commodity customer does not specify a juris-
diction as provided in subparagraph (i) or (ii) of this sub-
division and an account statement does not identify an
office serving the commodity customer's account as pro-
vided in paragraph (iii) of this subdivision, the commodity
intermediary's jurisdiction is the jurisdiction in which is
located the chief executive office of the commodity inter-
mediary.

(f) Perfection of a security interest by filing, automatic
perfection of a security interest in investment property
granted by a broker or securities intermediary, and auto-
matic perfection of a security interest in a commodity
contract or commodity account granted by a commodity
intermediary are governed by the local law of the jurisdic-
tion in which the debtor is located.

§46-9-104. Transactions excluded from article.

This article does not apply:

(a) to a security interest subject to any statute of the
United States such as the Ship Mortgage Act, 1920, to the
extent that such statute governs the rights of parties to and
third parties affected by transactions in particular types of
property; or
(b) To a landlord's lien; or

c) to a lien given by statute or other rule of law for
services or materials except as provided in section 9-310
on priority of such liens; or

d) To a transfer of a claim for wages, salary or other
compensation of an employee; or

e) To a transfer by a government or governmental
subdivision or agency; or

(f) To a sale of accounts or chattel paper as part of a
sale of the business out of which they arose, or an assign­
ment of accounts or chattel paper which is for the purpose
of collection only, or a transfer of a right to payment
under a contract to an assignee who is also to do the per­
formance under the contract or a transfer of a single ac­
count to an assignee in whole or partial satisfaction of a
preexisting indebtedness; or

(g) To a transfer of an interest in or claim in or under
any policy of insurance, except as provided with respect to
proceeds (section 9-306) and priorities in proceeds (sec­
tion 9-312); or

(h) To a right represented by a judgment (other than a
judgment taken on a right to payment which was collater­
al); or

(i) To any right of setoff; or

(j) Except to the extent that provision is made for
fixtures in section 9-313, to the creation or transfer of an
interest in or lien on real estate, including a lease or rents
thereunder; or

(k) To a transfer in whole or in part of any claim aris­
ing out of tort; or

(l) To a transfer of an interest in any deposit account
(subsection (1) of section 9-105), except as provided with
respect to proceeds (section 9-306) and priorities in pro­
cceeds (section 9-312); or

(m) To a transfer of an interest in a letter of credit
other than the rights to proceeds of written letter of credit.
§46-9-105. Definitions and index of definitions.

(1) In this article unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts, and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts, or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any 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 1 (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;

*Clerk's Note: This section was also amended by S. B. 157 (Chapter 255), which passed prior to this act.
(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 (defined in section 3-104), or any other writing which evidences 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 including, but not limited to, all certificated certificates of deposit. 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;

(l) "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 elec-
tricity, 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).
"Fixture filing". Section 9-313(1).
"General intangibles". Section 9-106.
"Inventory". Section 9-109(4).
"Investment property". Section 9-115.
"Lien creditor". Section 9-301(3).
"Proceeds". Section 9-306(1).
"Purchase money security interest". Section 9-107.
"United States". Section 9-103.

(3) The following definitions in other articles apply to this article:

"Broker". Section 8-102.
"Certificated security". Section 8-102.
"Check". Section 3-104.
§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, rights to proceeds of written letters of credit 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.
§46-9-304. Perfection of security interest in instruments, documents, proceeds of a written letter of credit, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.

1 (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in the rights to proceeds of a written letter of credit can be perfected only by the secured party's taking possession of the letter of credit. 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 (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 (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 (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 (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 preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to subsection (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 transfer.

(6) After the twenty-one-day period in subsections (4) and (5) of this section perfection depends upon compliance 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, instruments, (other than certificated securities), money, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. A security interest in the right to proceeds of a written letter of credit may be perfected by the secured party's taking possession of the letter of credit. 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 bailee 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 otherwise perfected as provided in this article before or after the period of possession by the secured party.
CHAPTER 255

(S. B. 157—By Senators Wooton, Bowman, Buckalew, Deem, Dittmar, Miller, Oliverio, Ross and Scott)

[Passed March 7, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred five, article nine, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying that a certificated certificate of deposit is an "instrument" for purposes of secured transactions governed by the uniform commercial code.

Be it enacted by the Legislature of West Virginia:

That section one hundred five, article nine, chapter forty-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. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER.

*§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 obligated on an account, chattel paper or general intangible;
3. (b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;
4. (c) "Collateral" means the property subject to a security interest, and includes accounts, and chattel paper which have been sold;

*Clerk's Note: This section was also amended by H. B. 4669 (Chapter 254), which passed subsequent to this act.
(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts, or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any 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 1 (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 (defined in section 3-104), or any other writing which evidences 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, including, but not limited to, all certificated certificates of deposit. 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;

(l) "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).
"Fixture filing". Section 9-313(1).
91 "General intangibles". Section 9-106.
92 "Inventory". Section 9-109(4).
93 "Investment property". Section 9-115.
94 "Lien creditor". Section 9-301(3).
95 "Proceeds". Section 9-306(1).
96 "Purchase money security interest". Section 9-107.
97 "United States". Section 9-103.

(3) The following definitions in other articles apply to this article:

100 "Broker". Section 8-102.
101 "Certificated security". Section 8-102.
102 "Check". Section 3-104.
103 "Clearing corporation". Section 8-102.
104 "Contract for sale". Section 2-106.
105 "Control". Section 8-106.
106 "Delivery". Section 8-301.
107 "Entitlement holder". Section 8-102.
108 "Financial asset". Section 8-102.
109 "Holder in due course". Section 3-302.
110 "Note". Section 3-104.
111 "Sale". Section 2-106.
112 "Securities intermediary". Section 8-102.
113 "Security". Section 8-102.
114 "Security certificate". Section 8-102.
115 "Security entitlement". Section 8-102.
116 "Uncertificated security". Section 8-102.

(4) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.
AN ACT to repeal article one-a, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said code by adding thereto a new chapter, designated chapter thirty-one-b; and to amend and reenact section ten, article six, chapter forty-seven of said code, all relating to adopting the uniform limited liability company act of 1996; general provisions; definitions; knowledge and notice of a fact; effect of operating agreement; nonwaivable provisions; applicability of supplemental principles of law and equity; requirements for name; reservation of name; registration of name; designation of office and agent for service of process; change thereof; resignation of agent for service of process; agent for service of process; nature of business and powers; organization; limited liability company as legal entity; articles of organization; amendment or restatement thereof; signing of records; requirement for filing in office of secretary of state; correction of filed record; certificate of existence or authorization; liability for false statement in filed record; filing compelled by court; annual report to be filed with secretary of state; relations of members and managers to persons dealing with limited liability company; agency of members and managers; limited liability company liable for member's or manager's actionable conduct; liability of members and managers; relations of members to each other and to limited liability company; form of contribution; member's liability for contributions; member's and manager's rights to payments and reimbursement; management of limited liability company; sharing of and right to distributions; limitations on distributions; liability for unlawful distributions; member's right to information; general standards of member's and manager's conduct; actions by members; continuation of limited liability company after expiration of specified term; transferees and creditors of member; member's distributional interest; transfer of
distributional interest; rights of transferee; rights of creditor; member's dissociation; events causing member's dissociation; member's power to dissociate; wrongful dissociation; effect of member's dissociation; member's dissociation when business not wound up; company purchase of distributional interest; court action to determine fair value of distributional interest; dissociated member's power to bind limited liability company; statement of dissociation; winding up company's business; events causing dissolution and winding up of company's business; limited liability company continues after dissolution; right to wind up limited liability company's business; member's or manager's power and liability as agent after dissolution; articles of termination; distribution of assets in winding up business; known claims against dissolved limited liability company; other claims against dissolved limited liability company; grounds for administrative dissolution by secretary of state; procedures for and effect thereof; reinstatement following administrative dissolution; appeal from denial of reinstatement; conversions and mergers; definitions; conversion of partnership or limited partnership to limited liability company; effect of conversion; entity unchanged; merger of entities; confirmation of title to real estate; articles of merger; effect of merger; article not exclusive over conversion or merger; foreign limited liability companies; law governing same; application for certificate of authority; activities not constituting transaction of business; issuance of certificate of authority; name of foreign limited liability company; revocation of certificate of authority; cancellation of authority; effect of failure to obtain certificate of authority; action by attorney general; derivative actions; right of action; proper plaintiff; requirements of pleading; award of expenses; miscellaneous provisions; uniformity of application and construction; short title; severability; effective date; transitional provisions; savings clause; professional limited liability companies; definitions; membership and authorization; name requirements; duty of professional licensing boards; professional relationship not affected; liability of company, its members, managers, agents and employees; professional liability insurance and requirements; applicability of other provisions of law; and prohibiting limited liability companies from asserting the defense of usury.
Be it enacted by the Legislature of West Virginia:

That article one-a, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that said code be further amended by adding thereto a new chapter, designated chapter thirty-one-b; and that section ten, article six, chapter forty-seven of said code be amended and reenacted, all to read as follows:

Chapter
47. Regulation of Trade.

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

Article
2. Organization.
3. Relations of Members and Managers to Persons Dealing with Limited Liability Company.
4. Relations of Members to Each Other and to Limited Liability Company.
5. Transferees and Creditors of Member.
6. Member's Dissociation.
8. Winding Up Company's Business.
9. Conversions and Merges.
10. Foreign Limited Liability Companies.
11. Derivative Actions.
13. Professional Limited Liability Companies.

ARTICLE 1. GENERAL PROVISIONS.

§31B-1-102. Knowledge and notice.
§31B-1-103. Effect of operating agreement; nonwaivable provisions.
§31B-1-104. Supplemental principles of law.
§31B-1-105. Name.
§31B-1-106. Reserved name.
§31B-1-107. Registered name.
§31B-1-108. Designated office and agent for service of process.
§31B-1-109. Change of designated office or agent for service of process.
§31B-1-110. Resignation of agent for service of process.
§31B-1-111. Service of process.

In this chapter:

(1) "Articles of organization" means initial, amended, and restated articles of organization and articles of merger. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed in the office of the secretary of state or other official having custody of company records in the state or country under whose law it is organized.

(2) "At-will company" means a limited liability company other than a term company.

(3) "Business" includes every trade, occupation, profession and other lawful purpose, whether or not carried on for profit.

(4) "Debtor in bankruptcy" means a person who is the subject of an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application or a comparable order under federal, state or foreign law governing insolvency.

(5) "Distribution" means a transfer of money, property or other benefit from a limited liability company to a member in the member's capacity as a member or to a transferee of the member's distributional interest.

(6) "Distributional interest" means all of a member's interest in distributions by the limited liability company.

(7) "Entity" means a person other than an individual.

(8) "Foreign limited liability company" means an unincorporated entity organized under laws other than the laws of this state which afford limited liability to its owners comparable to the liability under section 3-303 and is not required to obtain a certificate of authority to transact business under any law of this state other than this chapter.

(9) "Limited liability company" means a limited liability company organized under this chapter.
(10) "Manager" means a person, whether or not a member of a manager-managed company, who is vested with authority under section 3-301.

(11) "Manager-managed company" means a limited liability company which is so designated in its articles of organization.

(12) "Member-managed company" means a limited liability company other than a manager-managed company.

(13) "Operating agreement" means the agreement under section 1-103 concerning the relations among the members, managers and limited liability company. The term includes amendments to the agreement.

(14) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality or any other legal or commercial entity.

(15) "Principal office" means the office, whether or not in this state, where the principal executive office of a domestic or foreign limited liability company is located.

(16) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(17) "Sign" means to identify a record by means of a signature, mark or other symbol, with intent to authenticate it.

(18) "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.

(19) "Term company" means a limited liability company in which its members have agreed to remain members until the expiration of a term specified in the articles of organization.
(20) "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance and gift.

§31B-1-102. 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 the fact;

(2) Has received a notification of the fact; or

(3) Has reason to know the fact exists from all of the facts known to the person at the time in question.

(c) A person notifies or gives a notification of a fact to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.

(d) A person receives a notification when the notification:

(1) Comes to the person's attention; or

(2) Is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(e) An entity knows, has notice or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the entity knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention had the entity exercised reasonable diligence. An entity exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the entity and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the entity to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the
transaction and that the transaction would be materially
affected by the information.

§31B-1-103. Effect of operating agreement; nonwaivable pro-
visions.

(a) Except as otherwise provided in subsection (b) of
this section, all members of a limited liability company
may enter into an operating agreement, which need not be
in writing, to regulate the affairs of the company and the
conduct of its business, and to govern relations among the
members, managers and company. To the extent the
operating agreement does not otherwise provide, this
chapter governs relations among the members, managers
and company.

(b) The operating agreement may not:

(1) Unreasonably restrict a right to information or
access to records under section 4-408;

(2) Eliminate the duty of loyalty under section
4-409(b) or 6-603(b)(3), but the agreement may:

(i) Identify specific types or categories of activities
that do not violate the duty of loyalty, if not manifestly
unreasonable; and

(ii) Specify the number or percentage of members or
disinterested managers that may authorize or ratify, after
full disclosure of all material facts, a specific act or trans-
action that otherwise would violate the duty of loyalty;

(3) Unreasonably reduce the duty of care under sec-
section 4-409(c) or 6-603(b)(3);

(4) Eliminate the obligation of good faith and fair
dealing under section 4-409(d), but the operating agree-
ment may determine the standards by which the perfor-

mance of the obligation is to be measured, if the standards
are not manifestly unreasonable;

(5) Vary the right to expel a member in an event spec-
ified in section 6-601(6);
(6) Vary the requirement to wind up the limited liability company's business in a case specified in section 8-801(b)(4) or (b)(5); or

(7) Restrict rights of a person, other than a manager, member and transferee of a member's distributonal interest, under this chapter.

§31B-1-104. 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 specified in section thirty-one, article six, chapter fifty-six of this code.

§31B-1-105. Name.

(a) The name of a limited liability company must contain "limited liability company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C." or "LC". "Limited" may be abbreviated as "Ltd." and "company" may be abbreviated as "Co."

(b) Except as authorized by subsections (c) and (d) of this section, the name of a limited liability company must be distinguishable upon the records of the secretary of state from:

(1) The name of any corporation, limited partnership or company incorporated, organized or authorized to transact business in this state;

(2) A name reserved or registered under section 1-106 or 1-107;

(3) A fictitious name approved under section 10-1005 for a foreign company authorized to transact business in this state because its real name is unavailable.

(c) A limited liability company may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records of the secretary of state
from one or more of the names described in subsection (b) of this section. The secretary of state shall authorize use of the name applied for if:

(1) The present user, registrant or owner of a reserved name consents to the use in a record and submits an undertaking in form satisfactory to the secretary of state to change the name to a name that is distinguishable upon the records of the secretary of state from the name applied for; or

(2) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A limited liability company may use the name, including a fictitious name, of another domestic or foreign company which is used in this state if the other company is organized or authorized to transact business in this state and the company proposing to use the name has:

(1) Merged with the other company;

(2) Been formed by reorganization with the other company; or

(3) Acquired substantially all of the assets, including the name, of the other company.

§31B-1-106. Reserved name.

(a) A person may reserve the exclusive use of the name of a limited liability company, including a fictitious name for a foreign company whose name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the name applied for is available, it must be reserved for the applicant's exclusive use for a nonrenewable one hundred twenty-day period.

(b) The owner of a name reserved for a limited liability company may transfer the reservation to another person by delivering to the secretary of state a signed notice of
§31B-1-107. Registered name.

(a) A foreign limited liability company may register its name subject to the requirements of section 10-1005, if the name is distinguishable upon the records of the secretary of state from names that are not available under section 1-105(b).

(b) A foreign limited liability company registers its name, or its name with any addition required by section 10-1005, by delivering to the secretary of state for filing an application:

1. Setting forth its name, or its name with any addition required by section 10-1005, the state or country and date of its organization and a brief description of the nature of the business in which it is engaged; and

2. Accompanied by a certificate of existence, or a record of similar import, from the state or country of organization.

(c) A foreign limited liability company whose registration is effective may renew it for successive years by delivering for filing in the office of the secretary of state a renewal application complying with subsection (b) of this section between the first day of October and the thirty-first day of December of the preceding year. The renewal application renews the registration for the following calendar year.

(d) A foreign limited liability company whose registration is effective may qualify as a foreign company under its name or consent in writing to the use of its name by a limited liability company later organized under this chapter or by another foreign company later authorized to transact business in this state. The registered name terminates when the limited liability company is organized or the foreign company qualifies or consents to the qualification of another foreign company under the registered name.
§31B-1-108. Designated office and agent for service of process.

(a) A limited liability company and a foreign limited liability company authorized to do business in this state shall designate and continuously maintain in this state:

(1) An office, which need not be a place of its business in this state; and

(2) An agent and street address of the agent for service of process on the company.

(b) An agent must be an individual resident of this state, a domestic corporation, another limited liability company or a foreign corporation or foreign company authorized to do business in this state.

c) Every foreign limited liability company and every domestic limited liability company whose principal place of business is located outside the state shall pay an annual fee of ten dollars for the services of the secretary of state as attorney-in-fact for such limited liability company, which fee shall be due and payable at the same time that the annual report required under section two hundred eleven, article two of this chapter is due, and such fees shall be used to offset the costs of the secretary of state for his or her services as attorney-in-fact.

§31B-1-109. Change of designated office or agent for service of process.

A limited liability company may change its designated office or agent for service of process by delivering to the secretary of state for filing a statement of change which sets forth:

(1) The name of the company;

(2) The street address of its current designated office;

(3) If the current designated office is to be changed, the street address of the new designated office;

(4) The name and address of its current agent for service of process; and
(5) If the current agent for service of process or street address of that agent is to be changed, the new address or the name and street address of the new agent for service of process.

§31B-1-110. Resignation of agent for service of process.

(a) An agent for service of process of a limited liability company may resign by delivering to the secretary of state for filing a record of the statement of resignation.

(b) After filing a statement of resignation, the secretary of state shall mail a copy to the designated office and another copy to the limited liability company at its principal office.

(c) An agency is terminated on the thirty-first day after the statement is filed in the office of the secretary of state.

§31B-1-111. Service of process.

(a) An agent for service of process appointed by a limited liability company or a foreign limited liability company is an agent of the company for service of any process, notice or demand required or permitted by law to be served upon the company.

(b) If a limited liability company or foreign limited liability company fails to appoint or maintain an agent for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the agent's address, the secretary of state is an agent of the company upon whom process, notice or demand may be served.

(c) Service of any process, notice or demand on the secretary of state may be made by delivering to and leaving with the secretary of state, the assistant secretary of state or clerk having charge of the limited liability company department of the secretary of state, the original process, notice or demand and two copies thereof for each defendant, along with a fee of ten dollars. No process, notice or demand may be served on or accepted by the secretary of state less than ten days before the return day.
thereof. If the process, notice or demand is served on the secretary of state, the secretary of state shall forward one of the copies by registered or certified mail, return receipt requested, to the company at its designated office and shall file in his or her office a copy of such process, notice or demand, with a note thereon endorsed of the time of service, or acceptance, as the case may be. Such service or acceptance of such process, notice or demand is sufficient if such return receipt is signed by an agent or employee of such company, or the registered or certified mail so sent by the secretary of state is refused by the addressee and the registered or certified mail is returned to the secretary of state, showing thereon the stamp of the United States postal service that delivery thereof has been refused, and such return receipt or registered or certified mail is appended to the original process, notice or demand and filed therewith in the clerk's office of the court from which such process, notice or demand was issued.

(d) The secretary of state shall keep a record of all processes, notices and demands served pursuant to this section and record the time of and the action taken regarding the service.

(e) This section does not affect the right to serve process, notice or demand in any manner otherwise provided by law.


(a) A limited liability company may be organized under this chapter for any lawful purpose, subject to any law of this state governing or regulating business.

(b) Unless its articles of organization provide otherwise, a limited liability company has the same powers as an individual to do all things necessary or convenient to carry on its business or affairs, including power to:

(1) Sue and be sued, and defend in its name;

(2) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use and otherwise deal with real or personal property, or any legal or equitable interest in property, wherever located;
(3) Sell, convey, mortgage, grant a security interest in, lease, exchange and otherwise encumber or dispose of all or any part of its property;

(4) Purchase, receive, subscribe for or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity;

(5) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligations by a mortgage on or a security interest in any of its property, franchises or income;

(6) Lend money, invest and reinvest its funds and receive and hold real and personal property as security for repayment;

(7) Be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other entity;

(8) Conduct its business, locate offices and exercise the powers granted by this chapter within or without this state;

(9) Elect managers and appoint officers, employees and agents of the limited liability company, define their duties, fix their compensation and lend them money and credit;

(10) Pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, option plans and benefit or incentive plans for any or all of its current or former members, managers, officers, employees and agents;

(11) Make donations for the public welfare or for charitable, scientific or educational purposes; and

(12) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business of the limited liability company.
ARTICLE 2. ORGANIZATION.

§31B-2-201. Limited liability company as legal entity.
A limited liability company is a legal entity distinct from its members.

(a) One or more persons may organize a limited liability company, consisting of one or more members, by delivering articles of organization to the office of the secretary of state for filing, together with a fee in the amount of one hundred dollars.

(b) Unless a delayed effective date is specified, the existence of a limited liability company begins when the articles of organization are filed.

(c) The filing of the articles of organization by the secretary of state is conclusive proof that the organizers satisfied all conditions precedent to the creation of a limited liability company.

§31B-2-203. Articles of organization.
(a) Articles of organization of a limited liability company must set forth:

(1) The name of the company;

(2) The address of the initial designated office;

(3) The name and street address of the initial agent for service of process;
(4) The name and address of each organizer;

(5) Whether the company is to be a term company and, if so, the term specified;

(6) Whether the company is to be manager-managed, and, if so, the name and address of each initial manager; and

(7) Whether one or more of the members of the company are to be liable for its debts and obligations under section 3-303(c).

(b) Articles of organization of a limited liability company may set forth:

(1) Provisions permitted to be set forth in an operating agreement; or

(2) Other matters not inconsistent with law.

(c) Articles of organization of a limited liability company may not vary the nonwaivable provisions of section 1-103(b). As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

(1) The operating agreement controls as to managers, members and members' transferees; and

(2) The articles of organization control as to persons other than managers, members and their transferees who reasonably rely on the articles to their detriment.

§31B-2-204. Amendment or restatement of articles of organization.

(a) Articles of organization of a limited liability company may be amended at any time by delivering articles of amendment to the secretary of state for filing. The articles of amendment must set forth the:

(1) Name of the limited liability company;

(2) Date of filing of the articles of organization; and

(3) Amendment to the articles.
A limited liability company may restate its articles of organization at any time. Restated articles of organization must be signed and filed in the same manner as articles of amendment. Restated articles of organization must be designated as such in the heading and state in the heading or in an introductory paragraph the limited liability company's present name and, if it has been changed, all of its former names and the date of the filing of its initial articles of organization.

§31B-2-205. Signing of records.

(a) Except as otherwise provided in this chapter, a record to be filed by or on behalf of a limited liability company in the office of the secretary of state must be signed in the name of the company by a:

(1) Manager of a manager-managed company;

(2) Member of a member-managed company;

(3) Person organizing the company, if the company has not been formed; or

(4) Fiduciary, if the company is in the hands of a receiver, trustee or other court-appointed fiduciary.

(b) A record signed under subsection (a) of this section must state adjacent to the signature the name and capacity of the signer.

(c) Any person may sign a record to be filed under subsection (a) of this section by an attorney-in-fact. Powers of attorney relating to the signing of records to be filed under subsection (a) of this section by an attorney-in-fact need not be filed in the office of the secretary of state as evidence of authority by the person filing but must be retained by the company.

§31B-2-206. Filing in office of secretary of state.

(a) Articles of organization or any other record authorized to be filed under this chapter must be in a medium permitted by the secretary of state and must be delivered to the office of the secretary of state. Unless the secretary of state determines that a record fails to comply as to form
with the filing requirements of this chapter, and if all filing
fees have been paid, the secretary of state shall file the
record and send a receipt for the record and the fees to the
limited liability company or its representative.

(b) Upon request and payment of a fee, the secretary
of state shall send to the requester a certified copy of the
requested record.

(c) Except as otherwise provided in subsection (d) of
this section and section 2-207(c), a record accepted for
filing by the secretary of state is effective:

(1) At the time of filing on the date it is filed, as evi-
denced by the secretary of state's date and time endorse-
ment on the original record; or

(2) At the time specified in the record as its effective
time on the date it is filed.

(d) A record may specify a delayed effective time and
date, and if it does so the record becomes effective at the
time and date specified. If a delayed effective date but no
time is specified, the record is effective at the close of
business on that date. If a delayed effective date is later
than the ninetieth day after the record is filed, the record is
effective on the ninetieth day.

§31B-2-207. Correcting filed record.

(a) A limited liability company or foreign limited
liability company may correct a record filed by the secre-
tary of state if the record contains a false or erroneous
statement or was defectively signed.

(b) A record is corrected:

(1) By preparing articles of correction that:

(i) Describe the record, including its filing date, or
attach a copy of it to the articles of correction;

(ii) Specify the incorrect statement and the reason it is
incorrect or the manner in which the signing was defec-
tive; and
(iii) Correct the incorrect statement or defective signing; and

(2) By delivering the corrected record to the secretary of state for filing.

(c) Articles of correction are effective retroactively on the effective date of the record they correct except as to persons relying on the uncorrected record and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

§31B-2-208. Certificate of existence or authorization.

(a) A person may request the secretary of state to furnish a certificate of existence for a limited liability company or a certificate of authorization for a foreign limited liability company.

(b) A certificate of existence for a limited liability company must set forth:

(1) The company's name;

(2) That it is duly organized under the laws of this state, the date of organization, whether its duration is at-will or for a specified term, and, if the latter, the period specified;

(3) If payment is reflected in the records of the secretary of state and if nonpayment affects the existence of the company, that all fees, taxes and penalties owed to this state have been paid;

(4) Whether its most recent annual report required by section 2-211 has been filed with the secretary of state;

(5) That articles of termination have not been filed; and

(6) Other facts of record in the office of the secretary of state which may be requested by the applicant.

(c) A certificate of authorization for a foreign limited liability company must set forth:

(1) The company's name used in this state;
(2) That it is authorized to transact business in this state;

(3) If payment is reflected in the records of the secretary of state and nonpayment affects the authorization of the company, that all fees, taxes and penalties owed to this state have been paid;

(4) Whether its most recent annual report required by section 2-211 has been filed with the secretary of state;

(5) That a certificate of cancellation has not been filed; and

(6) Other facts of record in the office of the secretary of state which may be requested by the applicant.

(d) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign limited liability company is in existence or is authorized to transact business in this state.

§31B-2-209. Liability for false statement in filed record.

If a record authorized or required to be filed under this chapter contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from a person who signed the record or caused another to sign it on the person's behalf and knew the statement to be false at the time the record was signed.


If a person required by section 2-205 to sign any record fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the circuit court to direct the signing of the record. If the court finds that it is proper for the record to be signed and that a person so designated has failed or refused to sign the record, it shall order the secretary of state to sign and file an appropriate record.

§31B-2-211. Annual report for secretary of state.
(a) A limited liability company, and a foreign limited liability company authorized to transact business in this state, shall deliver to the secretary of state for filing an annual report that sets forth:

1. The name of the company and the state or country under whose law it is organized;
2. The address of its designated office and the name and address of its agent for service of process in this state;
3. The address of its principal office; and
4. The names and business addresses of any managers.

(b) Information in an annual report must be current as of the date the annual report is signed on behalf of the limited liability company.

(c) The first annual report must be delivered to the secretary of state between the first day of January and the first day of April of the year following the calendar year in which a limited liability company was organized or a foreign company was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between the first day of January and the first day of April of the ensuing calendar years.

(d) If an annual report does not contain the information required in subsection (a) of this section, the secretary of state shall promptly notify the reporting limited liability company or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in subsection (a) of this section and delivered to the secretary of state within thirty days after the effective date of the notice, it is timely filed.

ARTICLE 3. RELATIONS OF MEMBERS AND MANAGERS TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY.

§31B-3-301. Agency of members and managers.
§31B-3-302. Limited liability company liable for member's or manager's actionable conduct.
§31B-3-303. Liability of members and managers.
§31B-3-301. Agency of members and managers.

(a) Subject to subsections (b) and (c) of this section:

(1) Each member is an agent of the limited liability company for the purpose of its business and an act of a member, including the signing of an instrument in the company's name, for apparently carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company, unless the member had no authority to act for the company in the particular matter and the person with whom the member was dealing knew or had notice that the member lacked authority.

(2) An act of a member which is not apparently for carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company only if the act was authorized by the other members.

(b) Subject to subsection (c) of this section, in a manager-managed company:

(1) A member is not an agent of the company for the purpose of its business solely by reason of being a member. Each manager is an agent of the company for the purpose of its business and an act of a manager, including the signing of an instrument in the company's name, for apparently carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company, unless the manager had no authority to act for the company in the particular matter and the person with whom the manager was dealing knew or had notice that the manager lacked authority.

(2) An act of a manager which is not apparently for carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company only if the act was authorized under section 4-404.

(c) Unless the articles of organization limit their authority, any member of a member-managed company or manager of a manager-managed company may sign and
deliver any instrument transferring or affecting the company's interest in real property. The instrument is conclusive in favor of a person who gives value without knowledge of the lack of the authority of the person signing and delivering the instrument.

§31B-3-302. Limited liability company liable for member's or manager's actionable conduct.

A limited liability company 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 member or manager acting in the ordinary course of business of the company or with authority of the company.

§31B-3-303. Liability of members and managers.

(a) Except as otherwise provided in subsection (c) of this section, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, are solely the debts, obligations and liabilities of the company. A member or manager is not personally liable for a debt, obligation or liability of the company solely by reason of being or acting as a member or manager.

(b) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers for liabilities of the company.

(c) All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations or liabilities of the company if:

(1) A provision to that effect is contained in the articles of organization; and

(2) A member so liable has consented in writing to the adoption of the provision or to be bound by the provision.

ARTICLE 4. RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY COMPANY.
§31B-4-401. Form of contribution.

A contribution of a member of a limited liability company may consist of tangible or intangible property or other benefit to the company, including money, promissory notes, services performed or other agreements to contribute cash or property, or contracts for services to be performed.

§31B-4-402. Member's liability for contributions.

(a) A member's obligation to contribute money, property or other benefit to, or to perform services for, a limited liability company is not excused by the member's death, disability or other inability to perform personally. If a member does not make the required contribution of property or services, the member is obligated at the option of the company to contribute money equal to the value of that portion of the stated contribution which has not been made.

(b) A creditor of a limited liability company who extends credit or otherwise acts in reliance on an obligation described in subsection (a) of this section, and without notice of any compromise under section 4-404(c)(5), may enforce the original obligation.

§31B-4-403. Member's and manager's rights to payments and reimbursement.
(a) A limited liability company shall reimburse a member or manager for payments made and indemnify a member or manager for liabilities incurred by the member or manager in the ordinary course of the business of the company or for the preservation of its business or property.

(b) A limited liability company shall reimburse a member for an advance to the company beyond the amount of contribution the member agreed to make.

(c) A payment or advance made by a member which gives rise to an obligation of a limited liability company under subsection (a) or (b) of this section constitutes a loan to the company upon which interest accrues from the date of the payment or advance.

(d) A member is not entitled to remuneration for services performed for a limited liability company, except for reasonable compensation for services rendered in winding up the business of the company.

§31B-4-404. Management of limited liability company.

(a) In a member-managed company:

(1) Each member has equal rights in the management and conduct of the company's business; and

(2) Except as otherwise provided in subsection (c) of this section or in section 8-801(b)(3)(i), any matter relating to the business of the company may be decided by a majority of the members.

(b) In a manager-managed company:

(1) Each manager has equal rights in the management and conduct of the company's business;

(2) Except as otherwise provided in subsection (c) of this section or in section 8-801(b)(3)(i), any matter relating to the business of the company may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers; and

(3) A manager:
(i) Must be designated, appointed, elected, removed or replaced by a vote, approval or consent of a majority of the members; and

(ii) Holds office until a successor has been elected and qualified, unless the manager sooner resigns or is removed.

(c) The only matters of a member or manager-managed company's business requiring the consent of all of the members are:

(1) The amendment of the operating agreement under section 1-103;

(2) The authorization or ratification of acts or transactions under section 1-103(b)(2)(ii) which would otherwise violate the duty of loyalty;

(3) An amendment to the articles of organization under section 2-204;

(4) The compromise of an obligation to make a contribution under section 4-402(b);

(5) The compromise, as among members, of an obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter;

(6) The making of interim distributions under section 4-405(a), including the redemption of an interest;

(7) The admission of a new member;

(8) The use of the company's property to redeem an interest subject to a charging order;

(9) The consent to dissolve the company under section 8-801(b)(2);

(10) A waiver of the right to have the company's business wound up and the company terminated under section 8-802(b);

(11) The consent of members to merge with another entity under section 9-904(c)(1); and
(12) The sale, lease, exchange or other disposal of all, or substantially all, of the company's property with or without goodwill.

(d) Action requiring the consent of members or managers under this chapter may be taken or without a meeting.

(e) A member or manager may appoint a proxy to vote or otherwise act for the member or manager by signing an appointment instrument, either personally or by the member's or manager's attorney-in-fact.

§31B-4-405. Sharing of and right to distributions.

(a) Any distributions made by a limited liability company before its dissolution and winding up must be in equal shares.

(b) A member has no right to receive, and may not be required to accept, a distribution in kind.

(c) If a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

§31B-4-406. Limitations on distributions.

(a) A distribution may not be made if:

(1) The limited liability company would not be able to pay its debts as they become due in the ordinary course of business; or

(2) The company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved, wound up and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up and termination of members whose preferential rights are superior to those receiving the distribution.

(b) A limited liability company may base a determination that a distribution is not prohibited under subsection (a) of this section on financial statements prepared on the
basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(c) Except as otherwise provided in subsection (e) of this section, the effect of a distribution under subsection (a) of this section is measured:

(1) In the case of distribution by purchase, redemption or other acquisition of a distributional interest in a limited liability company, as of the date money or other property is transferred or debt incurred by the company; and

(2) In all other cases, as of the date the:

(i) Distribution is authorized if the payment occurs within one hundred twenty days after the date of authorization; or

(ii) Payment is made if it occurs more than one hundred twenty days after the date of authorization.

(d) A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the company's indebtedness to its general, unsecured creditors.

(e) Indebtedness of a limited liability company, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of determinations under subsection (a) of this section if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to members could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

§31B-4-407. Liability for unlawful distributions.

(a) A member of a member-managed company or a member or manager of a manager-managed company who votes for or assents to a distribution made in violation of section 4-406, the articles of organization, or the operating agreement is personally liable to the company for
the amount of the distribution which exceeds the amount that could have been distributed without violating section 4-406, the articles of organization, or the operating agreement if it is established that the member or manager did not perform the member's or manager's duties in compliance with section 4-409.

(b) A member of a manager-managed limited liability company who knew a distribution was made in violation of section 4-406, the articles of organization, or the operating agreement is personally liable to the company, but only to the extent that the distribution received by the member exceeded the amount that could properly have been paid under section 4-406.

(c) A member or manager against whom an action is brought under this section may implead in the action all:

(1) Other members or managers who voted for or assented to the distribution in violation of subsection (a) of this section and may compel contribution from them; and

(2) Members who received a distribution in violation of subsection (b) of this section and may compel contribution from the member in the amount received in violation of subsection (b) of this section.

(d) A proceeding under this section is barred unless it is commenced within two years after the distribution.

§31B-4-408. Member’s right to information.

(a) A limited liability company shall provide members and their agents and attorneys access to its records, if any, at the company's principal office or other reasonable locations specified in the operating agreement. The company shall provide former members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were members. The right of access provides the opportunity to inspect and copy records during ordinary business hours. The company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.
A limited liability company shall furnish to a member, and to the legal representative of a deceased member or member under legal disability:

(1) Without demand, information concerning the company's business or affairs reasonably required for the proper exercise of the member's rights and performance of the member's duties under the operating agreement or this chapter; and

(2) On demand, other information concerning the company's business or affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

A member has the right upon written demand given to the limited liability company to obtain at the company's expense a copy of any written operating agreement.

§31B-4-409. General standards of member's and manager's conduct.

(a) The only fiduciary duties a member owes to a member-managed company and its other members are the duty of loyalty and the duty of care imposed by subsections (b) and (c) of this section.

(b) A member's duty of loyalty to a member-managed company and its other members is limited to the following:

(1) To account to the company and to hold as trustee for it any property, profit or benefit derived by the member in the conduct or winding up of the company's business or derived from a use by the member of the company's property, including the appropriation of a company's opportunity;

(2) To refrain from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company; and
(3) To refrain from competing with the company in the conduct of the company's business before the dissolution of the company.

(c) A member's duty of care to a member-managed company and its other members in the conduct of and winding up of the company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law.

(d) A member shall discharge the duties to a member-managed company and its other members under this chapter or under the operating agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(e) A member of a member-managed company does not violate a duty or obligation under this chapter or under the operating agreement merely because the member's conduct furthers the member's own interest.

(f) A member of a member-managed company may lend money to and transact other business with the company. As to each loan or transaction, the rights and obligations of the member are the same as those of a person who is not a member, subject to other applicable law.

(g) This section applies to a person winding up the limited liability company's business as the personal or legal representative of the last surviving member as if the person were a member.

(h) In a manager-managed company:

(1) A member who is not also a manager owes no duties to the company or to the other members solely by reason of being a member;

(2) A manager is held to the same standards of conduct prescribed for members in subsections (b) through (f) of this section;

(3) A member who pursuant to the operating agreement exercises some or all of the rights of a manager in the management and conduct of the company's business is
held to the standards of conduct in subsections (b) through (f) of this section to the extent that the member exercises the managerial authority vested in a manager by this chapter; and

(4) A manager is relieved of liability imposed by law for violation of the standards prescribed by subsections (b) through (f) of this section to the extent of the managerial authority delegated to the members by the operating agreement.

§31B-4-410. Actions by members.

(a) A member may maintain an action against a limited liability company or another member for legal or equitable relief, with or without an accounting as to the company's business, to enforce:

(1) The member's rights under the operating agreement;

(2) The member's rights under this chapter; and

(3) The rights and otherwise protect the interests of the member, including rights and interests arising independently of the member's relationship to the company.

(b) The accrual, and any time limited for the assertion, of 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.

§31B-4-411. Continuation of term company after expiration of specified term.

(a) If a term company is continued after the expiration of the specified term, the rights and duties of the members and managers remain the same as they were at the expiration of the term except to the extent inconsistent with rights and duties of members and managers of an at-will company.

(b) If the members in a member-managed company or the managers in a manager-managed company contin-
the business without any winding up of the business of the company, it continues as an at-will company.

ARTICLE 5. TRANSFEREES AND CREDITORS OF MEMBER.

§31B-5-501. Member’s distributional interest.

§31B-5-502. Transfer of distributional interest.

§31B-5-503. Rights of transferee.

§31B-5-501. Member's distributional interest.

(a) A member is not a coowner of, and has no transferable interest in, property of a limited liability company.

(b) A distributional interest in a limited liability company is personal property and, subject to sections 5-502 and 5-503, may be transferred, in whole or in part.

(c) An operating agreement may provide that a distributional interest may be evidenced by a certificate of the interest issued by the limited liability company and, subject to section 5-503, may also provide for the transfer of any interest represented by the certificate.

§31B-5-502. Transfer of distributional interest.

A transfer of a distributional interest does not entitle the transferee to become or to exercise any rights of a member. A transfer entitles the transferee to receive, to the extent transferred, only the distributions to which the transferor would be entitled.

§31B-5-503. Rights of transferee.

(a) A transferee of a distributional interest may become a member of a limited liability company if and to the extent that the transferor gives the transferee the right in accordance with authority described in the operating agreement or all other members consent.

(b) A transferee who has become a member, to the extent transferred, has the rights and powers, and is subject to the restrictions and liabilities, of a member under the operating agreement of a limited liability company and this chapter. A transferee who becomes a member also is liable for the transferor member's obligations to make
12 contributions under section 4-402 and for obligations
13 under section 4-407 to return unlawful distributions, but
14 the transferee is not obligated for the transferor member's
15 liabilities unknown to the transferee at the time the trans-
16 feree becomes a member.

17 (c) Whether or not a transferee of a distributional
18 interest becomes a member under subsection (a) of this
19 section, the transferor is not released from liability to the
20 limited liability company under the operating agreement
21 or this chapter.

22 (d) A transferee who does not become a member is
23 not entitled to participate in the management or conduct
24 of the limited liability company's business, require access
25 to information concerning the company's transactions or
26 inspect or copy any of the company's records.

27 (e) A transferee who does not become a member is
28 entitled to:

29 (1) Receive, in accordance with the transfer, distribu-
30 tions to which the transferor would otherwise be entitled;

31 (2) Receive, upon dissolution and winding up of the
32 limited liability company's business:

33 (i) In accordance with the transfer, the net amount
34 otherwise distributable to the transferor;

35 (ii) A statement of account only from the date of the
36 latest statement of account agreed to by all the members;

37 (3) Seek under section 8-801(b)(6) a judicial determi-
38 nation that it is equitable to dissolve and wind up the com-
39 pany's business.

40 (f) A limited liability company need not give effect to
41 a transfer until it has notice of the transfer.

§31B-5-504. Rights of creditor.

1 (a) On application by a judgment creditor of a mem-
2 ber of a limited liability company or of a member's trans-
3 feree, a court having jurisdiction may charge the
4 distributorial interest of the judgment debtor to satisfy the
judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor and make all other orders, directions, accounts and inquiries the judgment debtor might have made or which the circumstances may require to give effect to the charging order.

(b) A charging order constitutes a lien on the judgment debtor's distributional interest. The court may order a foreclosure of a lien on a distributional interest subject to the charging order at any time. A purchaser at the foreclosure sale has the rights of a transferee.

(c) At any time before foreclosure, a distributional interest in a limited liability company which is charged may be redeemed:

(1) By the judgment debtor;

(2) With property other than the company's property, by one or more of the other members; or

(3) With the company's property, but only if permitted by the operating agreement.

(d) This chapter does not affect a member's right under exemption laws with respect to the member's distributional interest in a limited liability company.

(e) This section provides the exclusive remedy by which a judgment creditor of a member or a transferee may satisfy a judgment out of the judgment debtor's distributional interest in a limited liability company.

ARTICLE 6. MEMBER'S DISSOCIATION.

§31B-6-601. Events causing member's dissociation.

§31B-6-602. Member's power to dissociate; wrongful dissociation.

§31B-6-603. Effect of member's dissociation.

§31B-6-601. Events causing member's dissociation.

A member is dissociated from a limited liability company upon the occurrence of any of the following events:
(1) The company's having notice of the member's express will to withdraw upon the date of notice or on a later date specified by the member;

(2) An event agreed to in the operating agreement as causing the member's dissociation;

(3) Upon transfer of all of a member's distributional interest, other than a transfer for security purposes or a court order charging the member's distributional interest which has not been foreclosed;

(4) The member's expulsion pursuant to the operating agreement;

(5) The member's expulsion by unanimous vote of the other members if:

(i) It is unlawful to carry on the company's business with the member;

(ii) There has been a transfer of substantially all of the member's distributional interest, other than a transfer for security purposes, or a court order charging the member's distributional interest, which has not been foreclosed;

(iii) Within ninety days after the company notifies a corporate member 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, the member fails to obtain a revocation of the certificate of dissolution or a reinstatement of its charter or its right to conduct business; or

(iv) A partnership or a limited liability company that is a member has been dissolved and its business is being wound up;

(6) On application by the company or another member, the member's expulsion by judicial determination because the member:

(i) Engaged in wrongful conduct that adversely and materially affected the company's business;
(ii) Willfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under section 4-409; or

(iii) Engaged in conduct relating to the company's business which makes it not reasonably practicable to carry on the business with the member;

(7) The member'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 the member or of all or substantially all of the member'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 member or of all or substantially all of the member's property obtained without the member's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;

(8) In the case of a member who is an individual:

(i) The member's death;

(ii) The appointment of a guardian or general conservator for the member; or

(iii) A judicial determination that the member has otherwise become incapable of performing the member's duties under the operating agreement;

(9) In the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, distribution of the trust's entire rights to receive distributions from the company, but not merely by reason of the substitution of a successor trustee;
(10) In the case of a member that is an estate or is acting as a member by virtue of being a personal representative of an estate, distribution of the estate's entire rights to receive distributions from the company, but not merely the substitution of a successor personal representative; or

(11) Termination of the existence of a member if the member is not an individual, estate or trust other than a business trust.

§31B-6-602. Member's power to dissociate; wrongful dissociation.

(a) Unless otherwise provided in the operating agreement, a member has the power to dissociate from a limited liability company at any time, rightfully or wrongfully, by express will pursuant to section 6-601(1).

(b) If the operating agreement has not eliminated a member's power to dissociate, the member's dissociation from a limited liability company is wrongful only if:

(1) It is in breach of an express provision of the agreement; or

(2) Before the expiration of the specified term of a term company:

(i) The member withdraws by express will;

(ii) The member is expelled by judicial determination under section 6-601(6);

(iii) The member is dissociated by becoming a debtor in bankruptcy; or

(iv) In the case of a member who is not an individual, trust other than a business trust, or estate, the member is expelled or otherwise dissociated because it willfully dissolved or terminated its existence.

(c) A member who wrongfully dissociates from a limited liability company is liable to the company and to the other members for damages caused by the dissociation.
§31B-6-603. Effect of member's dissociation.

(a) If under section 8-801 a member's dissociation from a limited liability company results in a dissolution and winding up of the company's business, article eight of this chapter applies. If a member's dissociation from the company does not result in a dissolution and winding up of the company's business under section 8-801:

(1) In an at-will company, the company must cause the dissociated member's distributional interest to be purchased under article seven of this chapter; and

(2) In a term company:

(i) If the company dissolves and winds up its business on or before the expiration of its specified term, article eight of this chapter applies to determine the dissociated member's rights to distributions; and

(ii) If the company does not dissolve and wind up its business on or before the expiration of its specified term, the company must cause the dissociated member's distributional interest to be purchased under article seven of this chapter on the date of the expiration of the term specified at the time of the member's dissociation.

(b) Upon a member's dissociation from a limited liability company:

(1) The member's right to participate in the management and conduct of the company's business terminates, except as otherwise provided in section 8-803, and the member ceases to be a member and is treated the same as a transferee of a member;
(2) The member's duty of loyalty under section 4-409(b)(3) terminates; and

(3) The member's duty of loyalty under section 4-409(b)(1) and (2) and duty of care under section 4-409(c) continue only with regard to matters arising and events occurring before the member's dissociation, unless the member participates in winding up the company's business pursuant to section 8-803.

ARTICLE 7. MEMBER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP.

§31B-7-701. Company purchase of distributional interest.
§31B-7-702. Court action to determine fair value of distributional interest.
§31B-7-703. Dissociated member's power to bind limited liability company.
§31B-7-704. Statement of dissociation.

§31B-7-701. Company purchase of distributional interest.

(a) A limited liability company shall purchase a distributional interest of a:

(1) Member of an at-will company for its fair value determined as of the date of the member's dissociation if the member's dissociation does not result in a dissolution and winding up of the company's business under section 8-801; or

(2) Member of a term company for its fair value determined as of the date of the expiration of the specified term that existed on the date of the member's dissociation if the expiration of the specified term does not result in a dissolution and winding up of the company's business under section 8-801.

(b) A limited liability company must deliver a purchase offer to the dissociated member whose distributional interest is entitled to be purchased not later than thirty days after the date determined under subsection (a) of this section. The purchase offer must be accompanied by:

(1) A statement of the company's assets and liabilities as of the date determined under subsection (a) of this section;
(2) The latest available balance sheet and income statement, if any; and

(3) An explanation of how the estimated amount of the payment was calculated.

(c) If the price and other terms of a purchase of a distributional interest are fixed or are to be determined by the operating agreement, the price and terms so fixed or determined govern the purchase unless the purchaser defaults. If a default occurs, the dissociated member is entitled to commence a proceeding to have the company dissolved under section 8-801(b)(5)(iv).

(d) If an agreement to purchase the distributional interest is not made within one hundred twenty days after the date determined under subsection (a) of this section, the dissociated member, within another one hundred twenty days, may commence a proceeding against the limited liability company to enforce the purchase. The company at its expense shall notify in writing all of the remaining members, and any other person the court directs, of the commencement of the proceeding. The jurisdiction of the court in which the proceeding is commenced under this subsection is plenary and exclusive.

(e) The court shall determine the fair value of the distributional interest in accordance with the standards set forth in section 7-702 together with the terms for the purchase. Upon making these determinations, the court shall order the limited liability company to purchase or cause the purchase of the interest.

(f) Damages for wrongful dissociation under section 6-602(b), and all other amounts owing, whether or not currently due, from the dissociated member to a limited liability company, must be offset against the purchase price.

§31B-7-702. Court action to determine fair value of distributional interest.

(a) In an action brought to determine the fair value of a distributional interest in a limited liability company, the court shall:
(1) Determine the fair value of the interest, considering among other relevant evidence the going concern value of the company, any agreement among some or all of the members fixing the price or specifying a formula for determining value of distributional interests for any purpose, the recommendations of any appraiser appointed by the court, and any legal constraints on the company's ability to purchase the interest;

(2) Specify the terms of the purchase, including, if appropriate, terms for installment payments, subordination of the purchase obligation to the rights of the company's other creditors, security for a deferred purchase price and a covenant not to compete or other restriction on a dissociated member; and

(3) Require the dissociated member to deliver an assignment of the interest to the purchaser upon receipt of the purchase price or the first installment of the purchase price.

(b) After the dissociated member delivers the assignment, the dissociated member has no further claim against the company, its members, officers or managers, if any, other than a claim to any unpaid balance of the purchase price and a claim under any agreement with the company or the remaining members that is not terminated by the court.

(c) If the purchase is not completed in accordance with the specified terms, the company is to be dissolved upon application under section 8-801(b)(5)(iv). If a limited liability company is so dissolved, the dissociated member has the same rights and priorities in the company's assets as if the sale had not been ordered.

(d) If the court finds that a party to the proceeding acted arbitrarily, vexatiously or not in good faith, it may award one or more other parties their reasonable expenses, including attorney's fees and the expenses of appraisers or other experts, incurred in the proceeding. The finding may be based on the company's failure to make an offer to pay or to comply with section 7-701(b).
(e) Interest must be paid on the amount awarded from the fair market value determined under section 7-701(a) to the date of payment.

§31B-7-703. Dissociated member's power to bind limited liability company.

For two years after a member dissociates without the dissociation resulting in a dissolution and winding up of a limited liability company's business, the company, including a surviving company under article nine of this chapter, is bound by an act of the dissociated member which would have bound the company under section 3-301 before dissociation only if at the time of entering into the transaction the other party:

(1) Reasonably believed that the dissociated member was then a member;

(2) Did not have notice of the member's dissociation; and

(3) Is not deemed to have had notice under section 7-704.

§31B-7-704. Statement of dissociation.

(a) A dissociated member or a limited liability company may file in the office of the secretary of state a statement of dissociation stating the name of the company and that the member is dissociated from the company.

(b) For the purposes of sections 3-301 and 7-703, a person not a member is deemed to have notice of the dissociation ninety days after the statement of dissociation is filed.

ARTICLE 8. WINDING UP COMPANY'S BUSINESS.

§31B-8-801. Events causing dissolution and winding up of company's business.

§31B-8-802. Limited liability company continues after dissolution.

§31B-8-803. Right to wind up limited liability company's business.

§31B-8-804. Member's or manager's power and liability as agent after dissolution.

§31B-8-805. Articles of termination.
§31B-8-806. Distribution of assets in winding up limited liability company's business.

§31B-8-807. Known claims against dissolved limited liability company.

§31B-8-808. Other claims against dissolved limited liability company.

§31B-8-809. Grounds for administrative dissolution.

§31B-8-810. Procedure for and effect of administrative dissolution.

§31B-8-811. Reinstatement following administrative dissolution.

§31B-8-812. Appeal from denial of reinstatement.

§31B-8-801. Events causing dissolution and winding up of company's business.

(a) In this section, "future distributions" means the total distributions that, as of the date of dissociation, are reasonably estimated to be made to the remaining members if the company were continued until the projected date of its termination, reduced by the amount of distributions that would have been made to the remaining members if the business of the company were dissolved and wound up on the date of dissociation.

(b) A limited liability company is dissolved, and its business must be wound up, upon the occurrence of any of the following events:

(1) An event specified in the operating agreement;

(2) Consent of the number or percentage of members specified in the operating agreement;

(3) Dissociation of a member who is also a manager or, if none, a member of an at-will company, and dissociation of a member who is also a manager or, if none, a member of a term company but only if the dissociation was for a reason provided in section 6-601(7) through (11) and occurred before the expiration of the specified term, but the company is not dissolved and required to be wound up by reason of the dissociation if:

(i) Within ninety days after the dissociation, the business of the company is continued by the agreement of:

(A) The remaining members that would be entitled to receive a majority of any distributions that would be made
to them assuming the business of the company were dis-
solved and wound up on the date of the dissociation; and

(B) The remaining members that would be entitled to
receive a majority of any future distributions that would
be made to them assuming the business of the company
were continued after the date of the dissociation; or

(ii) The business of the company is continued under a
right to continue stated in the operating agreement;

(4) An event that makes it unlawful for all or substan-
tially all of the business of the company to be continued,
but any cure of illegality within ninety days after notice to
the company of the event is effective retroactively to the
date of the event for purposes of this section;

(5) On application by a member or a dissociated
member, upon entry of a judicial decree that:

(i) The economic purpose of the company is likely to
be unreasonably frustrated;

(ii) Another member has engaged in conduct relating
to the company's business that makes it not reasonably
practicable to carry on the company's business with that
member;

(iii) It is not otherwise reasonably practicable to carry
on the company's business in conformity with the articles
of organization and the operating agreement;

(iv) The company failed to purchase the petitioner's
distributional interest as required by section 7-701; or

(v) The managers or members in control of the com-
pany have acted, are acting or will act in a manner that is
illegal, oppressive, fraudulent or unfairly prejudicial to the
petitioner;

(6) On application by a transferee of a member's inter-
est, a judicial determination that it is equitable to wind up
the company's business:

(i) After the expiration of the specified term, if the
company was for a specified term at the time the applicant
became a transferee by member dissociation, transfer or entry of a charging order that gave rise to the transfer; or (ii) At any time, if the company was at will at the time the applicant became a transferee by member dissociation, transfer or entry of a charging order that gave rise to the transfer.

§31B-8-802. Limited liability company continues after dissolution.

(a) Subject to subsection (b) of this section, a limited liability company continues after dissolution only for the purpose of winding up its business.

(b) At any time after the dissolution of a limited liability company and before the winding up of its business is completed, the members, including a dissociated member whose dissociation caused the dissolution, may unanimously waive the right to have the company's business wound up and the company terminated. In that case:

(1) The limited liability company resumes carrying on its business as if dissolution had never occurred and any liability incurred by the company or a member after the dissolution and before the waiver is determined as if the dissolution had never occurred; and

(2) The rights of a third party accruing under section 8-804(a) or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver are not adversely affected.

§31B-8-803. Right to wind up limited liability company's business.

(a) After dissolution, a member who has not wrongfully dissociated may participate in winding up a limited liability company's business, but on application of any member, member's legal representative or transferee, the circuit court, for good cause shown, may order judicial supervision of the winding up.

(b) A legal representative of the last surviving member may wind up a limited liability company's business.
(c) A person winding up a limited liability company's business may preserve the company's 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 company's business, dispose of and transfer the company's property, discharge the company's liabilities, distribute the assets of the company pursuant to section 8-806, settle disputes by mediation or arbitration and perform other necessary acts.

§31B-8-804. Member's or manager's power and liability as agent after dissolution.

(a) A limited liability company is bound by a member's or manager's act after dissolution that:

(1) Is appropriate for winding up the company's business; or

(2) Would have bound the company under section 3-301 before dissolution, if the other party to the transaction did not have notice of the dissolution.

(b) A member or manager who, with knowledge of the dissolution, subjects a limited liability company to liability by an act that is not appropriate for winding up the company's business is liable to the company for any damage caused to the company arising from the liability.

§31B-8-805. Articles of termination.

(a) At any time after dissolution and winding up, a limited liability company may terminate its existence by filing with the secretary of state articles of termination stating:

(1) The name of the company;

(2) The date of the dissolution; and

(3) That the company's business has been wound up and the legal existence of the company has been terminated.

(b) The existence of a limited liability company is terminated upon the filing of the articles of termination, or
§31B-8-806. Distribution of assets in winding up limited liability company’s business.

(a) In winding up a limited liability company's business, the assets of the company must be applied to discharge its obligations to creditors, including members who are creditors. Any surplus must be applied to pay in money the net amount distributable to members in accordance with their right to distributions under subsection (b) of this section.

(b) Each member is entitled to a distribution upon the winding up of the limited liability company's business consisting of a return of all contributions which have not previously been returned and a distribution of any remainder in equal shares.

§31B-8-807. Known claims against dissolved limited liability company.

(a) A dissolved limited liability company may dispose of the known claims against it by following the procedure described in this section.

(b) A dissolved limited liability company shall notify its known claimants in writing of the dissolution. The notice must:

(1) Specify the information required to be included in a claim;

(2) Provide a mailing address where the claim is to be sent;

(3) State the deadline for receipt of the claim, which may not be less than one hundred twenty days after the date the written notice is received by the claimant; and

(4) State that the claim will be barred if not received by the deadline.
A claim against a dissolved limited liability company is barred if the requirements of subsection (b) of this section are met, and:

(1) The claim is not received by the specified deadline; or

(2) In the case of a claim that is timely received but rejected by the dissolved company, the claimant does not commence a proceeding to enforce the claim within ninety days after the receipt of the notice of the rejection.

(d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

§31B-8-808. Other claims against dissolved limited liability company.

(a) A dissolved limited liability company may publish notice of its dissolution and request persons having claims against the company to present them in accordance with the notice.

(b) The notice must:

(1) Be published at least once in a newspaper of general circulation in the county in which the dissolved limited liability company's principal office is located or, if none in this state, in which its designated office is or was last located;

(2) Describe the information required to be contained in a claim and provide a mailing address where the claim is to be sent; and

(3) State that a claim against the limited liability company is barred unless a proceeding to enforce the claim is commenced within five years after publication of the notice.

(c) If a dissolved limited liability company publishes a notice in accordance with subsection (b) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce
the claim against the dissolved company within five years after the publication date of the notice:

(1) A claimant who did not receive written notice under section 8-807;

(2) A claimant whose claim was timely sent to the dissolved company but not acted on; and

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim not barred under this section may be enforced:

(1) Against the dissolved limited liability company, to the extent of its undistributed assets; or

(2) If the assets have been distributed in liquidation, against a member of the dissolved company to the extent of the member's proportionate share of the claim or the company's assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

§31B-8-809. Grounds for administrative dissolution.

The secretary of state may commence a proceeding to dissolve a limited liability company administratively if the company does not:

(1) Pay any fees, taxes or penalties imposed by this chapter or other law within sixty days after they are due;

(2) Deliver its annual report to the secretary of state within sixty days after it is due.

§31B-8-810. Procedure for and effect of administrative dissolution.

(a) If the secretary of state determines that a ground exists for administratively dissolving a limited liability company, the secretary of state shall enter a record of the determination and serve the company with a copy of the record.
(b) If the company does not correct each ground for
dissolution or demonstrate to the reasonable satisfaction of
the secretary of state that each ground determined by the
secretary of state does not exist within sixty days after
service of the notice, the secretary of state shall administra-
tively dissolve the company by signing a certification of
the dissolution that recites the ground for dissolution and
its effective date. The secretary of state shall file the origi-
nal of the certificate and serve the company with a copy of
the certificate.

(c) A company administratively dissolved continues its
existence but may carry on only business necessary to
wind up and liquidate its business and affairs under sec-
tion 8-802 and to notify claimants under sections 8-807
and 8-808.

(d) The administrative dissolution of a company does
not terminate the authority of its agent for service of pro-
cess.

§31B-8-811. Reinstatement following administrative dissolu-
tion.

(a) A limited liability company administratively dis-
sovled may apply to the secretary of state for reinstate-
ment within two years after the effective date of dissolu-
tion. The application must:

(1) Recite the name of the company and the effective
date of its administrative dissolution;

(2) State that the ground for dissolution either did not
exist or have been eliminated;

(3) State that the company's name satisfies the require-
ments of section 1-105; and

(4) Contain a certificate from the tax commissioner
reciting that all taxes owed by the company have been
paid.

(b) If the secretary of state determines that the applica-
tion contains the information required by subsection (a)
of this section and that the information is correct, the sec-
retary of state shall cancel the certificate of dissolution and
prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate.

(c) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the company may resume its business as if the administrative dissolution had never occurred.

§31B-8-812. Appeal from denial of reinstatement.

(a) If the secretary of state denies a limited liability company's application for reinstatement following administrative dissolution, the secretary of state shall serve the company with a record that explains the reason or reasons for denial.

(b) The company may appeal the denial of reinstatement to the circuit court within thirty days after service of the notice of denial is perfected. The company appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the company's application for reinstatement and the secretary of state's notice of denial.

(c) The court may summarily order the secretary of state to reinstate the dissolved company or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

ARTICLE 9. CONVERSIONS AND MERGERS.

§31B-9-901. Definitions.

§31B-9-902. Conversion of partnership or limited partnership to limited liability company.

§31B-9-903. Effect of conversion; entity unchanged.

§31B-9-904. Merger of entities; confirmation of title to real estate required.

§31B-9-905. Articles of merger.

§31B-9-906. Effect of merger.

§31B-9-907. Article not exclusive.

§31B-9-901. Definitions.
In this article:

(1) "Corporation" means a corporation under chapter thirty-one of this code, a predecessor law, or comparable law of another jurisdiction.

(2) "General partner" means a partner in a partnership and a general partner in a limited partnership.

(3) "Limited partner" means a limited partner in a limited partnership.

(4) "Limited partnership" means a limited partnership created under article nine, chapter forty-seven of this code, a predecessor law, or comparable law of another jurisdiction.

(5) "Partner" includes a general partner and a limited partner.

(6) "Partnership" means a general partnership under chapter forty-seven-b of this code, a predecessor law, or comparable law of another jurisdiction.

(7) "Partnership agreement" means an agreement among the partners concerning the partnership or limited partnership.

(8) "Shareholder" means a shareholder in a corporation.

§31B-9-902. Conversion of partnership or limited partnership to limited liability company.

(a) A partnership or limited partnership may be converted to a limited liability company pursuant to this section.

(b) The terms and conditions of a conversion of a partnership or limited partnership to a limited liability company must be approved by all of the partners or by a number or percentage of the partners required for conversion in the partnership agreement.

(c) An agreement of conversion must set forth the terms and conditions of the conversion of the interests of partners of a partnership or of a limited partnership, as the
case may be, into interests in the converted limited liability
company or the cash or other consideration to be paid or
delivered as a result of the conversion of the interests of
the partners, or a combination thereof.

(d) After a conversion is approved under subsection
(b) of this section, the partnership or limited partnership
shall file articles of organization in the office of the secre-
tary of state which satisfy the requirements of section
2-203 and contain:

(1) A statement that the partnership or limited partner-
ship was converted to a limited liability company from a
partnership or limited partnership, as the case may be;

(2) Its former name;

(3) A statement of the number of votes cast by the
partners entitled to vote for and against the conversion
and, if the vote is less than unanimous, the number or
percentage required to approve the conversion under
subsection (b) of this section; and

(4) In the case of a limited partnership, a statement
that the certificate of limited partnership is to be canceled
as of the date the conversion took effect.

(e) In the case of a limited partnership, the filing of
articles of organization under subsection (d) of this sec-
tion cancels its certificate of limited partnership as of the
date the conversion took effect.

(f) A conversion takes effect when the articles of orga-
nization are filed in the office of the secretary of state or
at any later date specified in the articles of organization.

(g) A general partner who becomes a member of a
limited liability company as a result of a conversion re-
mains liable as a partner for an obligation incurred by the
partnership or limited partnership before the conversion
takes effect.

(h) A general partner's liability for all obligations of
the limited liability company incurred after the conversion
takes effect is that of a member of the company. A limit-
ed partner who becomes a member as a result of a conver-
sion remains liable only to the extent the limited partner was liable for an obligation incurred by the limited partnership before the conversion takes effect.

§31B-9-903. 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 vests in the limited liability company;

(2) All debts, liabilities and other obligations of the converting partnership or limited partnership continue as obligations of the limited liability company;

(3) An action or proceeding pending by or against the converting partnership or limited partnership may be continued as if the conversion had not occurred;

(4) Except as prohibited by other law, all of the rights, privileges, immunities, powers and purposes of the converting partnership or limited partnership vest in the limited liability company; and

(5) Except as otherwise provided in the agreement of conversion under section 9-902(c), all of the partners of the converting partnership continue as members of the limited liability company.

§31B-9-904. Merger of entities; confirmation of title to real estate required.

(a) Pursuant to a plan of merger approved under subsection (c) of this section, a limited liability company may be merged with or into one or more limited liability companies, foreign limited liability companies, corporations, foreign corporations, partnerships, foreign partnerships, limited partnerships, foreign limited partnerships or other domestic or foreign entities.

(b) A plan of merger must set forth:
(1) The name of each entity that is a party to the merger;

(2) The name of the surviving entity into which the other entities will merge;

(3) The type of organization of the surviving entity;

(4) The terms and conditions of the merger;

(5) The manner and basis for 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 in part; and

(6) The street address of the surviving entity’s principal place of business.

(c) A plan of merger must be approved:

(1) In the case of a limited liability company that is a party to the merger, by all of the members or by a number or percentage of members specified in the operating agreement;

(2) In the case of a foreign limited liability company 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 foreign limited liability company is organized;

(3) In the case of a partnership or domestic limited partnership that is a party to the merger, by the vote required for approval of a conversion under section 9-902(b); and

(4) In the case of any other entities that are parties to the merger, by the vote required for approval of a merger by the law of this state or of the state or foreign jurisdiction in which the entity is organized and, in the absence of such a requirement, by all the owners of interests in the entity.

(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 is effective upon the filing of the articles of merger with the secretary of state, or at such later date as the articles may provide.

(f) Irrespective of whether the surviving limited liability company is to be governed by the laws of this state or by the laws of any other state, any constituent limited liability company thereof owning or holding real estate in this state shall further evidence title thereto in the surviving limited liability company by executing and acknowledging for record a confirmatory deed or deeds to the respective parcels of real estate, which deed or deeds shall be recorded in the office of the clerk of the county commission of the respective counties in which such real estate is situate; and such deed or deeds shall recite as the consideration therefor the said merger and shall be deemed confirmatory of the title of such real estate in the surviving limited liability company.

§31B-9-905. Articles of merger.

(a) After approval of the plan of merger under section 9-904(c), unless the merger is abandoned under section 9-904(d), articles of merger must be signed on behalf of each limited liability company and other entity that is a party to the merger and delivered to the secretary of state for filing. The articles must set forth:

(1) The name and jurisdiction of formation or organization of each of the limited liability companies and other entities that are parties to the merger;

(2) For each limited liability company that is to merge, the date its articles of organization were filed with the secretary of state;

(3) That a plan of merger has been approved and signed by each limited liability company and other entity that is to merge;

(4) The name and address of the surviving limited liability company or other surviving entity;

(5) The effective date of the merger;
(6) If a limited liability company is the surviving entity, such changes in its articles of organization as are necessary by reason of the merger;

(7) If a party to a merger is a foreign limited liability company, the jurisdiction and date of filing of its initial articles of organization and the date when its application for authority was filed by the secretary of state or, if an application has not been filed, a statement to that effect; and

(8) If the surviving entity is not a limited liability company, an agreement that the surviving entity may be served with process in this state and is subject to liability in any action or proceeding for the enforcement of any liability or obligation of any limited liability company previously subject to suit in this state which is to merge, and for the enforcement, as provided in this chapter, of the right of members of any limited liability company to receive payment for their interest against the surviving entity.

(b) If a foreign limited liability company is the surviving entity of a merger, it may not do business in this state until an application for that authority is filed with the secretary of state.

(c) The surviving limited liability company or other entity shall furnish a copy of the plan of merger, on request and without cost, to any member of any limited liability company or any person holding an interest in any other entity that is to merge.

(d) Articles of merger operate as an amendment to the limited liability company's articles of organization.

§31B-9-906. Effect of merger.

(a) When a merger takes effect:

(1) The separate existence of each limited liability company and other entity that is a party to the merger, other than the surviving entity, terminates;

(2) All property owned by each of the limited liability companies and other entities that are party to the merger vests in the surviving entity;
(3) All debts, liabilities and other obligations of each limited liability company and other entity that is party to the merger become the obligations of the surviving entity;

(4) An action or proceeding pending by or against a limited liability company or other party to a 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; and

(5) Except as prohibited by other law, all the rights, privileges, immunities, powers and purposes of every limited liability company and other entity that is a party to a merger become vested in the surviving entity.

(b) The secretary of state is an agent for service of process in an action or proceeding against the surviving foreign entity to enforce an obligation of any party to a merger if the surviving foreign entity fails to appoint or maintain an agent designated for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the designated office. Upon receipt of process, the secretary of state shall send a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

(1) The date the company receives the process, notice or demand;

(2) The date shown on the return receipt, if signed on behalf of the company; or

(3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed.

(c) A member of the surviving limited liability company is liable for all obligations of a party to the merger for which the member was personally liable before the merger.

(d) Unless otherwise agreed, a merger of a limited liability company that is not the surviving entity in the merger does not require the limited liability company to
wind up its business under this chapter or pay its liabilities and distribute its assets pursuant to this chapter.

(e) Articles of merger serve as articles of dissolution for a limited liability company that is not the surviving entity in the merger.

§31B-9-907. Article not exclusive.

This article does not preclude an entity from being converted or merged under other law.

ARTICLE 10. FOREIGN LIMITED LIABILITY COMPANIES.

§31B-10-1001. Law governing foreign limited liability companies.

(a) The laws of the state or other jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its managers, members and their transferees.

(b) A foreign limited liability company may not be denied a certificate of authority by reason of any difference between the laws of another jurisdiction under which the foreign company is organized and the laws of this state.

(c) A certificate of authority does not authorize a foreign limited liability company to engage in any business or exercise any power that a limited liability company may not engage in or exercise in this state.

§31B-10-1002. Application for certificate of authority.
(a) A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing, together with a fee in the amount of one hundred fifty dollars. The application must set forth:

(1) The name of the foreign company or, if its name is unavailable for use in this state, a name that satisfies the requirements of section 10-1005;

(2) The name of the state or country under whose law it is organized;

(3) The street address of its principal office;

(4) The address of its initial designated office in this state;

(5) The name and street address of its initial agent for service of process in this state;

(6) Whether the duration of the company is for a specified term and, if so, the period specified;

(7) Whether the company is manager-managed, and, if so, the name and address of each initial manager; and

(8) Whether the members of the company are to be liable for its debts and obligations under a provision similar to section 3-303(c).

(b) A foreign limited liability company shall deliver with the completed application a certificate of existence or a record of similar import authenticated by the secretary of state or other official having custody of company records in the state or country under whose law it is organized.

§31B-10-1003. Activities not constituting transacting business.

(a) Activities of a foreign limited liability company that do not constitute transacting business in this state within the meaning of this article include:
(1) Maintaining, defending or settling an action or proceeding;

(2) Holding meetings of its members or managers or carrying on any other activity concerning its internal affairs;

(3) Maintaining bank accounts;

(4) Maintaining offices or agencies for the transfer, exchange and registration of the foreign company's own securities or maintaining trustees or depositories with respect to those securities;

(5) Selling through independent contractors;

(6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(7) Creating or acquiring indebtedness, mortgages or security interests in real or personal property;

(8) Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting and maintaining property so acquired;

(9) Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions of a like manner; and

(10) Transacting business in interstate commerce.

(b) For purposes of this article, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (a) of this section, constitutes transacting business in this state.

(c) This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation or regulation under any other law of this state.

§31B-10-1004. Issuance of certificate of authority.
Unless the secretary of state determines that an application for a certificate of authority fails to comply as to form with the filing requirements of this chapter, the secretary of state, upon payment of all filing fees, shall file the application and send a receipt for it and the fees to the limited liability company or its representative.

§31B-10-1005. Name of foreign limited liability company.

(a) If the name of a foreign limited liability company does not satisfy the requirements of section 1-105, the company, to obtain or maintain a certificate of authority to transact business in this state, must use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its managers, in the case of a manager-managed company, or of its members, in the case of a member-managed company, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d) of this section, the name, including a fictitious name to be used to transact business in this state, of a foreign limited liability company must be distinguishable upon the records of the secretary of state from:

(1) The name of any corporation, limited partnership, or company incorporated, organized or authorized to transact business in this state;

(2) A name reserved or registered under section 1-106 or 1-107; and

(3) The fictitious name of another foreign limited liability company authorized to transact business in this state.

(c) A foreign limited liability company may apply to the secretary of state for authority to use in this state a name that is not distinguishable upon the records of the secretary of state from a name described in subsection (b) of this section. The secretary of state shall authorize use of the name applied for if:
(1) The present user, registrant or owner of a reserved name consents to the use in a record and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the foreign applying limited liability company; or

(2) The applicant delivers to the secretary of state a certified copy of a final judgment of a court establishing the applicant's right to use the name applied for in this state.

(d) A foreign limited liability company may use in this state the name, including the fictitious name, of another domestic or foreign entity that is used in this state if the other entity is incorporated, organized or authorized to transact business in this state and the foreign limited liability company:

(1) Has merged with the other entity;

(2) Has been formed by reorganization of the other entity; or

(3) Has acquired all or substantially all of the assets, including the name, of the other entity.

(e) If a foreign limited liability company authorized to transact business in this state changes its name to one that does not satisfy the requirements of section 1-105, it may not transact business in this state under the name as changed until it adopts a name satisfying the requirements of section 1-105 and obtains an amended certificate of authority.

§31B-10-1006. Revocation of certificate of authority.

(a) A certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the secretary of state in the manner provided in subsection (b) of this section if:

(1) The company fails to:

(i) Pay any fees, taxes and penalties owed to this state;
(ii) Deliver its annual report required under section 2-211 to the secretary of state within sixty days after it is due;

(iii) Appoint and maintain an agent for service of process as required by this article; or

(iv) File a statement of a change in the name or business address of the agent as required by this article; or

(2) A misrepresentation has been made of any material matter in any application, report, affidavit or other record submitted by the company pursuant to this article.

(b) The secretary of state may not revoke a certificate of authority of a foreign limited liability company unless the secretary of state sends the company notice of the revocation, at least sixty days before its effective date, by a record addressed to its agent for service of process in this state, or if the company fails to appoint and maintain a proper agent in this state, addressed to the office required to be maintained by section 1-108. The notice must specify the cause for the revocation of the certificate of authority. The authority of the company to transact business in this state ceases on the effective date of the revocation unless the foreign limited liability company cures the failure before that date.

§31B-10-1007. Cancellation of authority.

A foreign limited liability company may cancel its authority to transact business in this state by filing in the office of the secretary of state a certificate of cancellation. Cancellation does not terminate the authority of the secretary of state to accept service of process on the company for claims for relief arising out of the transactions of business in this state.

§31B-10-1008. Effect of failure to obtain certificate of authority.

(a) A foreign limited liability company transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.
(b) The failure of a foreign limited liability company to have a certificate of authority to transact business in this state does not impair the validity of a contract or act of the company or prevent the foreign limited liability company from defending an action or proceeding in this state.

(c) Limitations on personal liability of managers, members and their transferees are not waived solely by transacting business in this state without a certificate of authority.

(d) If a foreign limited liability company transacts business in this state without a certificate of authority, it appoints the secretary of state as its agent for service of process for claims for relief arising out of the transaction of business in this state.

§31B-10-1009. Action by attorney general.

The attorney general may maintain an action to restrain a foreign limited liability company from transacting business in this state in violation of this article.

ARTICLE 11. DERIVATIVE ACTIONS.

§31B-11-1101. Right of action.

§31B-11-1102. Proper plaintiff.

§31B-11-1103. Pleading.

§31B-11-1104. Expenses.

§31B-11-1101. Right of action.

A member of a limited liability company may maintain an action in the right of the company if the members or managers having authority to do so have refused to commence the action or an effort to cause those members or managers to commence the action is not likely to succeed.

§31B-11-1102. Proper plaintiff.

In a derivative action for a limited liability company, the plaintiff must be a member of the company when the action is commenced; and:

(1) Must have been a member at the time of the transaction of which the plaintiff complains; or
(2) The plaintiff's status as a member must have de-
volved upon the plaintiff by operation of law or pursuant
to the terms of the operating agreement from a person
who was a member at the time of the transaction.

§31B-11-1103. Pleading.

In a derivative action for a limited liability company,
the complaint must set forth with particularity the effort of
the plaintiff to secure initiation of the action by a member
or manager or the reasons for not making the effort.

§31B-11-1104. Expenses.

If a derivative action for a limited liability company is
successful, in whole or in part, or if anything is received
by the plaintiff as a result of a judgment, compromise or
settlement of an action or claim, the court may award the
plaintiff reasonable expenses, including reasonable attor-
ney's fees, and shall direct the plaintiff to remit to the
limited liability company the remainder of the proceeds
received.

ARTICLE 12. MISCELLANEOUS PROVISIONS.

§31B-12-1201. Uniformity of application and construction.
§31B-12-1202. Short title.
§31B-12-1203. Severability clause.
§31B-12-1204. Effective date.
§31B-12-1205. Transitional provisions.
§31B-12-1206. Savings clause.

§31B-12-1201. Uniformity of application and construction.

This chapter shall be applied and construed to effectu-
ate its general purpose to make uniform the law with re-
spect to the subject of this chapter among states enacting
it.

§31B-12-1202. Short title.

This chapter may be cited as the Uniform Limited
Liability Company Act.

§31B-12-1203. Severability clause.
If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are severable.

§31B-12-1204. Effective date.

This chapter takes effect on the first day of July, one thousand nine hundred ninety-six.

§31B-12-1205. Transitional provisions.

(a) Before the first day of July, one thousand nine hundred ninety-six, this chapter governs only a limited liability company organized:

(1) After the effective date of this chapter, unless the company is continuing the business of a dissolved limited liability company under the provisions of the former West Virginia limited liability company act; and

(2) Before the effective date of this chapter, which elects, as provided by subsection (c) of this section, to be governed by this chapter.

(b) On and after the first day of July, one thousand nine hundred ninety-six, this chapter governs all limited liability companies.

(c) Before the first day of July, one thousand nine hundred ninety-six, a limited liability company voluntarily may elect, in the manner provided in its operating agreement or by law for amending the operating agreement, to be governed by this chapter.

§31B-12-1206. Savings clause.

This chapter does not affect an action or proceeding commenced or right accrued before the effective date of this chapter.

ARTICLE 13. PROFESSIONAL LIMITED LIABILITY COMPANIES.

§31B-13-1302. Who may become a member; professional limited liability companies authorized.

§31B-13-1303. Name.

§31B-13-1304. Duty of licensing board.

§31B-13-1305. Professional relationships not affected; liability for debts, etc., of limited liability company, its members, managers, employees and agents; individual liability.

§31B-13-1306. Application of article.


As used in this article:

(1) "Licensing board" means the governing body or agency established under chapter thirty of this code which is responsible for the licensing and regulation of the practice of the profession which the professional limited liability company is organized to provide;

(2) "Professional limited liability company" means a limited liability company organized under this chapter for the purpose of rendering a professional service; and

(3) "Professional service" means the services rendered by the following professions: Attorneys-at-law under article two, physicians and podiatrists under article three, dentists under article four, optometrists under article eight, accountants under article nine, veterinarians under article ten, architects under article twelve, engineers under article thirteen, osteopathic physicians and surgeons under article fourteen and chiropractors under article sixteen, all of chapter thirty of this code.

§31B-13-1302. Who may become a member; professional limited liability companies authorized.

(a) Two or more persons duly licensed or otherwise legally authorized to render the same professional services or to practice together within this state may become members of a professional limited liability company under the provisions of this chapter for the purpose of rendering the same professional services. Notwithstanding any provision of this code to the contrary, including any limitation or restriction set forth in any licensing provision of chapter thirty of this code, a professional limited liability company
may be formed to provide any of the professional services as defined in section 13-1301(3) of this article.

(b) No professional limited liability company organized under this article shall have as a member anyone other than a person who is duly licensed or otherwise legally authorized to render the professional services for which the professional limited liability company was organized.

§31B-13-1303. Name.

The name of a professional limited liability company shall contain the words "professional limited liability company" or the abbreviation "P.L.L.C." or "Professional L. L.C.".

§31B-13-1304. Duty of licensing board.

The licensing board for each of the professions authorized to form professional limited liability companies under this article shall propose legislative rules for promulgation, in accordance with the provisions of article three, chapter twenty-nine-a of this code, providing for the implementation of this article and the procedures for the formation and approval of professional limited liability companies for the particular profession under the jurisdiction of such licensing board.

§31B-13-1305. Professional relationships not affected; liability for debts, etc., of limited liability company, its members, managers, employees and agents; individual liability.

(a) The provisions of this article shall not be construed to alter or affect the professional relationship between an individual furnishing professional services and a person receiving that service either with respect to liability arising out of that professional service or any confidential relationship between the individual rendering and the individual receiving the professional services, and all confidential relationships enjoyed under the laws of this state, whether now in existence, or hereafter enacted, shall remain inviolate.
(b) A member, manager, agent or employee of a professional limited liability company shall not, by reason of being a member, manager, agent or employee of a professional limited liability company, be personally liable for any debts or claims against, or the acts or omissions of the professional limited liability company or of another member, manager, agent or employee of the professional limited liability company.

(c) The professional limited liability company shall be liable for the acts or omissions of its members, managers, agents and employees to the same extent to which any other limited liability company would be liable for the acts or omissions of its members, managers, agents and employees while they are engaged in carrying on the professional limited liability company business.

(d) Notwithstanding any provision of this article to the contrary, any individual who renders a professional service as a member, manager, agent or employee of a professional limited liability company is liable for a negligent or wrongful act or omission in which the individual personally participated to the same extent as if the individual rendered the professional service as a sole practitioner.

(e) A professional limited liability company organized under this article shall carry at all times at least one million dollars of professional liability insurance which shall insure the limited liability company and its members against liability imposed upon the company or any of its members arising out of the performance of professional services to patients or clients of the company by any of the members or professional or nonprofessional managers or employees of the limited liability company.

(f) If, in any proceeding, compliance by a professional limited liability company with the requirements of subsection (e) of this section is disputed, that issue shall be determined by the court, and the burden of proof of compliance shall be on the person who claims the limitation of liability set forth in subsection (b) of this section.
(g) If a professional limited liability company is in compliance with the requirements of subsection (e) of this section, the requirements of this section shall not be admissible or in any way be made known to a jury in determining an issue of liability for or extent of the obligation or damages in question.

(h) A professional limited liability company is considered to be in compliance with subsection (e) of this section if it provides one million dollars of funds specifically designated and segregated for the satisfaction of judgments against the limited liability company, its members or any of its professional or nonprofessional managers or employees resulting from any of the types of claims covered by subsection (e) of this section, by:

1. Deposit in trust or in bank escrow of cash, bank certificates of deposit or United States treasury obligation; or
2. A bank letter of credit or insurance company bond.

§31B-13-1306. Application of article.

Except as otherwise specifically provided in this article, all provisions of this chapter governing limited liability companies shall be applicable to professional limited liability companies.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 6. MONEY AND INTEREST.

§47-6-10. Corporations, partnerships, and limited partnerships not entitled to defense of usury.

No corporation, partnership, limited partnership or limited liability company may interpose the defense of usury in any civil action, nor may any bond, note, debt or contract of a corporation, partnership, limited partnership or limited liability company be set aside, impaired or adjudged invalid by reason of anything contained in the laws prohibiting usury.
AN ACT to amend and reenact sections one, three, five and seven, article two, chapter twenty-two-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to definitions in the water pollution control revolving fund act; changing the term "local government" to "local entity"; adding banking institutions to the definition of "local entity"; establishing a revolving fund; promulgation of rules; disbursement from the fund; collection of money due the fund; and review of funded projects.

Be it enacted by the Legislature of West Virginia:

That sections one, three, five and seven, article two, 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 2. WATER POLLUTION CONTROL REVOLVING FUND
ACT.

§22C-2-1. Definitions.
§22C-2-3. West Virginia water pollution control revolving fund; disbursement of fund moneys; administration of the fund.
§22C-2-5. Collection of money due to the fund.
§22C-2-7. Environmental review of funded projects.

§22C-2-1. Definitions.

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

3 (a) "Authority" means the water development authority provided for in section four, article one of this chapter.
(b) "Cost" as applied to any project financed under the provisions of this article means the total of all costs incurred by a local entity that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project including:

1. Developmental, planning and feasibility studies, surveys, plans and specifications;
2. Architectural, engineering, financial, legal or other special services;
3. Acquisition of land and any buildings and improvements on the land or buildings, including the discharge of any obligations of the sellers of the land, buildings or improvements;
4. Site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment;
5. The reasonable costs of financing incurred by the local entity in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, and the funding of accounts and reserves which the authority may require; and
6. Other items that the division of environmental protection determines to be reasonable and necessary.

(c) "Fund" means the state water pollution control revolving fund provided for in this article as it may be expanded or modified from time to time pursuant to the clean water act, as amended, the federal safe drinking water act, as amended or by the executive order of the governor issued to comply with federal laws relating to the acts.
(d) "Instrumentality" means the division of environmental protection or the agency designated by an order of the governor as having the primary responsibility for administering the fund pursuant to the federal clean water act, as amended, and the federal safe drinking water act, as amended, or other federal laws.

(e) "Local entity" means any county, city, town, municipal corporation, authority, district, public service district, commission, banking institution or political subdivision in West Virginia.

(f) "Project" means any public water or wastewater treatment facility located or to be located in or outside this state by a local entity and includes:

1. Sewage and wastewater collection, treatment and disposal facilities;
2. Public water transportation, treatment and distribution facilities;
3. Drainage facilities and projects;
4. Administrative, maintenance, storage and laboratory facilities related to the facilities delineated in subdivisions (1), (2) and (3) of this subsection;
5. Interests in land related to the facilities delineated in subdivisions (1), (2), (3) and (4) of this subsection; and
6. Other projects allowable under federal law.

§22C-2-3. West Virginia water pollution control revolving fund; disbursement of fund moneys; administration of the fund.

(a) Under the direction of the division of environmental protection, the water development authority shall establish, administer and manage a permanent and perpetual fund, to be known as the "West Virginia Water Pollution Control Revolving Fund." The fund shall be comprised of moneys appropriated to the fund by the Legislature, moneys allocated to the state by the federal government ex-
pressly for the purposes of establishing and maintaining a state water pollution control revolving fund, all receipts from loans made from the fund to local entities, all income from the investment of moneys held in the fund, and all other sums designated for deposits to the fund from any source, public or private. Moneys in the fund shall be used solely to make loans to local entities to finance or refinance the costs of a project: Provided, That moneys in the fund shall be utilized to defray the costs incurred by the authority and the division of environmental protection in administering the provisions of this article: Provided, however, That moneys in the fund shall be used to make grants for projects to the extent allowed or authorized by federal law.

(b) The director of the division of environmental protection, in consultation with the authority, shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code, to:

(1) Govern the disbursement of moneys from the fund; and

(2) Establish a state water pollution control revolving fund program to direct the distribution of grants or loans from the fund to particular local entities and establish the interest rates and repayment terms of the loans.

(c) In order to carry out the administration and management of the fund, the authority is authorized to employ officers, employees, agents, advisers and consultants, including attorneys, financial advisers, engineers, other technical advisers and public accountants and, notwithstanding any provisions of this code to the contrary, to determine their duties and compensation without the approval of any other agency or instrumentality.

(d) The authority shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to govern the pledge of loans to secure bonds of the authority.
(e) All moneys belonging to the fund shall be kept in appropriate depositories and secured in conformance with this code. Disbursements from the fund shall be authorized for payment by the director of the authority or the director's designee. Any depository or officer of the depository to which moneys of the fund are paid shall act as trustee of the moneys and shall hold and apply them solely for the purposes for which the moneys are provided under this article. Moneys in the fund shall not be commingled with other money of the authority. If not needed for immediate use or disbursement, moneys in the fund may be invested or reinvested by the authority in obligations or securities which are considered lawful investments for public funds under this code.

§22C-2-5. Collection of money due to the fund.

In order to ensure the timely payment of all sums due and owing to the fund under a revolving fund loan agreement between the state and a local entity, and notwithstanding any provisions of this code to the contrary, the authority has and may, at its option, exercise the following rights and remedies in the event of any default by a local entity under a loan agreement:

(a) The authority may directly impose, in its own name and for its own benefit, service charges upon all users of a project funded by a loan distributed to a local entity pursuant to this article, and may proceed directly to enforce and collect the service charges, together with all necessary costs of the enforcement and collection.

(b) The authority may exercise, in its own name or in the name of and as the agent for a particular local entity, all of the rights, powers and remedies of the local entity with respect to the project or which may be conferred upon the local entity by statute, rule, regulation or judicial decision, including all rights and remedies with respect to users of the project funded by the loan distributed to that local entity pursuant to this article.

(c) The authority may, by civil action, mandamus or other judicial or administrative proceeding, compel per-
formance by a local entity of all of the terms and conditions of the loan agreement between the state and that local entity including:

(1) The adjustment of service charges as required to repay the loan or otherwise satisfy the terms of the loan agreement;

(2) The enforcement and collection of service charges; and

(3) The enforcement by the local entity of all rights and remedies conferred by statute, rule, regulation or judicial decision.

The rights and remedies enumerated in this section are in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement.

§22C-2-7. Environmental review of funded projects.

(a) The division of environmental protection shall conduct an environmental review on each project funded under this article. The director of the division of environmental protection shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the environmental review of funded projects: Provided, That the rules shall be consistent with the regulations promulgated by the United States environmental protection agency pursuant to the federal clean water act, as amended.

(b) The director of the division of environmental protection is authorized to direct a local entity, or its agent, to implement all measures that, in the judgment of the director, are necessary in order to mitigate or prevent adverse impacts to the public health, safety or welfare or to the environment that may result from a project funded under this article. The director is further authorized to require all projects to comply with all other appropriate federal laws and regulations that are required of the projects under the federal clean water act, as amended.
CHAPTER 258

(Com. Sub. for H. B. 4132—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed March 4, 1996; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections six, nine, nine-a, nine-b, nine-d, nine-f and eleven, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article ten-d, chapter five of said code; to amend and reenact section thirteen, article one, chapter twelve of said code; to amend and reenact sections two, three, five, eight, ten, twelve, thirteen and fifteen, article six of said chapter; to further amend said article by adding thereto a new section, designated section nine-g; and to amend chapter forty-four of said code by adding thereto a new article, designated article six-b, all relating to transferring from the board of investments to the newly created West Virginia trust fund for the purpose of investment the funds formerly known as the consolidated pension fund and hereafter known as the consolidated pension plan and being within the West Virginia public employees retirement system established in article ten, chapter five of this code, and within the state teachers retirement system established in article seven-a, chapter eighteen of this code, and within the West Virginia state police retirement system established in article two-a, chapter fifteen of this code, and within the death, disability and retirement fund for the division of public safety established in article two, chapter fifteen of this code, and within the judges' retirement system established in article nine, chapter fifty-one of this code, and within the workers' compensation fund established in article three, chapter twenty-three of this code, and within the coal-workers' pneumoconiosis fund established in article four-b, chapter twenty-three of this code; consolidated public retirement board transferring public retirement plans' employee and employer contributions except defined contribution and voluntary...
deferred compensation funds; payment for services relating to the pursuit of claims against third party investment losses; board of investments; definitions; board composition; removal of authority to invest public retirement funds; management of consolidated fund; purchase of loans from the workers' compensation loan pool, from the public employees retirement system loan pool, and from the teachers retirement system loan pool; restrictions on investments; investment policy; standard of care; exceptions to the board of investments; audits; West Virginia trust fund; how article cited; legislative findings and purpose; public employee and employer contributions declared to be an irrevocable trust; disclaimer of state ownership; workers' compensation and pneumoconiosis funds declared to be trust funds; definitions; West Virginia trust fund created; body corporate; board created; trustees; nomination and appointment of trustees, qualifications and terms of appointment, advice and consent; operational, annual, and other meetings; designation of representatives and committees; board meetings with committees regarding investment policy statement required; open meetings, qualifications; management and control of fund; officers; staff; fiduciary or surety bonds for trustees; liability of trustees; corporate powers; annual audits; reports and information to constitutional and legislative officers, council of finance and administration, consolidated public retirement board, workers' compensation fund, and coal-workers' pneumoconiosis fund; statements and reports open for inspection; fees for service; transfers to the trust; trust indenture; standard of care; and limitations on investments.

Be it enacted by the Legislature of West Virginia:

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

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.


44. Administration of Estates and Trusts.

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 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-1. Consolidated public retirement board created; transition; members; vacancies.

(a) There is hereby created a consolidated public retirement board to administer all public retirement plans in this state. It shall administer the public employees retirement system established in article ten of this chapter; the teachers retirement system established in article seven-a, chapter eighteen of this code; the teachers' defined contribution retirement system created by article seven-b, chapter eighteen of this code; the death, disability and retirement fund of the department of public safety created by article two, chapter fifteen of this code; and the judges' retirement system created under article nine, chapter fifty-one of this code.

(b) The consolidated public retirement board shall begin administration of the systems listed in subsection (a) of this section on the first day of July, one thousand nine hundred ninety-one: Provided, That the board shall begin administration of the teachers' defined contribution retirement system established in article seven-b, chapter eighteen of this code on the first day of January, one thousand nine hundred ninety-one. Prior to that date the
existing entities which administer the system shall cooperate with the board in the orderly transition of all duties, responsibilities, records and other materials in their possession.

(c) The membership of the consolidated public retirement board consists of:

(1) The governor or his or her designee;

(2) The state treasurer or his or her designee;

(3) The state auditor or his or her designee;

(4) The secretary of the department of administration or his or her designee;

(5) Four residents of the state, who are not members, retirants or beneficiaries of any of the public retirement systems, to be appointed by the governor, with the advice and consent of the Senate; and

(6) A member, annuitant or retirant of the public employees retirement system who is or was a state employee; a member, annuitant or retirant of the public employees retirement system who is not or was not a state employee; a member, annuitant or retirant of the teachers retirement system; a member, annuitant or retirant of the department of public safety death, disability and retirement fund; and a member, annuitant or retirant of the teachers' defined contribution retirement system, all to be appointed by the governor, with the advice and consent of the Senate.

(d) The appointed members of the board shall serve five-year terms. A member appointed pursuant to subdivision (5), subsection (c) of this section ceases to be a member of the board if he or she ceases to be a member of the represented system. If a vacancy occurs in the appointed membership, the governor, within sixty days, shall fill the vacancy by appointment for the unexpired term. No more than five appointees shall be of the same political party.

(e) The consolidated public retirement board shall have all the powers, duties, responsibilities and liabilities of
the public employees retirement system established
pursuant to article ten of this chapter; the teachers
retirement system established pursuant to article seven-a,
chapter eighteen of this code; the teachers' defined
contribution system established pursuant to article seven-b,
chapter eighteen of this code; the death, disability and
retirement fund of the department of public safety created
pursuant to article two, chapter fifteen of this code; and
the judges' retirement system created pursuant to article
nine, chapter fifty-one of this code and their appropriate
governing boards. The consolidated public retirement
board may propose for promulgation all rules necessary
to effectuate its powers, duties and responsibilities
pursuant to article three, chapter twenty-nine-a of this
code: Provided, That the board may adopt any or all of
the rules, previously promulgated, of a retirement system
which it administers.

(f) Effective on the first day of July, one thousand
nine hundred ninety-six, the consolidated public
retirement board shall, within two business days of receipt,
transfer all funds received by the consolidated public
retirement board for the benefit of the retirement systems
within the consolidated pension plan as defined in section
three-c, article six-b, chapter forty-four of this code,
including, but not limited to, all employer and employee
contributions, to the West Virginia trust fund: Provided,
That the employer and employee contributions of the
teachers' defined contribution system, established in
section three, article seven-b, chapter eighteen of this code,
and voluntary deferred compensation funds invested by
the West Virginia consolidated public retirement board
pursuant to section five, article ten-b of this chapter, shall
not be transferred to the West Virginia trust fund.

(g) The consolidated public retirement board shall be
a trustee for all public retirement plans, except with regard
to the investment of funds: Provided, That the
consolidated public retirement board shall be a trustee
with regard to the investments of the teachers' defined
contribution system, and voluntary deferred compensation
funds invested pursuant to section five, article ten-b of this
chapter.
CHAPTER 12. PUBLIC MONEYS AND SECURITIES.


State Depositories.

ARTICLE 1. STATE DEPOSITORIES.

§12-1-13. Payment of banking services and litigation costs for prior investment losses.

(a) The board of investments is authorized to pay for banking services, and services ancillary thereto, by either a compensating balance in a noninterest-bearing account maintained at the financial institution providing the services or with a state warrant as described in section one, article five of this chapter.

(b) The board of investments is authorized to pay for the investigation and pursuit of claims against third parties for the investment losses incurred during the period beginning on the first day of August, one thousand nine hundred eighty-four, and ending on the thirty-first day of August, one thousand nine hundred eighty-nine. The payment may be in the form of a state warrant.

(c) If payment is made by a state warrant, the board of investments is authorized to establish within the consolidated fund an investment pool which will generate sufficient income to pay for all banking services provided to the state and to pay for the investigation and pursuit of the prior investment loss claims. All income earned by the investment pool shall be paid into a special account of the state board of investments to be known as the banking services account and shall be used solely for the purpose of paying for all banking services and services ancillary to the banking services provided to the state and for the investigation and pursuit of the prior investment loss claims.

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-2. Definitions.
§12-6-3. State board of investments continued; body corporate; members; appointment of certain members; qualifications and term of office.

§12-6-5. Powers of the board.

§12-6-8. Investment funds established; management thereof.

§12-6-9g. Transfer of loans to consolidated fund.

§12-6-10. Restrictions on investments.

§12-6-12. Investment policy; standard of care.

§12-6-13. Board as sole agency for investments; exceptions.

§12-6-15. Audits.

§12-6-2. Definitions.

1 As used in this article, unless a different meaning clearly appears from the context:

2 (1) "Board" means the West Virginia state board of investments;

3 (2) "Consolidated fund" means the investment fund managed by the board and established pursuant to subsection (a), section eight of this article;

4 (3) "Local government funds" means the moneys of a political subdivision, including policemen's pension and relief funds, firemen's pension and relief funds and volunteer fire departments, transferred to the board for deposit;

5 (4) "Political subdivision" means and includes a county, municipality or any agency, authority, board, county board of education, commission or instrumentality of a county or municipality and regional councils created pursuant to the provisions of section five, article twenty-five, chapter eight of this code;

6 (5) "Securities" means all bonds, notes, debentures or other evidences of indebtedness;

7 (6) "State funds" means all moneys of the state which may be lawfully invested except the "school fund" established by section four, article XII of the state constitution; and
(7) "West Virginia trust fund" means the entity created by the provisions of article six-b, chapter forty-four of this code.

§12-6-3. State board of investments continued; body corporate; members; appointment of certain members; qualifications and term of office.

(a) The state board of investments is hereby continued as a body corporate of the state authorized to exercise all of the powers and functions granted to it pursuant to this article. There shall be seven members of the state board of investments. The governor, or his or her designee, state treasurer and state auditor shall be members of the board. There shall be four members appointed by the governor: Provided, That no more than three such appointed members may belong to the same political party.

(b) The members appointed by the governor shall be appointed from a list of twelve persons submitted jointly by the governor, the state treasurer and the state auditor. No more than two names submitted by the governor may be appointed as members to the board. Of the members appointed by the governor, two shall be members of the financial community, one shall be a certified public accountant and one shall be an attorney with experience in finance and investment matters. Appointments shall be made by the governor with the advice and consent of the Senate.

(c) Appointed members shall serve for a term of six years and may be reappointed at the expiration of their terms. In the event of a vacancy among appointed members, an appointment shall be made to fill the unexpired term. Upon the expiration of terms on the thirtieth day of April, two thousand one, the governor shall appoint or reappoint one member to a three-year term; one to a four-year term; one to a five-year term; and one to a six-year term. Thereafter, all terms shall be six years.

(d) Appointed members of the board shall serve without compensation, but are entitled to their reasonable and necessary expenses actually incurred in discharging their duties under this article.
§12-6-5. Powers of the board.

The board may exercise all powers necessary or appropriate to carry out and effectuate its corporate purposes. The board may:

1. Adopt and use a common seal and alter the same at pleasure;

2. Sue and be sued;

3. Enter into contracts and execute and deliver instruments;

4. Acquire (by purchase, gift or otherwise), hold, use and dispose of real and personal property, deeds, mortgages and other instruments;

5. Promulgate and enforce bylaws and rules for the management and conduct of its affairs;

6. Retain and employ legal, accounting, financial and investment advisors and consultants;

7. Acquire (by purchase, gift or otherwise), hold, exchange, pledge, lend and sell or otherwise dispose of securities and invest funds in interest earning deposits;

8. Maintain accounts with banks, securities dealers and financial institutions both within and outside this state;

9. Engage in financial transactions whereby securities are purchased by the board under an agreement providing for the resale of the securities to the original seller at a stated price;

10. Engage in financial transactions whereby securities held by the board are sold under an agreement providing for the repurchase of the securities by the board at a stated price;

11. Consolidate and manage moneys, securities and other assets of the other funds and accounts of the state and the moneys of political subdivisions which may be made available to it under the provisions of this article;
(12) Enter into agreements with political subdivisions of the state whereby moneys of the political subdivisions are invested on their behalf by the board;

(13) Charge and collect administrative fees from political subdivisions for its services;

(14) Exercise all powers generally granted to and exercised by the holders of investment securities with respect to management of the investment securities;

(15) Contract with one or more banking institutions in or outside the state for the custody, safekeeping and management of securities held by the board; and

(16) Develop and implement a centralized receipts processing center.

§12-6-8. Investment funds established; management thereof.

(a) There is hereby established a special investment fund to be managed by the board and designated as the "consolidated fund".

(b) Each board, commission, department, official or agency charged with the administration of state funds is hereby authorized to make moneys available to the board for investment.

(c) Each political subdivision of this state through its treasurer or equivalent financial officer is hereby authorized to enter into agreements with the board for the investment of moneys of the political subdivision. Any political subdivision may enter into an agreement with any state agency from which it receives funds to allow the funds to be transferred to their investment account with the state board of investments.

(d) Moneys held in the various funds and accounts administered by the board shall be invested as permitted in section twelve of this article and subject to the restrictions contained in section ten of this article. The board shall maintain records of the deposits and withdrawals of each participant and the performance of the various funds and accounts. The board shall also establish such rules and regulations for the administration of the various funds and accounts established by this section as it considers
necessary for the administration of the funds and accounts, including, but not limited to: (1) The specification of minimum amounts which may be deposited in any fund or account and minimum periods of time for which deposits will be retained; and (2) creation of reserves for losses. Provided, That in the event any moneys made available to the board may not lawfully be combined for investment or deposited in the consolidated funds established by this section, the board may create special accounts and may administer and invest those moneys in accordance with the restrictions specially applicable to those moneys.

§12-6-9g. Transfer of loans to consolidated fund.

The Legislature hereby finds and declares that with the establishment of the West Virginia trust fund as provided in article six-b, chapter forty-four of this code, and the transfer of the retirement systems' and workers' compensation and pneumoconiosis funds' investments to the West Virginia trust fund, those mortgage and economic development loans which the board determines cannot be actively traded and which are currently held by the retirement systems and workers' compensation and pneumoconiosis funds should remain as investments of the state.

Effective on the thirtieth day of June, one thousand nine hundred ninety-six, the board of investments is hereby directed to purchase the workers' compensation loan pool, public employees retirement system loan pool and teachers retirement loan pool. The amount to be paid shall be the loan's current amortized cost value plus any accrued interest as of the purchase date. The purchased loans shall then be recorded in the consolidated fund's state loan pool.

§12-6-10. Restrictions on investments.

Notwithstanding any other provision in this code, moneys on deposit in the consolidated fund shall be invested as permitted by section twelve of this article subject to the restrictions and conditions contained in this section:
(1) At no time shall more than seventy-five percent of the consolidated fund be invested in any bond, note, debenture, commercial paper or other evidence of indebtedness of any private corporation or association. Any such security, at the time of its acquisition, shall be investment grade paper;

(2) At no time shall more than five percent of the consolidated fund be invested in securities issued by a single private corporation or association; and

(3) At no time shall less than fifteen percent of the consolidated fund be invested in any direct obligation of or obligation guaranteed as to the payment of both principal and interest by the United States of America.

§12-6-12. Investment policy; standard of care.

The board shall establish policy guidelines for the investment of moneys on deposit in each of the funds managed by the board based on the needs of the participants in the various funds. The board shall review the investments at least every three months and may require the purchase or sale of any investments. In order to effectuate its investment policies, the board shall require from each participant a schedule, on an annual or more frequent basis, of anticipated deposits and withdrawals.

Any investments made under this article shall be made with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. Fiduciaries shall diversify plan investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

§12-6-13. Board as sole agency for investments; exceptions.

All duties vested by law in any agency, commission, official or other board of the state relating to the investment of moneys, and the acquisition, sale, exchange or disposal of securities or any other investment are hereby transferred to the board: Provided, That the West Virginia trust fund, is the sole entity for the investment of
the consolidated pension plan funds in accordance with article six-b, chapter forty-four of this code: *Provided, however,* That neither this section nor any other section of this article applies to the "board of the school fund" and the "school fund" established by section 4, article XII of the state constitution: *Provided further,* That funds under the control of the municipal bond commission may, in the discretion of the commission, be made available to the board for investment to be invested by the commission as provided in article three, chapter thirteen of this code.

§12-6-15. Audits.

The board shall cause to be conducted an annual external audit, by a nationally recognized accounting firm in conjunction with the annual federal audit, of all investment transactions of the board: *Provided,* That the board shall on a monthly basis provide to each state agency and any other entity investing moneys in the consolidated fund an itemized statement of the agency's or the entity's account in the consolidated fund. The statement shall include the beginning balance, contributions, withdrawals, income distributed, change in value and ending balance.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 6B. WEST VIRGINIA TRUST FUND.

§44-6B-1. How article cited.

§44-6B-2. Legislative findings and purpose.

§44-6B-3. Definitions.

§44-6B-4. West Virginia trust fund created; body corporate; board created; trustees; nomination and appointment of trustees, qualifications and terms of appointment, advice and consent; annual and other meetings; designation of representatives and committees; board meetings with committees regarding investment policy statement required; open meetings, qualifications.

§44-6B-5. Management and control of fund; officers; staff; fiduciary or surety bonds for trustees; liability of trustees.

§44-6B-6. Corporate powers.

§44-6B-7. Annual audits; reports and information to constitutional and legislative officers, council of finance and administration, consolidated public retirement board, workers' compensation
§44-6B-8. Fees for service.
§44-6B-9. Transfers to the trust.
§44-6B-10. Trust indenture.
§44-6B-12. Limitations on investments.

§44-6B-1. How article cited.
1 This article shall be known and may be cited as the
2 "West Virginia Trust Fund Act".

§44-6B-2. Legislative findings and purpose.
1 (a) The Legislature hereby finds and declares that all
2 the public employees covered by the public employees
3 retirement system, the teachers retirement system, the West
4 Virginia state police retirement system, the death, disability
5 and retirement fund of the division of public safety and
6 the judges' retirement system should benefit from a
7 prudent and conscientious staff of financial professionals
8 dedicated to the administration, investment and
9 management of those employees' and employer's financial
10 contributions and that an independent trust fund board
11 and staff should be immune to changing political climates
12 and should provide a stable and continuous source of
13 professional financial investment and management.
14
15 (b) The Legislature hereby finds and declares further
16 that experience has demonstrated that prudent investment
17 provides diversification and beneficial return not only for
18 public employees but for all citizens of the state and that
19 in order to have access to this sound fiscal policy, public
20 employee and employer contributions are declared to be
21 an irrevocable trust, available for no use or purpose other
22 than for the benefit of those public employees.
23
24 (c) The Legislature hereby finds and declares further
25 that the state and other public employers that made or
26 make contributions to the West Virginia irrevocable trust
27 fund have no proprietary interest in the fund or in the
28 contributions made to the fund by them and that the state
29 and other public employers disclaim any right to reclaim
30 those contributions and waive any right of reclamation
they may have in the fund: Provided, That the provisions
of this subsection do not prohibit alterations or refunds of
employer contributions in the event of erroneous
payment.

(d) The Legislature hereby finds and declares further
that the workers' compensation funds and coal-workers'
pneumoconiosis fund are trust funds to be used
exclusively for those workers, miners and their
beneficiaries who have sacrificed their health in the
performance of their jobs, and further finds that the assets
available to pay awarded benefits should be prudently
invested so that awards may be paid.

(e) The Legislature hereby finds and declares further
that a not-for-profit, nonstock corporate structure with
appropriate governance shall be the best means of
assuring prudent financial management of this nonstate
trust fund under rapidly changing market conditions and
regulations.

(f) The Legislature hereby finds and declares further
that in accomplishing this purpose, the West Virginia trust
fund, created and established by section four of this
article, is acting in all respects for the benefit of the state's
public employees and ultimately the citizens of the state,
and the West Virginia trust fund is empowered by this
article to act as trustee for the irrevocable trust created by
this article, and the interests of citizens of the state shall be
best met by carrying out the provisions of this trust.

(g) The Legislature hereby finds and declares further
that the standard of care and prudence applied to trustees
and the conduct of the affairs of the irrevocable trust
created by this article is intended to be that applied to the
administration of private pension plans as described in
federal statutory law and by the common law of the
United States.

§44-6B-3. Definitions.

As used in this article unless a different meaning
clearly appears from the context:
(a) "Beneficiaries" means those individuals entitled to benefits from the consolidated pension plan;

(b) "Board" means the governing body for the West Virginia trust fund;

(c) "Consolidated pension plan" means the public employees retirement system established in article ten, chapter five of this code, the teachers retirement system established in article seven-a, chapter eighteen of this code, the West Virginia state police retirement system established in article two-a, chapter fifteen of this code, the death, disability and retirement fund of the department of public safety established in article two, chapter fifteen of this code, the judges' retirement system established in article nine, chapter fifty-one of this code, the workers' compensation fund established in article three, chapter twenty-three of this code, and the coal-workers' pneumoconiosis plan established in article four-b, chapter twenty-three of this code;

(d) "Participant plan" means any component system, plan or fund of the consolidated pension plan within the definition set forth in subdivision (c) of this section;

(e) "Political subdivision" means and includes a county, municipality or any agency, authority, board, county board of education, commission or instrumentality of a county or municipality and regional councils created pursuant to the provisions of section five, article twenty-five, chapter eight of this code;

(f) "State" means the state of West Virginia;

(g) "Trust fund" means the West Virginia trust fund; and

(h) "Trustee" means any member serving on the West Virginia trust fund board: Provided, That in section ten of this article wherein the terms of the trust indenture are set forth, "trustee" means the West Virginia trust fund.

§44-6B-4. West Virginia trust fund created; body corporate; board created; trustees; nomination and appointment of trustees, qualifications and terms of appointment, advice and consent; annual and other meetings; designation of representatives
and committees; board meetings with committees regarding investment policy statement required; open meetings, qualifications.

(a) There is hereby created the West Virginia trust fund. The fund is created as a public body corporate and established to provide prudent fiscal administration, investment and management for the pension funds and workers' compensation and pneumoconiosis funds formerly invested by this state. The corporation shall be organized as a nonprofit, nonstock corporation under the general corporation laws of the state.

(b) The trust fund shall be governed by a board of trustees, consisting of seven members:

(1) Four members shall be appointed by the governor from a list of twelve persons having experience in pension management, institutional management or financial markets. The list of twelve shall consist of four groups of three nominations, and no more than two of the three nominations in each group may be from the same political party. The president of the Senate, speaker of the House of Delegates, state auditor and state treasurer each shall submit one group of three nominations to the governor, who shall appoint one member from each group of three, which appointments shall be subject to the advice and consent of the Senate.

(2) The remaining three members shall be appointed from the general public by the governor, which appointments shall be subject to the advice and consent of the Senate. Of the members of the general public appointed by the governor, one shall be an attorney experienced in finance and investment matters, one shall be a certified public accountant and one shall be experienced in pension management, institutional management or financial markets.

(3) The governor shall make appointments to the trust fund board within sixty days of the effective date of this act. Nominations for the appointments shall be submitted to the governor within thirty days of the effective date of this act.
(4) Any appointment made by the governor subject to the advice and consent of the Senate is effective immediately upon appointment by the governor with respect to voting, constituting a quorum, receiving compensation and expenses, and all other rights and privileges of the trustee position.

(c) Two members shall serve for a term of three years, two members for a term of four years and three members for a term of five years, respectively, as the governor shall designate. Thereafter, at the end of each term, the governor may reappoint or appoint a successor following the same procedure as specified in subsection (b) of this section, who shall serve for five-year terms. No more than four of the trustees may belong to the same political party.

(d) In the event of a vacancy among the trustees, an appointment shall be made by the governor to fill the unexpired term. The governor shall fill the vacancy, by appointment from a new list of nominees, following the same procedure established in subsection (b) of this section.

(e) The governor may remove any trustee in case of gross negligence or misfeasance and may declare that position vacant and may appoint a person for the vacancy as provided in subsection (d) of this section.

(f) Each trustee shall be entitled to receive, and, at the trustee's option, the board shall pay to the trustee, compensation in the amount of five thousand dollars per year and additional compensation in the amount of five hundred dollars per meeting attended by the trustee in excess of the four quarterly meetings required by this section. In addition, trustees shall receive reasonable and necessary expenses actually incurred in discharging trustee duties pursuant to this article.

(g) The board shall meet quarterly and may include in its bylaws procedures for the calling and holding of additional meetings. For any quarterly or additional meeting in which the board shall review or modify its securities list or its investment objectives pursuant to subsection (f), section twelve of this article, the board shall
give ten days' notice in writing to the designated representative of each participant plan selected pursuant to subdivision (1), subsection (j) of this section, and the meeting shall be open to the members and beneficiaries of the participant plans for that portion of the meeting in which the board undertakes the review or modification.

(h) The West Virginia trust fund board shall meet prior to the first day of July, one thousand nine hundred ninety-six, to organize and structure its operations.

(i) The board shall hold an annual meeting within forty-five days after the issuance of the year-end financial report. The annual meeting may also serve as a quarterly meeting. The annual meeting shall be open to the public, and the board shall receive oral and written comments from representatives, members and beneficiaries of the participant plans and from other citizens of the state. At the annual meeting, the board shall adopt a fee schedule and a budget reflecting fee structures for the year.

(j) Pursuant to subsection (k) of this section, the board shall meet with committees representing the participant plans to discuss the board's drafting, reviewing or modifying the written investment policy of the trust with respect to that committee's participant plan pursuant to section twelve of this article. Representatives and committees shall be designated as follows:

(1) On or before the first day of May, one thousand nine hundred ninety-six, the West Virginia consolidated public retirement board shall promulgate procedural rules by which each pension system named in paragraphs one through five, subdivision (c), section ten of this article, shall designate an individual representative of each said pension system, and the West Virginia workers' compensation commission shall promulgate procedural rules by which the pneumoconiosis fund and the workers' compensation fund named in paragraphs six and seven, subdivision (c), section ten of this article, shall designate an individual representative of each said fund.

(2) On or before the first day of June, one thousand nine hundred ninety-six, and on or before the same date
each year thereafter, the consolidated public retirement board shall submit in writing to the West Virginia trust fund board the names of the five designated representatives, and the workers' compensation commission shall so submit the names of the two representatives.

(3) Each designated representative shall provide to the West Virginia trust fund board his or her current address, updated each year on or before the first day of July, to which address the board shall provide notice of meetings of the board pursuant to subsection (g) of this section.

(4) Each designated representative shall submit in writing to the board on or before the first day of July, one thousand nine hundred ninety-six, and on or before the same date each year thereafter, the names of no more than three persons comprising a committee representing the beneficiaries of that representative's participant plan.

(k) At its initial meeting, and thereafter at its annual meeting, the board shall meet with each of the seven committees, formed pursuant to subsection (j) of this section, for the purpose of receiving input from the committees regarding the board's drafting, reviewing or modifying its written investment policy statement for the trust. In developing the trust investment policy statement, the trustees shall receive each committee's stated objectives and policies regarding the risk tolerances and return expectations of each participant plan, with attention to the factors enumerated in subsection (g), section twelve of this article, in order to provide for the continuing financial security of the trust and its participant plans. The board may meet with the said committees or any of them at its quarterly and additional meetings for the same purpose.

(l) All meetings of the board shall be open to the representatives of the participant plans as appointed pursuant to subsection (j) of this section. The representatives shall be subject to any rules, bylaws, guidelines, requirements, and standards promulgated by the board. The representatives shall observe standards of decorum established by the board. The representatives shall be subject to the same code of conduct applicable to the trustees and shall be subject to all trust fund rules and
bylaws. The representatives shall also be subject to any requirements of confidentiality applicable to the trustees. Each representative shall be liable for any act which he or she undertakes which violates any rule, bylaw, or statute governing ethical standards, confidentiality, or other standard of conduct imposed upon the trustees or the representatives. Any meeting of the board may be closed, upon adoption of a motion by any trustee, when necessary to preserve the attorney-client privilege, to protect the privacy interests of individuals, to review personnel matters, or to maintain confidentiality when confidentiality is in the best interest of the beneficiaries of the trust.

§44-6B-5. Management and control of fund; officers; staff; fiduciary or surety bonds for trustees; liability of trustees.

(a) The management and control of the fund shall be vested solely in the board of trustees in accordance with the provisions of this article.

(b) The board of trustees shall elect a chairman to serve for a term of two years. The election shall be held at the board's first meeting after the effective date of this article. Effective with any vacancy in the chairmanship, the board shall elect a chairman to a new two-year term. Annually, beginning with the first meeting, the trustees shall elect a secretary, who need not be a member of the board, to keep a record of the proceedings of the board.

(c) The trustees shall appoint a chief executive officer of the trust fund and shall fix his or her duties and compensation. The chief executive officer shall have five years' experience in investment management with public or private funds within the ten years next preceding the date of appointment. The chief executive officer additionally shall have academic degrees, professional designations and other investment management or investment oversight or institutional investment experience in such combination as the trustees consider necessary to carry out the responsibilities of the chief executive officer position as defined by the trustees.
(d) The trustees shall retain an internal auditor to report directly to the trustees and shall fix his or her compensation. The internal auditor shall be a certified public accountant with at least three years' experience as an auditor. The internal auditor shall develop an internal audit plan, with board approval, for the testing of procedures and the security of transactions.

(e) Each trustee shall give a separate fiduciary or surety bond from a surety company qualified to do business within this state in a penalty amount of one million dollars for the faithful performance of his or her duties as a trustee of the fund. The board shall purchase a blanket bond for the faithful performance of its duties, in the amount of fifty million dollars or in an amount equivalent to one percent of the assets under management, whichever is greater. The amount of the blanket bond shall be in addition to the one million dollar individual bond required of each trustee by the provisions of this section. The board may require a fiduciary or surety bond from a surety company qualified to do business in this state for any person who has charge of, or access to, any securities, funds or other moneys held by the board, and the amount of the fiduciary or surety bond shall be fixed by the board. The premiums payable on all fiduciary or surety bonds shall be an expense of the board.

(f) The trustees and employees of the West Virginia trust fund are not liable personally, either jointly or severally, for any debt or obligation created by the West Virginia trust fund: Provided, That the trustees and employees of the West Virginia trust fund are liable for acts of misfeasance or gross negligence.

§44-6B-6. Corporate powers.

The fund may exercise all powers necessary or appropriate to carry out and effectuate its corporate purposes. The fund may:

(1) Adopt and use a common seal and alter the same at pleasure;
(2) Sue;
(3) Enter into contracts and execute and deliver instruments;
(4) Acquire (by purchase, gift or otherwise), hold, use and dispose of real and personal property, deeds, mortgages and other instruments;
(5) Promulgate and enforce bylaws and rules for the management and conduct of its affairs;
(6) Retain and employ legal, accounting, financial and investment advisors, managers and consultants;
(7) Acquire (by purchase, gift or otherwise), hold, exchange, pledge, lend and sell or otherwise dispose of securities and invest funds;
(8) Maintain accounts with banks, securities dealers and financial institutions both within and outside this state;
(9) Consolidate and manage moneys, securities and other assets of the pension plans and other funds and accounts of the state and the moneys of political subdivisions which may be made available to it under the provisions of this article;
(10) Enter into agreements with political subdivisions of the state whereby moneys of the political subdivisions are invested on their behalf by the fund;
(11) Charge and collect administrative investment and management fees for its services;
(12) Exercise all powers generally granted to and exercised by the holders of investment securities with respect to management of the securities;
(13) Make, and from time to time, amend and repeal bylaws, regulations and procedures not inconsistent with the provisions of this article;
(14) Hire its own employees, consultants, managers and advisors as it considers necessary, and fix their compensation and prescribe their duties;
40  (15) Develop, implement and maintain its own
41  banking accounts, investments and employee benefit
42  plans;
43  
44  (16) Borrow or open lines of credit; and
45  
46  (17) Do all things necessary to implement and operate
47  the trust fund and carry out the intent of this article.

§44-6B-7. Annual audits; reports and information to constitu­
1  tional and legislative officers, council of finance
2  and administration, consolidated public retire­
3  ment board, workers' compensation fund and
4  coal-workers' pneumoconiosis fund; statements
5  and reports open for inspection.
6  
7  (a) The trust fund shall cause an annual financial and
8  compliance audit to be made by a certified public
9  accounting firm having a minimum staff of ten certified
10  public accountants and being a member of the American
11  institute of certified public accountants, and, if doing
12  business in West Virginia, being a member of the West
13  Virginia society of certified public accountants. The
14  financial and compliance audit shall be made of the trust
15  fund's books, accounts and records, with respect to its
16  receipts, disbursements, investments, contracts and all other
17  matters relating to its financial operations. Copies of the
18  audit report shall be furnished to the governor, state
19  treasurer, state auditor, president of the Senate, speaker of
20  the House of Delegates, council of finance and
21  administration and consolidated public retirement board.
22  
23  (b) The trust fund shall produce monthly financial
24  statements and deliver them to each member of the board
25  and the executive secretary of the consolidated public
26  retirement board as established in sections one and two,
27  article ten-d, chapter five of this code and to the
28  commissioner of the bureau of employment programs as
29  administrator of the workers' compensation fund and
30  coal-workers' pneumoconiosis fund, as established in
31  section one, article one, and section one, article three, and
32  section seven, article four-b, chapter twenty-three of this
33  code.
(c) The trust fund shall deliver in each quarter to the council of finance and administration and the consolidated public retirement board a report detailing the investment performance of the retirement plans.

(d) The trust fund shall cause an annual performance audit to be made by a nationally recognized fiduciary service. The trust fund shall furnish copies of the audit report to the governor, state treasurer, state auditor, president of the Senate, speaker of the House of Delegates, council of finance and administration and consolidated public retirement board.

(e) The trust fund shall provide any other information requested in writing by the council of finance and administration.

(f) All statements and reports required in this section shall be available for inspection by the members and beneficiaries and designated representatives of the participant plans.

§44-6B-8. Fees for service.

The trust fund shall charge fees, as adopted at the annual meeting, for the reasonable and necessary expenses incurred by the trust fund in rendering services to the participant plans. The fees shall be subtracted from the total return of the trust fund, and the net return shall be credited to the participant plans. All fees which are dedicated or identified or readily identifiable to an individual participant plan shall be charged against that plan, and all other fees shall be charged as a percentage of assets under management. At its annual meeting, the board shall adopt a fee schedule and a budget reflecting fee structures.

§44-6B-9. Transfers to the trust.

(a) The West Virginia state board of investments shall transfer to the West Virginia trust fund the computers, and other necessary items of equipment associated with each position at the board of investments whose responsibilities and obligations shall as of the effective date of this section be performed by the West Virginia trust fund.
(b) Any state employee who terminates his or her state employment and becomes employed by the West Virginia trust fund may at his or her option defer retirement within the public employees retirement system pursuant to section twenty-one, article ten, chapter five of this code, or, may elect to transfer to the West Virginia trust fund his or her employee contributions, with accrued interest, and, if vested, his or her employer contributions, with accrued interest. The West Virginia consolidated public retirement board shall transfer to the West Virginia trust fund the said contributions and accrued interest of terminating employees who so elect. The trust fund shall establish a private, nonstate retirement plan for the West Virginia trust fund employees, and the said transferred employee and employer contributions and interest shall be deposited to the private retirement plan.

(c) Upon the effective date of this article, no more than seven hundred thousand dollars of those funds remaining in the special revenue accounts known as the "loss legal expense fund" and the "security lending fund" and further known as WVFIMS accounts 8563 and 8565 shall be transferred to the West Virginia trust fund board for its use in the beginning operations of the trust fund.

§44-6B-10. Trust indenture.

The governor, on behalf of the state, shall enter into a trust indenture with the West Virginia trust fund as trustee, effective on the first day of July, one thousand nine hundred ninety-six. The trust indenture shall contain the following provisions:

(a) Simultaneously with the execution of the trust indenture, the state shall have delivered to the trustee all the assets of the consolidated pension fund with any other property that may be transferred hereafter to the trustee by the state, or by any other person or entity, which shall be used as provided in the trust indenture and which constitutes the trust estate. The trustee shall acknowledge receipt of the assets and agree to hold the assets, and any other property that later may be added to the trust, and to perform the duties of trustee, according to the terms and
conditions set forth in this trust indenture and in the provisions of the "West Virginia Trust Fund Act".

(b) The Legislature hereby reserves the following rights and powers:

(1) The right by supplemental agreement to amend, modify or alter the terms of this trust without consent of the trustee, or any beneficiary; and

(2) The right to request and receive additional information from the trustee at any time.

(c) The state directs the trustee to establish a trust for the participant plans specified by the state with the earnings and losses accounted for and charged individually to each participant plan, including, but not limited to, the following:

(1) The public employees retirement system;

(2) The teachers retirement system;

(3) The West Virginia state police retirement system;

(4) The death, disability and retirement fund of the department of public safety;

(5) The judges' retirement system;

(6) The pneumoconiosis fund; and

(7) The workers' compensation fund.

(d) In the administration of the trust created by the trust indenture, the trustee has the following powers:

(1) To purchase, retain, hold, transfer and exchange, and to sell, at public or private sale, the whole or any part of the trust estate upon such terms and conditions as it considers advisable;

(2) To invest and reinvest the trust estate or any part thereof, in any kind of property, real or personal, including, but not limited to, mortgage or mortgage participations, common stocks, preferred stocks, common
trust funds, bonds, notes or other securities, not- 
withstanding the provisions of articles five and six, chapter 
fourty-four of the code of West Virginia, one thousand nine 
hundred thirty-one, as amended;

(3) To carry the securities and other property held 
under the trust indenture either in the name of the trustee 
or in the name of its nominee;

(4) To vote, in person or by proxy, all securities held 
under the trust indenture, to join in or to dissent from and 
 oppose the reorganization, recapitalization, consolidation, 
merger, liquidation or sale of corporations or property; to 
exchange securities for other securities issued in 
connection with or resulting from any transaction; to pay 
any assessment or expense which the trustee considers 
advisable for the protection of its interest as holder of any 
such securities; to deposit securities in any voting trust or 
with any protective or like committee, or with a trustee 
depository; to exercise any option appurtenant to any 
securities for the conversion of any securities into other 
securities; and to exercise or sell any rights issued upon or 
with respect to the securities of any corporation, all upon 
terms the trustee considers advisable;

(5) To prosecute, defend, compromise, arbitrate or 
otherwise adjust or settle claims in favor of or against the 
trustee or other trust estate;

(6) To employ and pay from the trust estate legal and 
investment counsel, brokers and such other assistants and 
agents as the trustee considers advisable; and

(7) To develop, implement and modify an asset 
allocation plan for each participant plan. The asset 
allocation plans shall be implemented within the 
management and investment of the trust fund.

(e) All trust income shall be free from anticipation, 
alienation, assignment or pledge by, and free from 
attachment, execution, appropriation or control by or on 
behalf of, any and all creditors of any beneficiary by any 
proceeding at law, in equity, in bankruptcy or insolvency.
(f) The trustee may receive any other property, real or personal, tangible or intangible, of any kind whatsoever, that may be granted, conveyed, assigned, transferred, devised, bequeathed or made payable to it by the state, or by any other person or entity, for the purposes of the trust created by the trust indenture, and all such properties shall be held, managed, invested and administered by the trustee as provided in the trust indenture and in the "West Virginia Trust Fund Act".

(g) The trustee shall promptly cause to be paid to the state the amounts certified by the governor as necessary for the monthly payment of benefits to the beneficiaries of the trust.

(h) The trustees shall render an annual accounting to the state not more than one hundred twenty days following the close of the fiscal year of the trust.

(i) The trust created by this indenture is not invalid by reason of any existing law or rule against perpetuities or against accumulations or against restraints upon the power of alienation, but the trust may continue for such time as necessary to accomplish the purposes for which it is established.

(j) If any provision of the trust indenture is void, invalid or unenforceable, the remaining provisions are nevertheless valid and shall be carried into effect.


Any investments made under this article shall be made with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

(a) Trustees shall discharge their duties for the exclusive purpose of providing benefits to participants and their beneficiaries;
(b) Trustees shall diversify fund investments so as to minimize the risk of large losses unless, under the circumstances, it is clearly prudent not to do so;

(c) Trustees shall defray reasonable expenses of investing and operating the fund; and

(d) Trustees shall discharge their duties in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this article.

§44-6B-12. Limitations on investments.

The trust fund shall limit its asset allocation and types of securities to the following:

(a) Through the first day of July, one thousand nine hundred ninety-seven, the trust fund shall hold in equity investments no more than twenty percent of its total portfolio and no more than twenty percent of the assets of any individual participant plan; after the first day of July, one thousand nine hundred ninety-seven, and through the first day of July, two thousand, the trust fund shall hold in equity investments no more than forty percent of its total portfolio and no more than forty percent of the assets of any individual participant plan; after the first day of July, two thousand, the trust fund shall hold in equity investments no more than sixty percent of its total portfolio and no more than sixty percent of the assets of any individual participant plan.

(b) The trust fund shall hold in international securities no more than twenty percent of its portfolio and no more than twenty percent of the assets of any individual participant plan.

(c) The trust fund may not at the time of purchase hold more than five percent of its equity portfolio in the equity securities of any single company or association: Provided, That if a company or association has a market weighting of greater than five percent in the Standard &
Poor's 500 index of companies, the trust fund may hold securities of that equity equal to its market weighting.

(d) The trust fund may not hold more than twenty percent of its portfolio in commercial paper. Any commercial paper at the time of its acquisition shall be in one of the two highest rating categories by an agency nationally known for rating commercial paper.

(e) At no time shall the trust fund hold more than seventy-five percent of its portfolio in corporate debt. Any corporate debt security at the time of its acquisition shall be rated in one of the four highest rating categories by a nationally recognized rating agency.

(f) No security may be purchased by the trust fund unless the type of security is on a list approved by the trust fund board. The board may modify the securities list at any time, and must give notice of that action pursuant to subsection (g), section four of this article, and must review the said list at its annual meeting.

(g) The board, at the annual meeting provided for in subsection (i), section four of this article, shall review, establish and modify, if necessary, the investment objectives of the individual participant plans, as incorporated in the investment policy statement of the trust, so as to provide for the financial security of the trust fund, giving consideration to the following:

(1) Preservation of capital;
(2) Diversification;
(3) Risk tolerance;
(4) Rate of return;
(5) Stability;
(6) Turnover;
(7) Liquidity; and
(8) Reasonable cost of fees.
CHAPTER 259

(Com. Sub. for S. B. 140—By Senators Tomblin, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nine, relating to the West Virginia works program for welfare assistance to at-risk families; food stamp recipients and emergency assistance recipients; short title; legislative findings; program goals; definitions; authorization for program, permitting establishment as pilot projects, authorizing the request for federal waivers, making the program implementation subject to appropriation of funds; creating the "West Virginia works program fund"; defining program participation requirements; establishing eligibility for program participation; requiring participants to work, attend school or a training program; exemptions from work requirements; requiring all participants to sign a personal responsibility contract and defining required provisions; time limits for program participation; sanctions; establishing due process procedures; emergency assistance loans in lieu of monthly cash assistance; employer subsidy for employment; transitional assistance; requiring interagency coordination; requiring intergovernmental coordination and the use of existing state facilities and county transportation systems for program implementation; authorizing community organizations to develop support services; coordinating relationship with other law; and requiring review and evaluation by the legislative oversight commission on health and human resources accountability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. WEST VIRGINIA WORKS PROGRAM.
§9-9-1. Short title.
§9-9-2. Legislative findings; purpose.
§9-9-5. West Virginia works program fund.
§9-9-6. Program participation.
§9-9-7. Work requirements.
§9-9-10. Participation limitation; exceptions.
§9-9-17. Public-private partnerships.
§9-9-18. Relationship with other law.

§9-9-1. Short title.

1 This article may be cited as the "WV WORKS Act".

§9-9-2. Legislative findings; purpose.

1 (a) The Legislature hereby finds that:
2 (1) At-risk families are capable of becoming self-supporting;
3 (2) A reformed assistance program should both expect and assist a parent and caretaker-relatives in at-risk families to support their dependent children and children for which they are caretakers;
4 (3) Every parent or caretaker-relative can exhibit responsible patterns of behavior so as to be a positive role model;
5 (4) Every parent or caretaker-relative who receives welfare assistance has a responsibility to participate in an activity to help them prepare for, obtain and maintain gainful employment;
(5) For a parent or caretaker-relative who receives welfare assistance and for whom full-time work is not feasible, participation in some activity is expected to further themselves, their family or their community;

(6) The state should promote the value of work and the capabilities of individuals;

(7) Job development efforts should enhance the employment opportunities of participants;

(8) An effective public education system is the key to long-term self-support; and

(9) A reformed assistance program should be structured to achieve a clear set of outcomes; deliver services in an expedient, effective and efficient manner; maximize community support for participants; and demonstrate budget neutrality over five years. After five years, there is expected to be a decrease in the following: (i) The number of persons receiving public assistance; (ii) the amount of time an individual remains on public assistance; and (iii) the amount of money spent in the West Virginia works program.

(b) The goals of the program are to achieve more efficient and effective use of public assistance funds; reduce dependency on public programs by promoting self-sufficiency; and structure the assistance programs to emphasize employment and personal responsibility. The program is to be evaluated on the increase in employment rates in the program areas; the completion of educational and training programs; the increased compliance in preventive health activities, including immunizations; and a decrease in the case-load of division personnel.


In addition to the rules for the construction of statutes in section ten, article two, chapter two of this code and the words and terms defined in section two, article one of this chapter, unless a different meaning appears from the context:
(a) "At-risk family" means a group of West Virginians living in the same household, living below the federally designated poverty level, lacking the resources to become self-supporting, and consisting of a dependent minor child or children living with a parent, stepparent or caretaker-relative; an "at-risk family" may include an unmarried minor parent and his or her dependent child or children who live in an adult supervised setting;

(b) "Barrier" means any fact, circumstance or situation that prevents a person from becoming self-sufficient or from seeking, obtaining or maintaining employment of any kind, including physical or mental disabilities, lack of education, testing, training, counseling, child care arrangements, transportation, medical treatment or substance abuse treatment;

(c) "Beneficiary" or "participant" means any person in an at-risk family who receives welfare assistance for himself or herself, for family members or for persons for whom he or she cares;

(d) "Community or personal development" means activities designed or intended to eliminate barriers to participation in self-sufficiency activities. These activities are to provide community benefit and enhance personal responsibility, including, but not limited to, classes or counseling for learning life skills or parenting, dependent care, job readiness, volunteer work, participation in sheltered workshops or substance abuse treatment;

(e) "Department" means the state department of health and human resources;

(f) "Division" means the division of human services;

(g) "Income" means money received by any member of an at-risk family which can be used at the discretion of the household to meet its basic needs: Provided, That income shall not include earnings of minor children in school, payments received from earned income tax credit or tax refunds;
(h) "Personal responsibility contract" means a written agreement entered into by the division and a beneficiary which establishes the responsibilities and obligations of the beneficiary;

(i) "Secretary" means the secretary of the state department of health and human resources;

(j) "Subsidized employment" means employment with earnings provided by an employer who receives a subsidy from the division for the creation and maintenance of the employment position;

(k) "Support services" means, but is not limited to, the following services: Child care; medicaid; transportation assistance; information and referral; resource development services which is assisting families to receive child support enforcement and supplemental social security income; family support services which is parenting, budgeting and family planning; relocation assistance; and mentoring services;

(l) "Supported employment" means employment with earnings, after mandatory deductions, that provides a level of income that does not allow an at-risk family to exist independent of government support such that supplemental cash assistance, child care subsidies, food stamps, subsidized housing or other assistance may be provided as necessary for a period of time;

(m) "Unsubsidized employment" means employment with earnings, after mandatory deductions, that provides a level of income that allows a family to become completely independent of government support;

(n) "Welfare assistance" means aid to families with dependent children, food stamps or emergency assistance;

(o) "Work" means unsubsidized employment, subsidized employment, employment with support, work experience or community or personal development; and

(p) "Work experience" means unpaid structured work activities that are provided in an environment where performance expectations are similar to those existing in
unsubsidized employment and which provide training in occupational areas that can realistically be expected to lead to unsubsidized employment.


(a) The secretary shall conduct the West Virginia works program in accordance with this article and any applicable waivers from the secretary of the federal department of health and human services and the secretary of the federal department of agriculture or in accordance with federal block-grant funding or similar federal funding stream. This program shall be implemented to replace welfare assistance programs for at-risk families in accordance with this article and within federal requirements; to coordinate the transfer of all applicable state programs into the West Virginia works program; to expend only the funds appropriated by the Legislature to establish and operate the program; to establish administrative due process procedures for revocation or termination proceedings; and implement such other procedures as may be necessary to accomplish the purpose of this article.

(b) Notwithstanding any provision of the law to the contrary, the secretary shall implement the West Virginia works program as soon as possible, but no later than three months after receiving federal waiver approval and sufficient funds.

(c) The secretary shall submit federal waiver proposals to permit this state to limit the duration of assistance to adults, increase the asset test to five thousand dollars, to disregard the restriction that limits the primary wage earner to working less than one hundred hours per month and to eliminate the requirement of recent attachment to the work force.

(d) The secretary may establish the program as one or more pilot projects to test the policy being evaluated. Any pilot project so established is to be consistent with the principles and goals set forth in this act. The secretary shall determine the counties in which to implement the provisions of this program, considering a fair representa-
tion of both rural and urban areas, and may vary the program components to test the effectiveness, efficiency and fiscal impact of each prior to statewide implementation. The secretary shall structure the initial pilot program, or programs to include a minimum of fifteen percent of the state population that qualifies for aid to families with dependent children, or any successor program. The pilot program shall eventually include a minimum of fifteen percent of the participants eligible in other categories, as funds are available.

(e) The West Virginia works program authorized pursuant to this act does not create an entitlement to that program or any services offered within that program, unless entitlement is created pursuant to a federal law or regulation. The West Virginia works program, and each component of that program established by this act or the expansion of any component established pursuant to federal law or regulation, is subject to the annual appropriation of funds by the Legislature and the corresponding federal financial participation moneys.

(f) On or before the first day of October, one thousand nine hundred ninety-six, the secretary shall propose emergency rules in accordance with the provisions of section fifteen, article three, chapter twenty-nine-a of this code regarding the implementation of the pilot program, including, but not limited to, rules establishing requirements for participation in the program, and rules regarding the development, fulfillment and cancellation of personal responsibility contracts.

(g) The secretary shall propose rules in accordance with the provisions of chapter twenty-nine-a of this code necessary to accomplish all other purposes of this article, including, but not limited to, rules for the regulation of the West Virginia works program when expanded; rules establishing requirements for participation in the program; and rules regarding the development, fulfillment and cancellation of personal responsibility contracts: Provided, That such rules shall not be filed as emergency rules pursuant to section fifteen, article three of said chapter.
(h) Copies of all rules proposed by the secretary shall also be filed with the legislative oversight commission on health and human resources accountability established pursuant to article twenty-nine-e, chapter sixteen of this code.

§9-9-5. West Virginia works program fund.

There is hereby created a special account within the state treasury to be known as the "West Virginia Works Program Fund". Expenditures from the fund shall be used exclusively to meet the necessary expenditures of the program, including wage reimbursements to participating employers, aid to dependent children cash grants, employment-related day care payments, transportation expenses and administrative costs directly associated with the operation of the program. Moneys paid into the account shall be from specific appropriations by the Legislature and the corresponding federal financial participation moneys.

§9-9-6. Program participation.

(a) Unless otherwise noted in this article, all adult recipients of welfare assistance shall be required to participate in the West Virginia works program, or pilot program, in accordance with the provisions of this article. The level of participation, services to be delivered and work requirements shall be defined within the terms of the personal responsibility contract and through rules established by the secretary.

(b) To the extent funding permits, any individual exempt under the provisions of section eight of this article may participate in the activities and programs offered through the West Virginia works program.

(c) Support services other than cash assistance through the works program may be provided to at-risk families to eliminate the need for cash assistance.

(d) Cash assistance through the works program may be provided to an at-risk family if the combined family income is below the income and asset test levels estab-
lished by the division: *Provided*, That an at-risk family that includes a married man and woman and dependent children of either one or both may receive an additional cash assistance benefit in an amount ten percent greater than the cash assistance benefit provided to the same size household in which there are no married adults.

(e) The secretary shall promulgate legislative rules in accordance with article three, chapter twenty-nine-a of this code and administer the West Virginia works program to insure that no duplication of benefits occurs to the participants in the program. Participants may not receive benefits under the works program and at the same time and for the same time period also receive aid to families with dependent children or other forms of governmental assistance that are the same or similar to those granted in this article.

§9-9-7. Work requirements.

Unless otherwise exempted by the provisions of section eight of this article, the West Virginia works program shall require that anyone who possesses a high school diploma, or its equivalent, or anyone who is of the age of twenty years or more, to work or attend an educational or training program for a minimum of twenty hours per week to receive any form of welfare assistance. In accordance with federal law or regulation, the work, education and training requirements of this section are waived for any qualifying participant if day care services are not available. In order for any participant to receive welfare assistance, he or she shall enter into personal responsibility contracts pursuant to the provisions of section nine of this article.


Participants exempt from the work requirements of the works program pursuant to the provisions of this section shall be required to develop a personal responsibility contract. The secretary shall establish by rule categories of persons exempt only from the work requirements of the
program, which categories shall include, but not be limited to, the following:

(a) A parent caring for a dependent child with a life-threatening illness;

(b) Individuals over the age of sixty years;

(c) Persons working in unsubsidized employment;

(d) Full-time students that are less than twenty years of age and are pursuing a high school diploma or equivalent;

(e) Persons with a physical or mental incapacity as defined pursuant to the provisions of title forty-two of the Social Security Act and the regulations promulgated thereunder, 45 C.F.R. §233.90;

(f) Individuals suffering from a temporary debilitating injury for the duration of that injury. For purposes of this section, the injury must cause the temporary disability for more than thirty days;

(g) Relatives providing in-home care for an individual that would otherwise be institutionalized; and

(h) Any woman during the last trimester of pregnancy and the first six months after the birth of the child but in no case shall the woman be exempt from the work requirements for more than a total of six months: Provided, That, in the case of the birth of the first child to said woman after said woman first becomes a public assistance recipient, the woman shall be exempt for the first two years after the birth of said child.


(a) Every eligible adult beneficiary shall participate in a program orientation and the development, and subsequent revisions, of a personal responsibility contract. The contract shall be defined based on the assessed needs of the participant.

(1) If the participant has a recent attachment to the work force, the contract shall include provisions regarding
required job search activities, identified support services, level of benefits requested and time limitation.

(2) If the participant does not have a recent attachment to the work force, the contract shall identify the evaluation or testing activities, and/or job training activities necessary prior to job search activities, identified support services, benefits requested and time limitation.

(3) If it is determined that the participant is not able to obtain or maintain gainful employment, the contract shall contain appropriate provisions defining the activities that benefit the participant, their family or their community.

(4) If the participant is a parent or caretaker-relative, the contract shall include the requirement that the participant develop and maintain, with the appropriate health care provider, a schedule of preventive care for their dependent child, including routine examinations and immunizations; nutrition counseling; assurance of school attendance for school age children under their care; assurance of properly supervised child care, including after-school care; and establish paternity or actively pursue child support, or both, if applicable and if deemed necessary, counseling, parenting or family planning classes.

(5) If the participant is a parent or caretaker-relative who must remove barriers prior to employment, the contract shall include a list of the identified barriers and an individual plan for removing the same.

(6) If the participant is a teenage parent, the participant may work and the contract shall include the requirements that the participant:

(A) Remain in an educational activity to complete high school, obtain a general equivalent diploma or obtain vocational training and make satisfactory scholastic progress without incurring any disciplinary actions;

(B) Attend parenting classes or participate in a mentorship program, or both; and

(C) Live at home or in other adult supervised arrangements if they are unemancipated minor parents.
(7) If the participant is under the age of twenty years and does not have a high school education or its equivalent, the contract shall include requirements to participate in mandatory education or training, which may include a return to high school if the participant is unemployed and to make satisfactory scholastic progress and without incurring any disciplinary actions.

(b) The participant shall have up to thirty days from approval of application to develop the personal responsibility contract. If the participant refuses to sign the personal responsibility contract, the department shall stop all benefits and services until the participant complies with this section.

(c) Personal responsibility contracts shall be drafted by the division on a case-by-case basis; take into consideration the individual circumstances of each beneficiary; reviewed and re-evaluated not less often than every two years; and, in the discretion of the division, amended or extended on a periodic basis.

§9-9-10. Participation limitation; exceptions.

The length of time a participant may receive West Virginia works program benefits shall be defined in the personal responsibility contract: Provided, That no participant may receive benefits for a period longer than sixty months, except in circumstances as defined by legislative rule pursuant to the provisions of article three, chapter twenty-nine-a of this code.


(a) The division may refuse to extend or renew a personal responsibility contract and the benefits received by the beneficiary, or may terminate an existing contract and benefits, if the division finds any of the following:

(1) The employment of fraud or deception by the beneficiary in applying for or receiving program benefits;

(2) A substantial breach of the requirements and obligations set forth in the personal contract of responsibility;
(3) A violation of any provision of the personal contract of responsibility, this article, or any rule promulgated by the secretary pursuant to this article.

(b) In the event the division determines that a personal responsibility contract or the benefits received by the beneficiary are subject to revocation or termination, written notice of the violation, revocation or termination shall be deposited in the United States mail, postage pre-paid and addressed to the beneficiary at his or her last known address fourteen days prior to such termination or revocation. Such notice shall state the action of the division, its reason or reasons for such termination and grant to the beneficiary a reasonable opportunity to be heard at a fair and impartial hearing before the division in accordance with administrative procedures established by the division and due process of law.

(c) In any hearing granted pursuant to the provisions of this section, the beneficiary shall maintain the burden of proving that his or her benefits were improperly terminated and shall bear his or her own costs, including attorneys fees.

(d) The secretary shall determine by rule de minimis violations and those violations subject to sanctions and maximum penalties. In the event the division finds that a beneficiary has violated any provision of this article, of his or her personal responsibility contract or any applicable division rule, the division shall impose sanctions against the beneficiary as follows:

(1) For the first noncompliance, a one-third reduction of benefits for three months;

(2) For the second noncompliance, a two-thirds reduction in benefits for three months; and

(3) For the third noncompliance, a termination of benefits.

(e) For any sanction imposed pursuant to subsection (d) of this section, if compliance occurs within ten days of notice of the sanction, the reduction in benefits shall not
be imposed, but the noncompliance shall count in determining the level of sanction to be imposed for any future noncompliance. Once a reduction in benefits is in effect, it shall remain in effect for the entire three months. A reduction of benefits applies to both cash assistance and support services. If benefits are terminated, benefits may not be provided until the noncompliance that caused the termination has been rectified or excused.


(a) In order to encourage at-risk families not to apply for ongoing monthly cash assistance from the state, the secretary may issue one-time emergency assistance allowances to families in an amount not to exceed three months of cash assistance in order to enable such families to become immediately self-supporting.

(b) Except as otherwise provided by this section, all emergency assistance allowances shall be issued with a repayment schedule determined on a case-by-case basis by the division.

(c) If within one year of receiving such assistance an at-risk family subsequently applies for monthly cash assistance, the division shall recoup the amount remaining unpaid on the allowance from future monthly cash assistance payments at the monthly rate of ten percent of the monthly cash assistance payment for a period not to exceed twenty-four months.

(d) One half of the amount of any emergency assistance allowance may be forgiven after a recipient has been employed in unsubsidized employment for one year after the date of receipt of the allowance. The full amount of the allowance may be forgiven after the recipient has been employed in unsubsidized employment for two years after the date of the receipt of the allowance.

(e) The secretary shall establish by rule the standards to be considered in making emergency assistance allowances, developing repayment schedules and qualifications for allowance forgiveness.
29 (f) Nothing in this section shall be construed to re-
30 quire that the division or any assistance issued pursuant to
31 this section be subject to any of the provisions of chapter
32 thirty-one or chapter forty-six-a of this code.


(a) To the extent resources are available, an employer
1 may be paid a subsidy by the department for the employ-
2 ment of a parent or caretaker-relative of an at-risk family
3 if the employer agrees to hire the works program partici-
4 pant at the end of the subsidized period. If the employer
5 does not hire the participant at the end of the subsidized
6 period, the program shall not use that employer for subsi-
7 dized employment for the next twelve months.
8
(b) If the division determines that any employer estab-
9 lishes a pattern of discharging employees hired pursuant
10 to the provisions of this article subsequent to the expira-
11 tion of the subsidized period without good cause, the em-
12 ployer shall no longer be eligible for participation in the
13 subsidy program for a period to be determined by the
14 division.


The West Virginia works program may provide transi-
1 tional assistance in the form of supportive services and
2 allow at-risk families to retain a portion of their cash assis-
3 tance when they have earnings below fifty percent of the
4 federally designated poverty level. For those at-risk fami-
5 lies with earnings between fifty and one hundred percent
6 of the federally designated poverty level, supportive ser-
7 vices may be continued.


The Legislature encourages the development of a
1 system of coordinated services, shared information and
2 stream-lined application procedures between the program
3 and the other agencies within the department to implement
4 the provisions of this article. The secretary shall require
the coordination of activities between the program and the following agencies:

(a) The child support enforcement division for the purpose of establishing paternity, promoting cooperation in the pursuit of child support, encouraging noncustodial parents to get job search assistance and determining eligibility for cash assistance and support services;

(b) The bureau of public health for the purpose of determining appropriate immunization schedules, delivery systems and verification procedures; and

(c) The bureau of medical services for the purpose of reporting eligibility for medical assistance and transitional benefits.

The secretary may require the coordination of procedures and services with any other agency he or she deems necessary to implement this program.

The secretary shall propose any rules, including emergency rules, necessary for the coordination of various agency activities in the implementation of this section.


The commissioner of the bureau of employment programs and the superintendent of the department of education shall assist the secretary in the establishment of the West Virginia works program. Prior to implementation of this program, each department shall address in their respective plans the method in which their respective resources will be devoted to facilitate the identification of or delivery of services for participants and shall coordinate their respective programs with the division in the provision of services to participants and their families. Each county board of education shall designate a person to coordinate with the local department of health and human resources office the board's services to participant families and that person shall work to achieve coordination at the local level.

The secretary and the superintendent shall develop a plan for program implementation to occur with the use of
existing state facilities and county transportation systems within the project areas whenever practicable. This agree-
ment shall include, but not be limited to, the use of build-
ings, grounds and buses. Whenever possible, the support-
ive services, education and training programs should be offered at the existing school facilities.

The commissioner shall give priority to participants of the works program within the various programs of the bureau of employment programs. The secretary and the commissioner shall develop reporting and monitoring mechanisms between their respective agencies.

§9-9-17. Public-private partnerships.

The secretary is authorized to enter into agreements with any private, nonprofit, charitable or religious organi-
izations to promote the development of the community support services necessary for the effective implementa-
ton of this program.

§9-9-18. Relationship with other law.

If any provision of this article conflicts with any other provision of this code or rules, the provisions of this article shall supersede such provisions: Provided, That the provi-
sions of this article shall not supersede any provisions which are required or mandated by federal law.


The legislative oversight commission on health and human resources accountability is charged with immediate and ongoing oversight of the program created by this article. This commission shall study, review and examine the work of the program, the department and its staff; study, review and examine all rules proposed by the de-
partment; and monitor the development and implementa-
tion of the West Virginia works program. The commis-
sion shall review and make recommendations to the Legis-
lature and the legislative rule-making review committee regarding any plan, policy or rule proposed by the secre-
tary, the division or the program.
AN ACT to extend the time for the county commission of Barbour County to meet as a levying body for the purpose of presenting to the voters of the county an election to consider an excess levy for the fire departments and emergency squads in Barbour County, from the third Tuesday of April until the last Thursday in May, one thousand nine hundred ninety-six.

Be it enacted by the Legislature of West Virginia:

BARBOUR COUNTY EXCESS Levy.

§1. Extended time for Barbour County commission to meet as levying body for election to consider an excess levy for fire department and emergency squads.

Notwithstanding, the provisions of article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary, the county commission of Barbour County is hereby authorized to extend the time for its meeting as a levying body, setting the levy rate and certifying its actions to the state tax commissioner from the third Tuesday in April, until the last Thursday in May, one thousand nine hundred ninety-six, for the purpose of submitting to the voters of Barbour County the consideration of an excess levy for fire departments and emergency squads.
CHAPTER 261

(Com. Sub. for S. B. 36—By Senator Wiedebusch)

[Passed February 26, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to authorize the municipalities of Cairo, Harrisville and Pennsboro to construct and maintain a centralized water treatment plant, storage facilities and transmission lines for the purpose of providing potable water to those municipalities; authorizing the municipalities to create the Hughes river water board to assume ownership of the facilities; membership; powers and duties; board of directors; bylaws; rules; support, maintenance and operation; funds; and severability.

Be it enacted by the Legislature of West Virginia:

HUGHES RIVER WATER BOARD.

§1. Municipalities of Cairo, Harrisville and Pennsboro authorized to create and join the Hughes River Water Board; powers and duties generally.

The municipalities of Cairo, Harrisville and Pennsboro are hereby authorized and empowered to create a joint endeavor of the three governing authorities and join a board to be known as the Hughes river water board to own and operate a centralized water treatment plant, water storage facilities and transmission lines to provide these and other water service demands within the county. The board shall have the power and authority to own and operate a water treatment plant and transmission system, to sell and contract for the sale of water and to provide for the proper maintenance, repair and upgrade to the water system, including the power of eminent domain, to buy, sell or lease real and personal property and to take all other actions as may be necessary to carry out such purposes. The borrowing of money and the notes, bonds and security interests evidencing any borrowing shall be authorized by resolution approved by the board, shall bear the date or dates, and shall mature at the time or times, in the case of any bonds, as the resolution or resolutions may provide. The notes, bonds and security interests shall bear interest
at such rate or rates, be in such denominations, be in the
form, either coupon or registered, carry the registration
privileges, be executed in the manner, be payable in the
medium of payment, at the place or places, and be subject
to the terms or conditions of redemption as the resolution
or resolutions may provide: Provided, That every issue of
notes, security interests and bonds shall be limited obliga-
tions of the board payable solely out of any revenues or
moneys of the board, subject only to any agreements with
the holders of particular notes, security interests or bonds
pledging particular revenues. The notes, security interests
and bonds issued by the board shall be and hereby are
made negotiable instruments under the provisions of arti-
cle eight, chapter forty-six of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, sub-
ject only to the provisions of the notes, security interests or
bonds for registration.

§2. Board of directors; appointment; officers; procedures;
bylaws; rules.

There shall be a board of directors, consisting of one
member representing each of the participating municipali-
ties. The municipalities shall make appointments to the
board through their duly constituted government authori-
ties as provided herein. No later than the first day of July,
one thousand nine hundred ninety-six, the municipality of
Cairo shall appoint one member of the board of directors
for the term of three years. The municipality of
Harrisville shall appoint one member for the term of four
years. The municipality of Pennsboro shall appoint one
member for the term of five years. Although members
shall serve from date of appointment, terms of office shall
expire as if said terms had commenced on the first day of
July, one thousand nine hundred ninety-six. Each succes-
sor member of the board of directors shall be appointed
by the respective municipality that appointed the prede-
cessor member and each successor member shall be ap-
pointed for a term of three years, except that any person
appointed to fill a vacancy occurring before the expiration
of the term shall serve only for the unexpired portion
thereof. Any member of the board shall be eligible for
reappointment and the appointing municipality which
appointed the member may remove that member at any
time for any reason. There shall be an annual meeting of
the board of directors on the second Monday in July of
each year and a monthly meeting on the day in each
month which the board may designate in its bylaws. A
special meeting may be called by the president or any two
members of the board and shall be held only after all of
the directors are given notice thereof in writing. At all
meetings two members shall constitute a quorum and at
each annual meeting of the board of directors it shall elect,
from its membership, a president, a vice president, a secre-
tary and a treasurer: *Provided,* That a member may be
elected both secretary and treasurer. The board of direc-
tors shall adopt those bylaws and rules which it deems
necessary for its own guidance and for the administration,
supervision and protection of the water board and all of
the property belonging to the water board. The board of
directors shall have all the powers necessary, convenient
and advisable for the proper operation, equipment and
management of the water board; and except as otherwise
especially provided in this act, shall have the powers and
be subject to the duties which are conferred and imposed
upon the cooperating municipalities by article
twenty-three, chapter eight of the code of West Virginia,
one thousand nine hundred thirty-one, as amended. The
qualifications of the directors shall be determined by each
participating municipality.

§3. Same—A body corporate.

The Hughes river water board hereby created shall be
a public corporation and governmental instrumentality.
As such it may contract and be contracted with, sue and be
sued, plead and be impleaded and shall have and use a
common seal.

§4. Title to property.

The title to all property, both real and personal, that
will provide potable water to the municipalities in connec-
tion with the operation by it shall vest in the board of
directors of the Hughes river water board, hereby created.
§5. Support, maintenance and operation.

Each governing authority of the municipalities that appoint membership to the board of directors or that are served by the water facilities governed by the board hereby created may support the board with general or special revenues or excess levies. All income realized by the operation of the water board from the sale of water to municipalities or from any other sources shall be used by the board of directors for the support of the Hughes river water board.

§6. Deposit and disbursement of funds.

All money collected or appropriated by the three governing authorities for water board purposes shall be deposited in a special account for the Hughes river water board, and shall be disbursed by the board for the purpose of operating a public water system.

§7. Workers' compensation; social security and public employees' retirement benefits for employees.

All employees of the Hughes river water board hereby created shall be entitled to the benefits of the provisions of chapter twenty-three, and articles seven and ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

§8. Effect of future amendments of general law.

Amendments to article twenty-three, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and other general laws shall control this act only to the extent that they do not conflict with the special features hereof, or unless the intent to amend this act is clear and unmistakable.


If any provision hereof is held invalid, such invalidity shall not affect other provisions hereof which can be given effect without the invalid provision, and to this end the provisions of this act are declared to be severable.
AN ACT to establish the coalfields expressway authority; func­
tions; members; appointment; powers and duties; officers;
bylaws; rules and regulations; compensation; authority as
corporate body; and severability.

Be it enacted by the Legislature of West Virginia:

COALFIELDS EXPRESSWAY AUTHORITY.

§1. Parkway authority created; functions.

There is hereby created a coalfields expressway au-

authority to promote and advance the construction of a

modern highway through McDowell, Raleigh and Wyo-

ming counties and to coordinate with counties, municipali-

ties, state and federal agencies, public nonprofit corpo-

rations, private corporations, associations, partnerships and

individuals for the purpose of planning, assisting and

establishing recreational, tourism, industrial, economic and

community development of the coalfields expressway for

the benefit of West Virginians.

§2. Members; appointment; powers and duties generally; offi-
cers; bylaws; rules and regulations; compensation.

(a) The authority consists of nine voting members and
three ex officio nonvoting members. All members shall
be appointed before the first day of July, one thousand
nine hundred ninety-six.

(b) Each of the county commissions of the counties of
McDowell, Raleigh and Wyoming shall appoint three vot-
ing members to the commission. The terms of the voting
members initially appointed by a county commission are
as follows: One member shall be appointed for a term of
one year and two members shall be appointed for a term
of two years. All successive appointments shall be for a term of four years. Any voting member may be removed for cause by the appointing county commission.

(c) The three ex officio nonvoting members are the commissioner of highways or designee, the director of natural resources or designee and the executive director of the West Virginia development office or designee. All terms of ex officio nonvoting members are for four years.

(d) Should a vacancy occur, the person appointed to fill the vacancy shall serve only for the unexpired portion thereof. All members are eligible for reappointment.

(e) There shall be an annual meeting of the authority on the third Monday in July in each year and a monthly meeting on a day and at a time as the authority may designate in its bylaws. A special meeting may be called by the president, the secretary or any two members of the authority and may be held only after all members are given notice of the meeting in writing. Five voting members constitute a quorum for all meetings. At each annual meeting of the authority, it shall elect a president, vice president, secretary and treasurer. The authority shall adopt bylaws, rules and regulations as may be necessary for its operation and management. The authority has all, but only, those powers necessary, incidental, convenient and advisable for the following purposes:

(1) The promotion of economic development and tourism along the coalfields expressway;

(2) Advocating actions consistent with that plan or its provisions to or before any governmental entity or any private person or entity; and

(3) Otherwise acting in an advisory capacity with regard to any aspects of the coalfields expressway at the request of or without the request of any governmental entity or private person or entity.

The authority may not own any of the real estate or real property herein described for development and may not be responsible for operating or maintaining the parkway.
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49 Each voting member of the authority shall be
50 compensated monthly by the governing bodies which
51 appointed the members in an amount to be fixed by the
52 governing body.

§3. Body corporate.

1 The authority hereby created shall be a public
2 corporation and as such it may contract and be contracted
3 with, sue and be sued, plead and be impleaded and may
4 have and use a corporate seal.

§4. Severability.

1 If any provision hereof is held invalid, such invalidity
2 shall not affect other provisions hereof which can be given
3 effect without the invalid provision, and to this end the
4 provisions of this act are declared to be severable.

CHAPTER 263
(H. B. 4852—By Delegate Manuel)

[Passed March 8, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to authorize cooperation between the Dunkard Creek
Watershed Association and like bodies in Greene County,
Pennsylvania; and providing for the development of a
Memorandum of Understanding.

Be it enacted by the Legislature of West Virginia:

DUNKARD CREEK WATERSHED ASSOCIATION.

§1. Dunkard Creek Watershed Association.

1 The Dunkard Creek Watershed Association of
2 Monongalia County, West Virginia, is hereby authorized
3 to cooperate with like bodies of Greene County,
4 Pennsylvania, in developing a memorandum of under-
5 standing for the purpose of enhancing the economic
6 potential of Dunkard Creek, increasing the quality of life
7 for stakeholders, and to receive and disburse funds,
8 regardless of perceived boundaries.
CHAPTER 264

(H. B. 4070—By Delegate Kerns)

[Passed February 15, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to name the bridge spanning Tygart Valley River and the CSX Railroad on U.S. Route No. 50 in Taylor County the John F. "Jack" Bennett Memorial Bridge and to require that signs be erected designating the name of the bridge.

Be it enacted by the Legislature of West Virginia:

WEST VIRGINIA DEPARTMENT OF HIGHWAYS.

§1. John F. "Jack" Bennett Memorial Bridge.

1. The bridge spanning Tygart Valley River and the CSX Railroad on U.S. Route No. 50 in Taylor County shall be named the John F. "Jack" Bennett Memorial Bridge.
2. Additionally, any bridge built to replace the bridge or any refurbishment of the current bridge shall also be named the John F. "Jack" Bennett Memorial Bridge. At least two signs shall be erected at the bridge designating the name of the bridge. The signs shall be erected such that motorists traveling in each direction on U.S. Route No. 50 can easily view the signs.

CHAPTER 265

(Com. Sub. for H. B. 4822—By Delegates Amores, Hunt, Seacrist, Walters and Manuel)

[Passed March 8, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to allow the Kanawha County commission the authority to construct and maintain county transportation, parking and other public facilities; delegation of authority to board or commission; financing.

Be it enacted by the Legislature of West Virginia:
KANAWHA COUNTY PUBLIC PARKING FACILITIES.

§1. Authority to construct and maintain county transportation, parking, and other public facilities; delegation of authority to board or commission; financing; additional special provisions as to motor vehicle parking facilities.

(a) The Kanawha County commission is hereby authorized and empowered to construct, reconstruct, establish, acquire, improve, renovate, extend, enlarge, increase, own, equip, repair (including replacement), maintain and operate transportation terminals, county and other public facilities and motor vehicle parking facilities including parking lots, buildings, ramps, curbline parking, meters and other facilities deemed necessary, appropriate, useful, convenient or incidental to the regulation, control and parking of motor vehicles.

§2. Definitions.

"Governing body" means the Kanawha County commission exercising the power and authority directly, or any commission or board created by the Kanawha County commission for the purposes described herein.

§3. Delegation of power and authority.

The power and authority conferred upon the Kanawha County commission may be exercised by the Kanawha County commission directly or may be delegated to commissions or boards created by the county commission for this purpose.

§4. Issuance of bonds; financing.

(a) In order to pay for all costs and expenses incurred in carrying out the provisions of this section, the Kanawha County commission is authorized to issue general obligation bonds of the county if the issuance thereof has been authorized by the voters of county as provided by law. Further, the Kanawha County commission may finance the costs and expenses by any other method permitted by law, including, without limiting the generality of the foregoing, the use of lease purchase financing through a building commission created pursuant to article
(b) The Kanawha County commission, in its discretion, may provide for the following:

(1) The leasing, or subleasing if the governing body is leasing the motor vehicle parking facility from a building commission created pursuant to article thirty-three, chapter eight of this code or from any other person, by the governing body as lessor or sublessor of space in or on a motor vehicle parking facility for any business, commercial or charitable use to the person, for fair and adequate consideration, for the period or periods of time and upon other terms and conditions to which the governing body may agree. In connection with the leasing or subleasing of any space, the governing body may agree to provide in or on the motor vehicle parking facility structures, accommodations or improvements as may be necessary for the business, commercial or charitable use or space may be leased or subleased upon condition that the lessee or sublessee shall provide the same in or on the space so leased or subleased.

(2) The leasing, or subleasing if the governing body is leasing the motor vehicle parking facility from a building commission created pursuant to article thirty-three, chapter eight of this code or from any other person, by the governing body as lessor or sublessor of air space over a motor vehicle parking facility for any business, commercial or charitable use to such person, for fair and adequate consideration, for period or periods of time and upon other terms and conditions to which the governing body may agree. Any lease or sublease of such air space may contain provisions: (i) Authorizing the use of areas of the underlying motor vehicle parking facility as are essential for ingress or egress to and from the air space; (ii) relating to the support of any building or other structure to be erected in the air space; and (iii) relating to the connection of essential public or private utilities to any building or other structure in the air space.

Every lease or sublease shall be authorized by resolution of the Kanawha County commission, which
resolution may specify terms and conditions which must be contained in the lease or sublease: Provided, That before any proposed lease or sublease is authorized by resolution of the Kanawha County commission, a public hearing on the proposed lease or sublease shall be held by the Kanawha County commission after notice of the date, time, place and purpose of the public hearing has been published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, which publication shall occur at least ten days prior to the public hearing, and the publication area for the publication shall be the county in which the motor vehicle parking facility is situate.

(c) The proceeds from any lease or sublease as provided in this section may be used by the governing body to pay all or any portion of the rental payments payable by the governing body for such motor vehicle parking facility if the governing body is leasing such facility from a building commission created pursuant to article thirty-three, chapter eight of this code or from any other person, to defray the costs of operation of such motor vehicle parking facility, or for any other lawful purpose, as the Kanawha County commission shall direct in the resolution approving such lease or sublease.

(d) Notwithstanding the fact that any motor vehicle parking facility subject to the provisions of this article is county owned or leased and the fact that a lease or sublease under the provisions of subdivision (1) or subdivision (2), subsection (c) of this section is for a public purpose as declared in subsection (b) of this section, any leasehold interest under subdivision (1), and any building, structure, accommodation or improvement erected, made or operated in any air space leased or subleased under subdivision (2) shall be subject to all property taxes, which shall be assessed and imposed against the lessee or sublessee, as the case may be, unless the use of the leasehold interest, building, structure, accommodation or improvement is otherwise exempt from property taxation under the provisions of section nine, article three, chapter eleven of this code.
(e) Without limiting the generality of the foregoing provisions of this section, any governing body is hereby authorized and empowered, but shall not be required to construct, reconstruct, establish, acquire, improve, renovate, extend, enlarge, increase, own, lease, equip (including replacement), maintain and operate motor vehicle parking facilities (including parking lots, buildings, ramps, curbside parking, meters and other facilities deemed necessary, appropriate, useful, convenient or incidental to the regulation, control and parking of motor vehicles) for use by the public as well as by employees, officers and agents of the Kanawha County commission or of any other governmental body, and to charge any person for the use of the facilities, the rates and charges as may be established from time to time by the governing body. The rates and charges may include the costs of operation of the facilities, the costs of leasing or financing the facilities, reimbursement for prior capital expenditures, and other costs, charges and other considerations as the governing body shall determine to be appropriate in its sole discretion.

CHAPTER 266

(S. B. 543—By Senators Wagner, Wooton, Bailey and Chafin)

[Passed March 8, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to establish a three-district economic council for the Sandy River district in McDowell County, the Huff district in Wyoming County and the Stafford district in Mingo County; providing the council with power to determine the economic and infrastructure needs of the districts and determine and implement remedies thereto; providing for a governing board of three members; providing for appointment of representatives to the board; and providing for the funding of the council.

Be it enacted by the Legislature of West Virginia:
§1. Economic council for Sandy river, Huff and Stafford districts created; functions.

There is hereby created a three-district economic development council, consisting of the districts of Sandy River in McDowell County, Huff in Wyoming County and Stafford in Mingo County, which shall determine the economic and infrastructure needs of the districts and determine and implement remedies thereto.

§2. Board of directors; appointment; terms; removal; compensation.

The management and control of the council, its property, operations, business and affairs is lodged in a board of directors, consisting of three members. The county commission of each county shall appoint a member to the board to represent the county. The board is not authorized to act until each member has been appointed.

Members shall serve three-year terms, except that the initial terms shall be staggered so that one member serves for one year, one member serves for two years and one member serves for three years. Members may be reappointed to additional terms. Members shall continue to serve until a successor has been appointed. No member may receive compensation for service as a board member.

§3. Funding.

The council is authorized to receive funds from private sources and may disburse the funds as it deems necessary to carry out the duties of the council.


Except as otherwise specially provided in this act, the authority has the powers and duties which are conferred and imposed, respectively, upon county or municipal development authorities by sections seven, seven-a, eight, nine, ten, eleven, twelve, thirteen and fourteen, article
six, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

In addition to the powers referred to above, the council has the power to maintain an office or offices as it deems necessary to carry out its responsibilities and to staff and equip the office or offices, which may include hiring an executive director.

CHAPTER 267
(H. B. 4096—By Delegate Clements)

[Passed February 20, 1996; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Wetzel County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of said county an election to consider an excess levy for operation of the West Virginia University extension service for the residents of Wetzel County, from the third Tuesday in April until the fourth Tuesday in May, one thousand nine hundred ninety-six.

Be it enacted by the Legislature of West Virginia:

COUNTY COMMISSION OF WETZEL COUNTY MEETING AS LEVYING BODY EXTENDED TO CONSIDER AN EXCESS LEVY.

§1. Extending time for county commission of Wetzel County to meet as levying body for election to consider an excess levy for operation of the West Virginia University extension service for residents of Wetzel County.

Notwithstanding the provisions of article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary, the county commission of Wetzel County, West Virginia, is
hereby authorized to extend the time for its meeting as a levying body, setting the levy rate and certifying its actions to the state tax commissioner from the third Tuesday in April until the fourth Tuesday in May, one thousand nine hundred ninety-six, for the purpose of submitting to the voters of Wetzel County the consideration of an excess levy for operation of the West Virginia University extension service for county residents.
COMMITTEE SUBSTITUTE FOR HOUSE JOINT RESOLUTION 22
(By Delegate Nesbitt)

[Adopted March 10, 1996]

Proposing an amendment to the Constitution of the State of West Virginia, relating to authorizing the Legislature to issue and sell state bonds not exceeding the aggregate amount of five hundred fifty million dollars to be used for improvement and construction of state roads; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred ninety-six, which proposed amendment is to read as follows:

SAFE ROADS AMENDMENT OF 1996.

(a) The Legislature shall have power to authorize the issuing and selling of state bonds not exceeding in the aggregate five hundred fifty million dollars. The proceeds of said bonds hereby authorized to be issued and sold over a five-year period in the following amounts:

(1) The first day of July, one thousand nine hundred ninety-seven, one hundred ten million dollars;

(2) The first day of July, one thousand nine hundred ninety-eight, one hundred ten million dollars;
(3) The first day of July, one thousand nine hundred ninety-nine, one hundred ten million dollars;

(4) The first day of July, two thousand, one hundred ten million dollars;

(5) The first day of July, two thousand one, one hundred ten million dollars.

Any bonds not issued under the provisions of subdivisions (1) through (4) of this subsection may be carried forward and issued in any subsequent year.

(b) The proceeds of the bonds shall be used and appropriated for the following purposes:

(1) Matching available federal funds for highway construction in this state; and

(2) General highway construction or improvements in each of the fifty-five counties.

(c) When a bond issue as aforesaid is authorized, the Legislature shall at the same time provide for the collection of an annual state tax sufficient to pay as it may accrue the interest on such bonds and the principal thereof within and not exceeding twenty-five years. Such tax shall be levied in any year only to the extent that the moneys in the state road fund irrevocably set aside and appropriated for and applied to the payment of the interest on and the principal of said bonds becoming due and payable in such year are insufficient therefor. Any interest that accrues on the issued bonds prior to payment shall only be used for the purposes of the bonds.

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. 3" and designated as the "Safe Roads Amendment of 1996" and the purpose of the proposed amendment is summarized as follows: "To provide for the improvement and construction of safe roads in the state."
HOUSE CONCURRENT RESOLUTION 18

(By Mr. Speaker, Mr. Chambers, and Ninety-four Members of the House of Delegates)

[Adopted February 27, 1996]

Urging the Congress of the United States to amend the Federal Food and Drug and Cosmetic Act and the Public Health Service Act to facilitate the development and approval of new drugs and biologics.

WHEREAS, Improving patient access to quality health care is the number one national goal; and

WHEREAS, The key to improved health care, especially for persons with serious unmet medical needs, is the rapid approval of safe and effective new drugs, biological products and medical devices; and

WHEREAS, Two thirds of all new drugs approved in the last six years by the Food and Drug Administration were approved first in other countries with approval of a new drug currently taking 14.8 years; and

WHEREAS, The United States has long led the world in discovering new drugs, but too many new medicines first are introduced in other countries, with forty drugs currently approved in one or more foreign countries still in development in the United States or awaiting FDA approval; and

WHEREAS, The patient is waiting for the industry to discover and efficiently develop safe and effective new medicines and for the FDA to facilitate the development and approval of safe medicines sooner; and

WHEREAS, There is a broad bipartisan consensus that the FDA must be re-engineered to meet the demands of the twenty-first century; and

WHEREAS, The current rules and practices governing the review of new drugs, biological products and medical devices by the United States Food and Drug Administration can delay approvals and are unnecessarily expensive; therefore, be it

Resolved by the Legislature of West Virginia:
That this Legislature respectfully urges the Congress of the United States to address this important issue by enacting comprehensive legislation to facilitate the rapid review and approval of innovative new drugs, biological products and medical devices, without compromising patient safety or product effectiveness; and, be it

Further Resolved, That the Clerk of the House of Delegates be hereby directed to transmit appropriate copies of this resolution to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, and to each member of the West Virginia Delegation of the Congress.

HOUSE RESOLUTION 1

(By Delegate Rowe)

[Adopted January 11, 1996]


Resolved by the House of Delegates:

That under authority of section thirteen, article one, chapter four of the Code of West Virginia, the Clerk of the House of Delegates is hereby authorized to have printed not to exceed 500 copies of the advance acts of the 1996 Regular Session of the Legislature bound in paper binding and to include therein the acts of any extraordinary sessions which have not been printed.

The Clerk of the Senate shall be furnished sufficient copies of said advance acts to supply each member of the Senate with five copies, as the same may be requested, and the Clerk of the House of Delegates shall forward five copies to each member of the House of Delegates, upon request of each such member. The Clerk of the House shall provide copies of said acts for distribution as provided by section six, article eight, chapter fifty-one of the code insofar as such distribution is practicable.

The Clerk of the House of Delegates is also authorized to publish not to exceed 500 copies of said acts, bound in buckram, and not to exceed 250 copies of the Journal of the House of Delegates for the second regular session of the 72nd Legislature
and include therein the unpublished Journals of any extraordinary sessions. In addition, there shall be printed twelve official copies of any Journal published, properly bound and designated. A copy of the Journal and five copies of said acts shall be furnished to each member of the Legislature, upon request of each such member. The Clerk shall retain sufficient copies of the buckram bound acts to supply legislative offices and the remaining copies shall be turned over to the Department of Administration for sale by that department.

For the work required in indexing, printing and distributing said acts and in the publication of said Journal of the House of Delegates and for completing other work of the session, the Speaker is hereby authorized to appoint such persons as he may deem necessary to perform technical, clerical, stenographic, custodial and other services required by the House of Delegates.

The Speaker shall certify a list of persons entitled to compensation under authority of this resolution to the Clerk of the House of Delegates, and the Clerk shall draw his requisition in favor of such persons at per diems or at monthly salaries, which shall be paid from the Per Diem of Officers and Employees Fund or the Contingent Fund of the House of Delegates.

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HOUSE RESOLUTION 4

(By Mr. Speaker, Mr. Chambers, and Delegate Ashley, offered on behalf of the entire membership of the House of Delegates)

[Adopted January 24, 1996]

Creating a standing Committee on Veterans' Affairs.

Resolved by the House of Delegates:

That a standing committee of the House, to be known as the Committee on Veterans' Affairs, be and it is hereby created; and, be it

Further Resolved, That the Speaker of the House be, and he is hereby, authorized to appoint the membership of such committee.
In memory of John F. "Jack" Bennett, former member of the House of Delegates from the County of Taylor.

WHEREAS, John F. Bennett served as a member of this House of Delegates with distinction and honor until his death on April 15, 1995, having been elected to the House from the Forty-second Delegate District, comprised of Taylor and portions of Marion and Monongalia counties, in 1992 and in 1994.

Jack Bennett was born on April 23, 1933. The son of Donley B. Bennett and Elsie M. Kester Bennett, he was educated in the public schools and attended West Virginia Wesleyan College. He received the Bachelor of Arts degree from Fairmont State College, the M. B. A. degree from West Virginia University, attended the University of Heidelberg, the University of Maryland, the Berlitz School of Language and held a paralegal degree from Marshall University.

Jack Bennett sought to be, and was, of assistance to his State and his fellow West Virginians through his active participation in various civic, benevolent and veteran's organizations. He was a veteran of the Korean Conflict, serving with the United States Air Force and retiring therefrom as Lieutenant Colonel with thirty-five years of service. He retired in January, 1993, as Executive Director of the West Virginia Safety Council.

A Past State Commander and life member of the Veterans of Foreign Wars Memorial City Post 3081 of Grafton, he was a member of the American Legion, Benevolent and Protective Order of Elks #308 of Grafton, Moose Lodge of Charleston, Military Order of Cooties, Kentucky Colonel, Admiral of the Cherry River Navy, U. S. Army Reserves, U. S. Air Force Reserves, U. S. Marine Corps Reserves, Color Guard for Memorial City Post 3081, Grafton Lodge #15 A. F. A. M., Scottish Rite Bodies of Wheeling, a Thirty-third Degree Mason, Osiris Temple of Wheeling, Legion of Honor, Central West Virginia Shrine Club, Taylor County Shrine Club, American Society of Safety
Engineers, Association of Safety Council Executives, the Jaycees, N. R. A. and the Marine Corp League.

A Methodist by faith, he was married to Margaret Elane Maxwell Bennett and they had three daughters: Mrs. Edwin (Denise) Propst, Jr., of Clarksburg; Miss Deborah Ann Bennett of Springfield, Virginia; and Mrs. James (Darlene) Hershman of Grafton. He is survived by his wife, his daughters and seven grandchildren; therefore, be it

Resolved by the House of Delegates:

That the life, contributions and public service of Jack Bennett should not go unnoticed, and it is with heartfelt sympathy that this House of Delegates hereby publicly notes his passing and extends to his family sincere condolences; and, be it

Further Resolved, That the Clerk of the House of Delegates be hereby directed to furnish appropriate copies of this resolution to his surviving wife, Margaret Elane Maxwell Bennett, and to his three daughters.

HOUSE RESOLUTION 9

(By Mr. Speaker, Mr. Chambers, and Delegates Kallai, Adkins, Rowe, J. Martin, Mezzatesta and Michael, offered on behalf of the entire membership of the House of Delegates)

[Adopted February 9, 1996]

Paying tribute to the life, accomplishments and memory of C. Farrell Johnson, former member of the House of Delegates from the Thirty-fifth Delegate District.

WHEREAS, The earthly life of C. Farrell Johnson ended on September 12, 1995, at his home following a sudden illness.

C. Farrell Johnson was born at Swandale, West Virginia, on November 14, 1925, to the late Roy and Elsie Johnson. He was educated in the public schools and studied engineering in Louisville, Kentucky. Mr. Johnson also held extension credits from Aiderson-Broaddus College.
Married May 21, 1949, to Sara A. Malcolm, they were the parents of two children, Jeanie J. Brown and Kellie June. He was preceded in death by his daughter, Kellie, in 1969. He is survived by his wife, Sara; his daughter, Jeanie Brown; two brothers, Darrell Johnson of Ravenswood and Johnny Johnson of Summersville; his sister, Jean Westfall of Ravenswood; and two grandchildren, Wesley and Jennifer Brown.

C. Farrell Johnson was involved in various local civic organizations and church-affiliated groups. He was the owner of R-S Broadcasting, with radio stations in Summersville, Richwood and Montgomery and was the host of the Gospel Showcase. He was a former co-owner of Modern Appliance and Furniture in Summersville, and was a past Mayor and member of the Town Council of Summersville.

Known to his friends simply as "Farrell", he was a member and past deacon of the Summersville Baptist Church, a Shriner, member of the Masonic Lodge, VFW and American Legion in Summersville and a United States Army veteran of World War II. He served as assistant tour leader to the Holy Land and traveled throughout the State as a representative of the American Baptist Convention, giving lectures on the Holy Land.

A dedicated, patriotic person, his favorite ending to a patriotic speech was "In the sundown side of life, can you look up at Old Glory as she waves gently in the breeze and say 'I gave you more than I have taken from you?'"

During his term as Mayor, he initiated procedures which hopefully will culminate in bringing of the hydroelectric power plant on the Summersville Dam, which will generate considerable revenue for the Town of Summersville.

As a Gospel music enthusiast, C. Farrell served as MC for many concerts, including the Music Fest each year in Summersville, and he received much recognition from professional groups for his promotions through broadcasting. Early in his broadcasting career he served as a national reporter in the mining disaster at Hominy Falls. That particular incident of reporting was picked up by national networks from Richwood radio and received worldwide attention.
C. Farrell Johnson was elected to the House of Delegates in 1986, 1988, 1990 and 1992, serving as House Chaplain for six of his eight years. As House Chaplain, he promoted the annual Legislative Prayer Breakfast, which evidenced that he always put his God first in his life. On a lighter side, Farrell Johnson took great pleasure in leading the House of Delegates in birthday wishes to any member when the occasion presented itself. As a legislator, he worked continuously on water and road projects for his District, was very attentive to the needs of his constituents and was equally kind to all with whom he came in contact.

C. Farrell Johnson will be remembered for his love of life, his jovial nature, his firmness in his convictions and his deep and abiding concern for the welfare of others, both young and old alike; therefore, be it

Resolved by the House of Delegates:

That it is with sadness and respect that this House of Delegates hereby formally notes the passing of C. Farrell Johnson, former member and friend, extols his memory, colorful life and character, and extends to his family heartfelt condolences upon the occasion of our collective loss; and, be it

Further Resolved, That the Clerk of the House of Delegates be hereby directed to furnish copies of this resolution to Sara A. Malcolm Johnson, his wife, and to his daughter, Jeanie Brown of Summersville.

HOUSE RESOLUTION 10

(By Delegates Tomblin, Dempsey, Whitman and Ellis)

[Adopted February 12, 1996]

Commemorating the passing of former House of Delegates member, Paul Hicks.

WHEREAS, Paul Hicks was appointed to the House of Delegates on August 15, 1968, and reelected later in that year and again in 1970; and

WHEREAS, The son of the late Cecil L. and Almita Bryant Hicks, he was married to Betty Rayburn Hicks and was the proud father of a son, David, and daughters, Mary and Paula Hicks; and
WHEREAS, Mr. Hicks was a veteran of the United States Air Force, serving in WWII and the Korean Conflict and was active in his community through his long-standing membership at the West Logan Missionary Baptist Church, Aracoma Lodge #99 AF&AM and as mayor of West Logan; therefore, be it

Resolved by the House of Delegates:

That regret and sympathy is hereby expressed to the family of Paul Hicks and his loving wife, Betty, upon their loss; and, be it

Further Resolved, That the Clerk of the House of Delegates be hereby directed to forward a copy of this memorial resolution to the members of the Hicks family.

COMMITTEE SUBSTITUTE FOR
HOUSE RESOLUTION 12

(By Delegates Greear, Seacrist, Hunt, Amores, Walters, Nesbitt, Farris, Calvert, Henderson, Miller, Sprouse, Harrison and Pulliam)

[Adopted February 21, 1996]

Amending House Rule Nos. 92a and 93, relating to bill carryover and bills to be presented in quadruplicate.

Resolved by the House of Delegates:

That House Rule Nos. 92a and 93, be amended to read as follows:

Bill Carryover.

92a. Any bill or joint resolution pending in the House at the time of sine die adjournment of the First Regular Session of a Legislature or extended First Regular Session thereof, which has not been rejected, laid on the table or postponed indefinitely by the House shall carry over in its original form to the Second Regular Session only at the request of the first-named sponsor of the bill or resolution, such request to be made to the Clerk of the House not later than ten days prior to the commencement of the session.
After receiving notice from the first-named sponsor of his or her intent to carry over the bill, the Clerk of the House shall notify all cosponsors that the bill will be carried over. All cosponsors shall have ten days after the date of notice to notify the Clerk of the House that their names should be removed from the bill to be carried over.

Any such bill or joint resolution shall retain this original number and shall be deemed to be reintroduced on the first day of the Second Regular Session and shall, except as otherwise directed by the Speaker, be treated as referred to the committee or committees to which it was originally referred.

In the case of any House bill or joint resolution which has been passed or adopted by the House, such bill or resolution shall likewise be deemed to be reintroduced and referred, except as otherwise directed by the Speaker, to the committee or committees to which it was originally referred.

This rule shall not apply to any bill or joint resolution solely sponsored by a former member, to supplemental appropriation or budget bills, to bills which promulgate legislative rules, to bills which expire or continue state agencies pursuant to the West Virginia Sunset Law, to bills of a local nature, or to any bill or joint resolution introduced during any extraordinary session.

**Bills to Be Presented in Quadruplicate.**

93. All bills for introduction shall be presented in quadruplicate bearing the name of the first-named sponsor and the name or names of all cosponsors by whom they are to be introduced. The original copy shall constitute the official bill for use of committees and for the permanent files of the House, one copy shall be used for printing and copying, one for the use and accommodation of the news media, and one for the Clerk's office files.

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**HOUSE RESOLUTION 18**

(By Mr. Speaker, Mr. Chambers, and Delegates Givens, Thompson and Yeager, offered on behalf of the entire membership of the House of Delegates)

[Adopted March 6, 1996]

A resolution of support for the troops in Bosnia.
WHEREAS, Many West Virginians have distinguished themselves by their unselfish dedication to the principles of freedom and the American way of life; and

WHEREAS, West Virginians have a proud tradition of service in the Armed Forces of the United States; and

WHEREAS, Members of the West Virginia Army and Air National Guard have been called upon to provide direct or indirect support in every major military action of the United States since World War II; and

WHEREAS, Seventeen West Virginia Army National Guardsmen of the 152nd Military Police Detachment of Moundsville, West Virginia, have been called to active federal duty and deployed in Bosnia with the United States Army and other forces of the United Nations in support of the peacekeeping mission there; and

WHEREAS, Those seventeen men and women have volunteered to be placed in harms way so the citizens of Bosnia may enjoy a better quality of life; and

WHEREAS, There may be additional members of the 152nd or other units of the West Virginia Army or Air National Guard called to federal duty as the Bosnian mission continues; therefore, be it

Resolved by the House of Delegates:

That the West Virginia House of Delegates hereby pledges its full support of the efforts of the brave men and women of the West Virginia National Guard; and be it

Further Resolved, That the West Virginia House of Delegates is proud of your service to our State and Nation, and wish you God's speed in the completion of your mission and your safe return to Almost Heaven; and be it

Further Resolved, That the Clerk of the House of Delegates is hereby directed to provide a copy of this resolution to each member of the 152nd Military Police Detachment currently activated for this federal mission and a copy to those additional soldiers and airmen of the West Virginia National Guard who are activated before the conclusion of this peacekeeping mission.
HOUSE RESOLUTION 21

(By Delegates Kiss, Mezzatesta, Prezioso, Staton, Faircloth, J. Martin, Michael, Rowe, Ashley, Miller and Riggs)

[Adopted March 9, 1996]

Paying tribute to the Honorable Speaker of the House of Delegates, Robert C. "Chuck" Chambers.

WHEREAS, The close of the 72nd Legislature will mark the end of an era of public service rendered by the Speaker of the House, the Honorable Robert C. Chambers.

Born on August 27, 1952, in Mingo County to Geraldine Kiser Chambers and the late James E. Chambers, he received his education in the public schools, graduating from Barboursville High School in 1970, the Bachelor of Arts degree in Political Science from Marshall University in 1974 and received the Doctor of Law degree from West Virginia University College of Law in 1978.

Interested in the political aspect of West Virginia life, Chuck Chambers was first elected to the House of Delegates in 1978. He served as a member of the Committee on the Judiciary during his entire tenure, and was appointed Chairman in 1985 by then-Speaker of the House, Joseph P. Albright.

As Chairman of the Committee on the Judiciary, he won the respect of his colleagues and a reputation for clear thinking, straight talk and fairness to all sides of a given issue. These qualities led to his election as Speaker of the House of Delegates on January 14, 1987. Robert C. "Chuck" Chambers is the 53rd Speaker of the House of Delegates and the longest serving Speaker in the history of the State of West Virginia.

As Speaker, he shepherds the House with a blend of dignity, quick wit and humor. On the theory that a government of laws is preferable to a government of men, Chuck Chambers presides over the House with an excellent command of the rules and has consistently recognized the importance of following its precedents. In looking to resolve a point of order or other procedural question, Speaker Chambers has applied a doctrine analogous to that known to the courts as "stare decisis", under which a judge in
RESOLUTIONS 2235

making a ruling will look to earlier cases involving the same question of law. In the same way, the Speaker has adhered to settled rulings that have been established by prior decision; and

WHEREAS, The legislative career of Speaker Chambers will come to a voluntary close, but his accomplishments and ideals will continue through the remaining history of the State and, in this regard, a scholarship fund at Marshall University has been established by the members of the House of Delegates in memory of his late father, to be known as the "Robert 'Chuck' Chambers Scholarship Fund"; therefore, be it

Resolved by the House of Delegates:

That it is with admiration and affection that this House of Delegates hereby formally recognizes the public service of its Speaker, the Honorable Robert C. "Chuck" Chambers, upon the occasion of his choosing to retire from the legislative arena; that the members of this House hereby extend to him their collective best wishes for the future and their collective word of thanks for the past and the present, and their sincere congratulations for an outstanding career of leadership; and, be it

Further Resolved, That the Clerk of the House of Delegates be hereby directed to furnish certified copies of this resolution to the Honorable Speaker of the House, Robert C. "Chuck" Chambers.

HOUSE RESOLUTION 23

(By Mr. Speaker, Mr. Chambers, and Delegates J. Martin, Michael, Rowe, Kiss, Mezzatesta, Prezioso and Staton)

[Adopted March 9, 1996]

Recognizing the outstanding public service and accomplishments of the Honorable Gaston Caperton, Governor of West Virginia.

WHEREAS, Gaston Caperton has served the people of West Virginia with vision, determination, compassion and courage; and

HE undersigned state Senators, Senators of the Twenty-Fifth Legislature, second regular session, do hereby further resolve, that the Clerk of the Senate be directed to deliver to the Governor a certified copy of this resolution.
WHEREAS, Gaston Caperton has worked hand-in-hand with the West Virginia Legislature, making the tough decisions and sticking to the right goals; and

WHEREAS, He always has been deeply committed to improving the quality of life for West Virginia's citizens and their communities; and

WHEREAS, His tenure as governor is an exceptional success story, particularly in the areas of education and job growth; and

WHEREAS, Governor Caperton led the state from the brink of bankruptcy to consistent budget surpluses and reliable fiscal management; and

WHEREAS, 75,000 new jobs, 12,000 miles of road improvements, a nationally-recognized regional jail system, an innovative public-private sector partnership and historic environmental laws are among his landmark improvements; and

WHEREAS, West Virginia students have benefitted from a much-advanced and nationally heralded education system under his leadership; and

WHEREAS, The basic skills computer program, professional training, new schools and renovations under the School Building Authority and a rise in teachers' salary ranking from 49th to 31st can be directly attributed to Gaston Caperton's vision for education; and

WHEREAS, Gaston Caperton will be remembered as one of this state's greatest governors for his unprecedented accomplishments, establishing West Virginia as a state strong and full of promise, gaining national recognition for superior performance on several fronts; and

WHEREAS, Gaston Caperton's love, dedication, faith and pride in the Mountain State have been the hallmarks of his leadership; therefore, be it

Resolved by the House of Delegates:

That it is with admiration and affection that this House of Delegates hereby formally recognizes the public service of the Governor, the Honorable Gaston Caperton, and that the members of this House hereby extend to him their collective best wishes
for the future and sincere congratulations for an outstanding career of leadership.

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**HOUSE RESOLUTION 25**

(By Delegate Willison)

[Adopted March 9, 1996]

Commemorating the passing of the Honorable Forest Buck, former member of the West Virginia House of Delegates from Tyler County.

**WHEREAS,** On the 13th day of February, 1996, the community of Sistersville suffered the loss of an outstanding citizen and community leader with the passing of Forest Buck; and

**WHEREAS,** Forest was born on March 8, 1909, in Aliquippa, PA, the son of the late Luster Buck and Kathrine Marshall Buck; and

**WHEREAS,** Forest was married to the late Mary "Madie" Harrington, and he and Mary were the devoted parents of four children, Lawrence, Edward, Barbara and the late Willis Buck; and

**WHEREAS,** Forest was a member of the House of Delegates from Tyler County from 1960 to 1972; and

**WHEREAS,** In addition to his public service, Forest was the former director of the Union Bank of Tyler County and former Co-owner of Buck Chevrolet in Sistersville and St. Marys, West Virginia. He also dedicated much of his time and effort to several civic and social organizations, including First Presbyterian Church of Sistersville; member, Phoenix Lodge #73 AF&AM; member, Nemesis Shrine, Parkersburg; member BPOE #333, Sistersville; member, Sigma Chi Fraternity; therefore, be it

**Resolved by the House of Delegates:**

That the House of Delegates of the West Virginia Legislature hereby expresses its deepest regret at the passing of Forest Buck; and, be it
Further Resolved, That the Clerk of the House of Delegates forward copies of this resolution to Lawrence "Larry" Buck, Edward "Bud" Buck, and Barbara Robertson, his children.

SENATE RESOLUTION 5
(By Senator Tomblin, Mr. President)
[Adopted January 29, 1996]

Memorializing the life of the Honorable J. Howard Myers, former sheriff, political leader, Clerk of the West Virginia Senate and distinguished West Virginian.

WHEREAS, The Honorable J. Howard Myers was born October 24, 1901, in Berkeley County, West Virginia, the son of James C. and Lillie E. Myers; and

WHEREAS, The Honorable J. Howard Myers received his education at Shepherd College and West Virginia University; and

WHEREAS, The Honorable J. Howard Myers was married February 6, 1937, to his beloved wife Elizabeth Trump of Kearneysville, West Virginia; and

WHEREAS, The Honorable J. Howard Myers served as Sheriff of Berkeley County, West Virginia, from 1938 to 1945. He served in a number of Democratic Party positions, including chairman of the State Democratic Executive Committee. He was also a member of a myriad of civic organizations, including the Masonic Lodge, where he served as a 32nd Degree Mason; and

WHEREAS, The Honorable J. Howard Myers was elected in 1945 as the fifteenth Clerk of the West Virginia Senate, a position he held with dedication and distinction until 1971. He was the longest-serving Senate Clerk in the history of West Virginia, serving fourteen consecutive terms; therefore, be it

Resolved by the Senate:

That the Senate hereby expresses its sincere sadness at the passing of the Honorable J. Howard Myers, former sheriff, political leader and longest-serving Clerk of the West Virginia Senate; and, be it
Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the members of the family of the late J. Howard Myers.

SENATE RESOLUTION 6
(By Senators Ross, Helmick, Anderson, Bailey, Blatnik, Boley, Bowman, Buckalew, Chafin, Craigo, Deem, Dittmar, Dugan, Grubb, Jackson, Kimble, Love, Macnaughtan, Manchin, Miller, Minear, Oliverio, Plymale, Schoonover, Scott, Sharpe, Tomblin, Mr. President, Wagner, Walker, Whitlow, Wiedebusch, Wooton and Yoder)

[Adopted January 31, 1996]

Requesting Columbia Gas Transmission, Incorporated, to maintain its headquarters in Charleston, West Virginia.

WHEREAS, Officials of Columbia Gas Transmission, Incorporated, have indicated a possibility of relocating their Charleston, West Virginia, headquarters; and

WHEREAS, Columbia Gas Transmission, Incorporated, has long been a leading employer for many West Virginians and has been a major economic force in West Virginia; and

WHEREAS, Columbia Gas Transmission, Incorporated, employs approximately one thousand people at its Charleston, West Virginia, headquarters and approximately one thousand six hundred people throughout the state; and

WHEREAS, The employees of Columbia Gas Transmission, Incorporated, have performed their jobs with exceptional dedication and reliability; and

WHEREAS, The economic impact of the loss of Columbia Gas Transmission, Incorporated, in West Virginia would be devastating to the city of Charleston, Kanawha County, and the state of West Virginia, as well as other businesses and industries within the state of West Virginia who rely on Columbia Gas Transmission, Incorporated, as a major source of income; therefore, be it

Resolved by the Senate:
That the Senate hereby requests Columbia Gas Transmission, Incorporated, to maintain its headquarters in Charleston, West Virginia, and continue to be a predominant economic force to the city of Charleston, Kanawha County, and the state of West Virginia, and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to Catherine Abbott, chairman and chief executive officer of Columbia Gas Transmission, Incorporated.

SENATE RESOLUTION 9
(By Senators Blatnik, Bowman, Wiedebusch and Macnaughtan)

[Adopted February 12, 1996]

Requesting the United States Postal Service to preserve and maintain the Wheeling, West Virginia, postmark and to assure the future maintenance of the Wheeling, West Virginia, processing center at the level that will sustain the high quality of service that the residents of the northern panhandle of West Virginia deserve.

WHEREAS, The city of Wheeling, West Virginia, has served a prominent role in the history of this state, including service as the state capitol and as the "Gateway to the West"; and

WHEREAS, The city of Wheeling, West Virginia, remains an important municipality in West Virginia and continues to be the third largest city in the state; and

WHEREAS, The United States Postal Service has operated mail service out of Wheeling for residents of the northern panhandle of West Virginia for over one hundred years, including service in the counties of Hancock, Brooke, Ohio, Marshall and Wetzel; and

WHEREAS, The Wheeling, West Virginia, postmark has become a symbol for the unique importance of Wheeling as a city and the role it has played in the development of the great state of West Virginia; and

WHEREAS, The United States Postal Service is contemplating a transfer of some mail processing services to Pittsburgh, Pennsylvania, which may lead to the elimination of some employment
and services and ultimately of the Wheeling, West Virginia, postmark; and

WHEREAS, The cancellation of the Wheeling, West Virginia, postmark and mail processing services could pose a degradation of mail service within West Virginia and could diminish the identity of Wheeling and the northern panhandle of West Virginia as an important historical, cultural and economic point in our nation; therefore, be it

Resolved by the Senate:

That the United States Postal Service heed the plea of the residents to preserve and maintain the Wheeling, West Virginia, postmark and maintain the Wheeling, West Virginia, processing center at the level that will sustain the high quality of service that the residents of the northern panhandle of West Virginia deserve; and, be it

Further Resolved, That the Clerk is hereby requested to forward a copy of this resolution to the Postmaster General of the United States and the members of the United States Senate from West Virginia.

SENATE RESOLUTION 13

(By Senators Tomblin, Mr. President, Jackson and Sharpe)

[Adopted February 16, 1996]

Memorializing the life of the Honorable Todd C. Willis, former educator, coach, senator, Senate Clerk, distinguished West Virginian and statesman.

WHEREAS, The Honorable Todd C. Willis was born April 4, 1925, in Logan County, West Virginia, the son of Thelma (Chambers) and Todd Charles Willis; and

WHEREAS, The Honorable Todd C. Willis received his education at Salem College, where he earned an AB degree, and at Marshall University where he received an MA degree; and

WHEREAS, The Honorable Todd C. Willis was married to his beloved wife Elizabeth Bartlett of Clarksburg, West Virginia, with whom he shared the joy of having three children: Elizabeth Cole, Taunja Gay and Todd Bartlett; and
WHEREAS, The Honorable Todd C. Willis served as comptroller for the Logan County Board of Education. He also served as a teacher and head football coach for Logan High School. He served his community through his active involvement in the Logan Junior Chamber of Commerce as a member and past president. He was also a former vice president of the West Virginia Junior Chamber of Commerce; and

WHEREAS, The Honorable Todd C. Willis was elected to the West Virginia Senate in 1972 from the seventh senatorial district. As a member of the West Virginia Senate, Senator Willis served as Chairman of the Senate Committee on Transportation; and

WHEREAS, The Honorable Todd C. Willis was elected as the eighteenth Clerk of the West Virginia Senate in 1980 and was reelected in 1981, 1983, 1985, 1987 and 1989. As Senate Clerk he served as a member of the American Society of Legislative Clerks and Secretaries and the National Conference of State Legislatures; and

WHEREAS, The Honorable Todd C. Willis retired as Senate Clerk on July 31, 1989, bringing to an end a long and dedicated career of public service to the citizens of West Virginia. The guidance and legislative expertise he contributed to the Senate was sorely missed by all who knew him; and

WHEREAS, Sadly, the life of the Honorable Todd C. Willis came to an end on December 12, 1995, in his beloved Logan County, West Virginia; therefore, be it

Resolved by the Senate:

That the Senate hereby extends its sincere sadness at the passing of the Honorable Todd C. Willis, a man who served the West Virginia Senate with dedication and commitment to the legislative process, a former educator, coach, senator, Senate Clerk, distinguished West Virginian and statesman; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to his beloved wife, Elizabeth Bartlett Willis; and his beloved children, Elizabeth Cole, Taunja Gay and Todd Bartlett.
SENATE RESOLUTION 21

(By Senators Tomblin, Mr. President, Anderson, Bailey, Blatnik, Boley, Bowman, Buckalew, Chafin, Craigo, Deem, Dittmar, Dugan, Grubb, Helmick, Jackson, Kimble, Love, Macnaughtan, Manchin, Miller, Minear, Oliverio, Plymale, Ross, Schoonover, Scott, Sharpe, Wagner, Walker, White, Whitlow, Wiedebusch, Wooton and Yoder)

[Adopted February 27, 1996]

Memorializing the life of the Honorable Porter Cotton, Doorkeeper of the West Virginia Senate and distinguished West Virginian.

Whereas, The Honorable Porter Cotton was born October 14, 1911, in Bessemer, Alabama; and

Whereas, The Honorable Porter Cotton was married to his beloved wife, Delores Eddy, with whom he shared the joy of having one daughter, Doris Fields; and

Whereas, The Honorable Porter Cotton served his nation with pride and patriotism in the United States Army; and

Whereas, The Honorable Porter Cotton was retired from Bethlehem Steel Corporation and was a member of a myriad of community service organizations, including member and treasurer of his Masonic Lodge; the United Mine Workers of America; member of the board of the Cabin Creek Medical Center; member of the Miner Training and Education Certification Board for the Department of Energy; and member of the Kanawha County Housing Authority; and

Whereas, The Honorable Porter Cotton was elected in 1989, 1991 and 1993 as the forty-ninth Doorkeeper of the West Virginia Senate and continued to serve the Senate with distinction and dedication until his death in January, 1996; therefore, be it

Resolved by the Senate:

That the Senate hereby extends its sincere sadness at the passing of the Honorable Porter Cotton, a man who had dedicated his life to his community and the betterment of his fellow man; and, be it
Further Resolved, That the Senate, posthumously, extends its sincere appreciation to the Honorable Porter Cotton for his dedication and commitment to the West Virginia Senate during his tenure as the forty-ninth Doorkeeper; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to Delores Eddy Cotton, beloved wife of the Honorable Porter Cotton, and his beloved daughter, Doris Fields.
LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 1996

CHAPTER 1

(S. B. 2—By Senators Tomblin, Mr. President, and Boley)
[By Request of the Executive]

[Passed July 16, 1996; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, in the amount of eighteen million dollars from the revenue shortfall reserve fund, account no. fund 2038, organization 0201, activity 999, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1997, organization 0100.

WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood victims and to fund other needed infrastructure and other projects throughout the state will fall short of that needed during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; and
WHEREAS, The revenue shortfall reserve fund has a sufficient balance available for appropriation in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; and,

WHEREAS, By the provisions of this legislation there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore,

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the revenue shortfall reserve fund, account no. fund 2038, organization 0201, activity 999, be decreased by expiring the amount of eighteen million dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0105, fiscal year 1997, organization 0100, be supplemented and amended by increasing the total appropriation by eighteen million dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 8—Governor's Office

4 Civil Contingent Fund

5 (WV Code Chapter 5)

6 Account No.

7 Fund 0105 FY 1997 Org 0100

8 Activity

9 General Revenue Fund

10

11 1 Civil Contingent Fund—

12 Surplus (R) . . . . . . . . . . 263 $ 18,000,000

13 The purpose of this bill is to expire the sum of eighteen million dollars from the revenue shortfall reserve fund, account no. fund 2038, organization 0201, activity
16 999, and to supplement the governor's office, civil contingen-
17 gent fund, account no. fund 0105, fiscal year 1997, organ-
18 ization 0100, in the budget act for the fiscal year ending
19 the thirtieth day of June, one thousand nine hundred
20 ninety-seven, by adding eighteen million dollars to the
21 existing appropriation.

CHAPTER 2

(S. B. 3—By Senators Tomblin, Mr. President, and Boley)
[By Request of the Executive]

[Passed July 16, 1996; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public mon-
ey out of the treasury from the state fund, general revenue, from surplus accrued as of the thirty-first day of July, one thousand nine hundred ninety-six, and authorizing the trans-
fer of these funds to the revenue shortfall reserve fund, account no. fund 2038, organization 0201, activity 999, sup-
plementing and amending chapter eight, acts of the Legisla-
ture, regular session, one thousand nine hundred ninety-six, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

1 That section eight, chapter eight, acts of the Legisla-
ture, regular session, one thousand nine hundred
3 ninety-six, be supplemented and amended following line
4 fifty-three by adding the following:

5 After allocating funds as necessary to provide for the
6 appropriations set forth in this section, the remainder of
7 the surplus accrued as of the thirty-first day of July, one
8 thousand nine hundred ninety-six, shall be transferred to
9 the revenue shortfall reserve fund, account no. fund 2038,
10 organization 0201, activity 999.

11 The purpose of this bill is to provide for the transfer
12 of the remainder of the surplus accrued as of the
13 thirty-first day of July, one thousand nine hundred
14 ninety-six, to the revenue shortfall reserve fund established
in section twenty, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended. This transfer is being made to replenish the amounts of money being withdrawn from the fund for purposes of providing flood relief and funding water, sewer and other projects.

CHAPTER 3

(S. B. 6—By Senators Tomblin, Mr. President, and Boley)
[By Request of the Executive]

[Passed July 15, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, four, five, six, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and eighteen, article seventeen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section twenty; to amend and reenact sections six and seven, article two, chapter thirty-one-a of said code; to further amend said article by adding thereto a new section, designated section sixteen; and to amend and reenact section one hundred five, article one, chapter forty-six-a of said code, all generally relating to licensure of consumer lending offices, banking institutions and secondary mortgage companies operating in West Virginia; changing definitions; clarifying that license requirements for lenders or brokers do not apply to federally insured depository institutions; requiring annual license renewal; removing residence requirements for licensure of lenders and brokers and establishing licensing requirements for out-of-state lenders and brokers wishing to do business in West Virginia; modifying the allowable amount of finance and other charges and extending the maximum time period for second mortgage loans; requiring the banking commissioner to study the effect of extending the maximum time period for second mortgage loans; prohibiting certain charges from being assessed if second mortgage is refinanced or another loan is obtained on same property within
twenty-four months and modifying allowable charges for secondary mortgages; requiring lender to provide proof of insurance to borrower within thirty days; allowing lenders to provide revolving lines of credit in certain circumstances; prohibiting brokers from receiving payment prior to completion of services unless all requirements of article six, chapter forty-six-a of this code are met; making the annual review of licensee's books and accounts by the commissioner discretionary; making it grounds to revoke or suspend licenses if lender makes consumer loans with intent to acquire secured property; modifying licensee's duty to relinquish license following suspension or revocation; modifying hearing requirements; providing that the penalties in article seventeen, chapter thirty-one of this code are cumulative; changing the periodic examination requirements for financial institutions; making the effective date of the amendments to chapters thirty-one and thirty-one-a of this code the seventh day of June, one thousand nine hundred ninety-six; establishing a per hour fee amount that the commissioner of banking may charge financial institutions for periodic record reviews; and exempting secondary mortgage lender and broker licensees from the provisions of chapter forty-six-a of this code when those provisions conflict with the provisions of chapter thirty-one or thirty-one-a of this code.

Be it enacted by the Legislature of West Virginia:

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

Chapter

31A. Banks and Banking.
46A. West Virginia Consumer Credit and Protection Act.
CHAPTER 31. CORPORATIONS.

ARTICLE 17. SECONDARY MORTGAGE LOANS.

§31-17-1. Definitions and general provisions.

§31-17-2. License required for lender or broker; exemptions.

§31-17-4. Applications for licenses; requirements; bonds; fees; renewals.

§31-17-5. Refusal or issuance of license.

§31-17-6. Minimum net assets to be maintained; bond to be kept in full force and effect; foreign corporation to remain qualified to do business in this state.

§31-17-8. Maximum period of loan; maximum interest and charge or charges; insurance; other prohibitions.

§31-17-9. Disclosure; closing statements; other records required.

§31-17-10. Advertising requirements.

§31-17-11. Records and reports; examination of records; analysis.

§31-17-12. Grounds for suspension or revocation of license; suspension and revocation generally; reinstatement or new license.

§31-17-13. Notice of refusal, or suspension or revocation, of license; relinquishing license.

§31-17-14. Hearing before commissioner; provisions pertaining to hearing.


§31-17-16. Actions to enjoin violations.

§31-17-18. Violations and penalties.

§31-17-20. Effective date.

§31-17-1. Definitions and general provisions.

As used in this article:

1 (1) "Secondary mortgage loan" means a loan made to an individual or partnership which is secured in whole or in part by a mortgage or deed of trust upon any interest in real property used as a dwelling with accommodations for not more than four families, which property is subject to the lien of one or more prior recorded mortgages, deeds of trust or vendor's liens.

2 (2) "Person" means an individual, partnership, association, trust, corporation or any other legal entity, or any combination thereof.

3 (3) "Lender" means any person who makes or offers to make or accepts or offers to accept any secondary mortgage loan in the regular course of business. A person shall be deemed to be acting in the regular course of business if he or she makes or accepts, or offers to make or accept, more than five secondary mortgage loans in any one calendar year.
(4) "Broker" means any person who, for a fee or commission or other consideration, negotiates or arranges, or who offers to negotiate or arrange, a secondary mortgage loan between a lender and a borrower.

(5) "Brokerage fee" means the fee or commission or other consideration charged by a broker for the services described in subdivision (4) of this section.

(6) "Principal" or "principal sum" means the total of:
   (a) The net amount paid to, receivable by or paid or payable for the account of the debtor;
   (b) The amount of any discount excluded from the loan finance charge; and
   (c) To the extent that payment is deferred:
      (i) Amounts actually paid or to be paid by the lender for registration, certificate of title or license fees if not included in paragraph (a) of this subdivision; and
      (ii) Additional charges permitted by this article.

(7) "Additional charges" means every type of charge arising out of the making or acceptance of a secondary mortgage loan, except finance charges, including, but not limited to, official fees and taxes, reasonable closing costs and certain documentary charges and insurance premiums and other charges which definition is to be read in conjunction with, and permitted by section one hundred nine, article three, chapter forty-six-a of this code.

(8) "Finance charge" means the sum of all interest and similar charges payable directly or indirectly by the debtor or imposed or collected by the lender incident to the extension of credit, as coextensive with the definition of "loan finance charge" set forth in section one hundred two, article one, chapter forty-six-a of this code.

(9) "Commissioner" means the commissioner of banking of this state.

(10) "Applicant" means a person who has applied for a lender's or broker's license.
(11) "Licensee" means any person duly licensed by the commissioner under the provisions of this article as a lender or broker.

(12) "Amount financed" means the total of the following items to the extent that payment is deferred:

(a) The cash price of the goods, services or interest in land, less the amount of any down payment, whether made in cash or in property traded in;

(b) The amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in or a lien on property traded in; and

(c) If not included in the cash price:

(i) Any applicable sales, use, privilege, excise or documentary stamp taxes;

(ii) Amounts actually paid or to be paid by the seller for registration, certificate of title or license fees; and

(iii) Additional charges permitted by this article.

§31-17-2. License required for lender or broker; exemptions.

(a) No person shall engage in this state in the business of lender or broker unless and until he or she shall first obtain a license to do so from the commissioner, which license remains unexpired, unsuspended and unrevoked, and no foreign corporation shall, notwithstanding the provisions of section seventy-nine-a, article one of this chapter, engage in such business in this state unless it shall qualify to hold property and transact business in this state.

(b) The provisions of this article do not apply to loans made by banking institutions, trust companies, savings and loan associations, industrial loan companies, insurance companies, credit unions or any federally insured depository institution, or to loans made by any other lender licensed by and under the supervision of any agency of the federal government, or to loans made by, or on behalf of, any agency or instrumentality of this state or federal government or by a nonprofit community development
organization which loans are subject to federal or state
government supervision and oversight.

§31-17-4. Applications for licenses; requirements; bonds; fees;
renewals.

(a) Application for a lender's or broker's license shall
each year be submitted in writing under oath, in the form
prescribed by the commissioner, and shall contain the full
name and address (both of the residence and place of
business) of the applicant and, if the applicant is a partner-
ship or association, of every member thereof, and, if a
corporation, of each officer, director and owner of five
percent or more of the capital stock thereof, and such
further information as the commissioner may reasonably
require. Any application shall also disclose the location in
this state at which the business of lender or broker is to be
conducted.

(b) At the time of making application for a lender's
license, the applicant therefor shall:

(1) If a foreign corporation, submit a certificate from
the secretary of state certifying that such applicant has
qualified to hold property and transact business in this
state;

(2) Submit proof that he or she has available for the
operation of the business at the location specified in the
application net assets of at least two hundred fifty thou-
sand dollars;

(3) File with the commissioner a bond in favor of the
state in the amount of one hundred thousand dollars, in
such form and with such conditions as the commissioner
may prescribe, and executed by a surety company autho-
rized to do business in this state;

(4) Pay to the commissioner a license fee of one thou-
sand dollars and an investigation fee of two hundred fifty
dollars. If the commissioner shall determine that an inves-
tigation outside this state is required to ascertain facts or
information relative to the applicant or information set
forth in the application, the applicant may be required to
advance sufficient funds to pay the estimated cost of the
An itemized statement of the actual cost of the investigation outside this state shall be furnished to the applicant by the commissioner, and the applicant shall pay or shall have returned to him or her, as the case may be, the difference between his or her payment in advance of the estimated cost and the actual cost of the investigation; and

(5) Submit proof that the applicant is a business in good standing in its state of incorporation, or if not a corporation, its state of business registration, and a full and complete disclosure of any litigation or unresolved complaint filed by a governmental authority or class action lawsuit on behalf of consumers relating to the operation of the license applicant.

(c) At the time of making application for a broker's license, the applicant therefor shall:

(1) If a foreign corporation, submit a certificate from the secretary of state certifying that the applicant has qualified to hold property and transact business in this state;

(2) Submit proof that he or she has available for the operation of the business at the location specified in the application net assets of at least ten thousand dollars;

(3) File with the commissioner a bond in favor of the state in the amount of one hundred thousand dollars, in such form and with such conditions as the commissioner may prescribe, and executed by a surety company authorized to do business in this state;

(4) Pay to the commissioner a license fee of one hundred dollars and an investigation fee of fifty dollars; and

(5) Submit proof that the applicant is a business in good standing in its state of incorporation, or if not a corporation, its state of business registration, and a full and complete disclosure of any litigation or unresolved complaint filed by a governmental authority or class action lawsuit on behalf of consumers relating to the operation of the license applicant.
(d) The aggregate liability of the surety on any bond given pursuant to the provisions of this section shall in no event exceed the amount of such bond.

(e) Nonresident lenders and brokers licensed under this article by their acceptance of such license acknowledge that they are subject to the jurisdiction of the courts of West Virginia and the service of process pursuant to section one hundred thirty-seven, article two, chapter forty-six-a of this code and section thirty-three, article three, chapter fifty-six of this code.

§31-17-5. Refusal or issuance of license.

(a) Upon an applicant's full compliance with the provisions of section four of this article, the commissioner shall investigate the relevant facts with regard to the applicant and his or her application for a lender's or broker's license, as the case may be. Upon the basis of the application and all other information before him or her, the commissioner shall make and enter an order denying the application and refusing the license sought if the commissioner finds that:

(1) The applicant does not have available the net assets required by the provisions of section four of this article;

(2) The applicant, individually, if an individual, or the partners, if a partnership, or the officers and directors, if a corporation, is of such character and reputation as reasonably to warrant the belief that the business will not be operated lawfully and properly in accordance with the provisions of this article;

(3) The applicant has habitually defaulted on financial obligations; or

(4) The applicant has done any act or has failed or refused to perform any duty or obligation for which the license sought could be suspended or revoked were it then issued and outstanding.

Otherwise, the commissioner shall issue to the applicant a lender's or broker's license which shall entitle the applicant to engage in the business of lender or broker, as
the case may be, during the period, unless sooner suspend-
ed or revoked, for which the license is issued.

(b) Every application for a lender's or broker's license
shall be passed upon and the license issued or refused
within forty-five days after the applicant therefor has fully
complied with the provisions of section four of this article.
Under no circumstances whatever shall the same person
hold both a lender's and a broker's license. Whenever an
application for a lender's or broker's license is denied and
the license sought is refused, which refusal has become
final, the commissioner shall retain the investigation fee or
fees but shall return the license fee to the applicant.

§31-17-6. Minimum net assets to be maintained; bond to be
kept in full force and effect; foreign corporation
to remain qualified to do business in this state.

At all times, a licensee shall: (1) Have available the net
assets required by the provisions of section four of this
article; (2) keep the bond required by said section in full
force and effect; and (3) if the licensee be a foreign cor-
poration, remain qualified to hold property and transact
business in this state.

§31-17-8. Maximum period of loan; maximum interest and
charge or charges; insurance; other prohibi-
tions.

(a) The maximum rate of finance charges and maxi-
mum total additional charges on or in connection with any
secondary mortgage loan shall be as follows:

(1) The maximum rate of finance charge shall not
exceed eighteen percent per year on the unpaid balance of
the amount financed: Provided, That the borrower shall
have the right to prepay his or her debt in whole or in part
at any time and shall receive a rebate for any unearned
finance charge, exclusive of any points, investigation fees
and loan origination fees, which rebate shall be computed
in accordance with section one hundred eleven, article
three, chapter forty-six-a of this code: Provided, however,
That the sum of any points, investigation fees and loan
origination fees charged may not exceed five percent of
the amount financed;

(2) A secondary mortgage loan shall be payable over
a period not to exceed sixty months. This sixty-month
maximum loan period is temporarily extended, as of the
effective date of this section, to one hundred twenty
months until the first day of July, two thousand, at which
time it reverts to the sixty-month maximum loan limit time
period. The commissioner shall report to the Legislature
by the first day of July, one thousand nine hundred
ninety-nine, on the impact of this extended loan time
period upon the citizens of this state. The report shall
include analysis of the impact of this loan period exten-
sion on the secondary mortgage industry in this state,
impacts of this extension on various socio-economic class-
es of citizens of this state, statistics regarding the number
of homes which have been foreclosed upon based on this
extension and the effect of this extension to any other
citizens of this state. The commissioner may require any
licensee to provide the commissioner with any information
necessary to make this report;

(3) The total of additional charges as permitted by this
section and by section one hundred nine, article three,
chapter forty-six-a of this code, excluding official fees
and taxes, and insurance, may equal, but shall not be in
excess of, ten percent of the principal sum: Provided,
That where the principal sum at the inception of the sec-
ondary mortgage loan is one thousand five hundred dol-
ars or less, the total additional charge or charges, exclud-
ning official fees, taxes and insurance, may exceed said ten
percent, but shall not be in excess of one hundred fifty
dollars: Provided, however, That no additional charges
other than official fees, taxes and hazard insurance may be
required by the same or affiliated lender more often than
once each twenty-four months by renewal of a secondary
mortgage loan or an additional secondary mortgage loan
secured by the same residential property;

(4) Where loan origination fees, investigation fees or
points have been charged by the licensee, such fees may
not be imposed again by the same or affiliated lender in
any refinancing of that loan or any additional loan on that
property made within twenty-four months thereof, unless
these earlier charges have been rebated by payment or
credit to the consumer under the actuarial method, or the
total of the earlier and current changes does not exceed
the five percent amount.

(b) Notwithstanding the provisions of subsection (a) of
this section, a delinquent or "late charge" may be charged
on any installment made ten or more days after the regu-
larly scheduled due date in accordance with section one
hundred twelve or one hundred thirteen, article three,
chapter forty-six-a of this code, whichever is applicable.
The charge may be made only once on any one install-
ment during the term of the secondary mortgage loan.

(c) Hazard insurance may be required by the lender of
the borrower, as provided in section one hundred nine,
article three, chapter forty-six-a of this code. Decreasing
term life insurance, in an amount not exceeding the
amount of the secondary mortgage loan and for a period
not exceeding the term of the loan, and accident and
health insurance in an amount sufficient to make the
monthly payments due on said loan in the event of the
disability of the borrower and for a period not exceeding
the life of said loan, may also be offered by the lender to
the borrower and the premium therefor may be financed.
The charges for any insurance shall not exceed the stan-
dard rate approved by the insurance commissioner for
such insurance. Proof of all insurance in connection with
secondary mortgage loans subject to this article shall be
furnished to the borrower within thirty days from and
after the date of application therefor by said borrower.

(d) No application fee may be allowed whether or not
the secondary mortgage loan is consummated; however,
the borrower may be required to reimburse the lender for
actual expenses incurred by the lender after acceptance
and approval of a secondary mortgage loan proposal
made in accordance with the provisions of this article
which is not consummated because of:

(1) The borrower's willful failure to close said loan; or
(2) The borrower's false or fraudulent representation of a material fact which prevents closing of said loan as proposed.

(e) No licensee shall make, offer to make, accept or offer to accept, any secondary mortgage loan except on the terms and conditions authorized in this article.

(f) No licensee shall induce or permit any husband and wife, jointly and severally, to become obligated to the licensee under this article, directly or contingently, or both, under more than one secondary mortgage loan at the same time for the purpose or with the result of obtaining greater charges than would otherwise be permitted under the provisions of this article.

(g) No instrument evidencing or securing a secondary mortgage loan shall contain:

(1) Any acceleration clause under which any part or all of the unpaid balance of the obligation not yet matured may be declared due and payable because the holder deems himself to be insecure;

(2) Any power of attorney to confess judgment or any other power of attorney;

(3) Any provision whereby the borrower waives any rights accruing to him under the provisions of this article;

(4) Any requirement that more than one installment be payable in any one installment period, or that the amount of any installment be greater or less than that of any other installment, except for the final installment which may be in a lesser amount, or unless the loan is structured as a revolving line of credit having no set final payment date; or

(5) Any assignment of or order for the payment of any salary, wages, commissions or other compensation for services, or any part thereof, earned or to be earned.

(h) No broker licensee shall charge a borrower or receive from a borrower money or other valuable consideration before completing performance of all services the broker has agreed to perform for the borrower, unless the
licensee also registers and complies with all requirements set forth for credit service organizations in article six-c, chapter forty-six-a of this code, including all additional bonding requirements as may be established therein.

(i) No lender licensee shall make revolving loans secured by a secondary mortgage lien for the retail purchase of consumer goods and services by use of a lender credit card.

§31-17-9. Disclosure; closing statements; other records required.

(a) Any licensee or person making on his own behalf, or as agent, broker or in other representative capacity on behalf of any other person, a secondary mortgage loan, whether lawfully or unlawfully, shall at the time of the closing furnish to the borrower a complete and itemized closing statement which shall show in detail:

(1) The amount and date of the note or secondary mortgage loan contract and the date of maturity;

(2) The nature of the security;

(3) The finance charge rate per annum and the itemized amount of finance charges and additional charges;

(4) The amount financed and total of payments;

(5) Disposition of the principal;

(6) A description of the payment schedule;

(7) The terms on which additional advances, if any, will be made;

(8) The charge to be imposed for past-due installments;

(9) A description and the cost of insurance required by the lender or purchased by the borrower in connection with the secondary mortgage loan;

(10) The name and address of the borrower and of the lender; and
(11) That the borrower may prepay the secondary mortgage loan in whole or in part on any installment date, and that the borrower will receive a rebate in full for any unearned finance charge.

Such detailed closing statement shall be signed by the lender or his representative, and a completed and signed copy thereof shall be retained by the lender and made available at all reasonable times to the borrower, the borrower's successor in interest to the residential property, or the authorized agent of the borrower or the borrower's successor, until the time as the indebtedness shall be satisfied in full.

The commissioner may, from time to time, by rules prescribe additional information to be included in a closing statement.

(b) Upon written request from the borrower, the holder of a secondary mortgage loan instrument shall deliver to the borrower, within ten days from and after receipt of the written request, a statement of the borrower's account showing the date and amount of all payments made or credited to the account and the total unpaid balance. Not more than two statements shall be requested in any twelve-month period.

(c) Upon satisfaction of a secondary mortgage loan obligation in full, the holder of the instrument evidencing or securing the obligation shall deliver to the borrower a recordable release and all writings signed by the borrower which were incident to applying for and obtaining the secondary mortgage loan.

§31-17-10. Advertising requirements.

It shall be unlawful and an unfair trade practice for any person to cause to be placed before the public in this state, directly or indirectly, any false, misleading or deceptive advertising matter pertaining to secondary mortgage loans or the availability thereof: Provided, That this section shall not apply to the owner, publisher, operator or employees of any publication or radio or television station
which disseminates such advertising matter without actual
knowledge of the false or misleading character thereof.

§31-17-11. Records and reports; examination of records;
analysis.

(a) Every licensee shall maintain at his or her place of
business in this state, if any, or if he or she has no place of
business in this state at his or her principal place of busi-
ness outside this state, such books, accounts and records
relating to all transactions within this article as are neces-
sary to enable the commissioner to enforce the provisions
of this article. All the books, accounts and records shall
be preserved, exhibited to the commissioner and kept
available as provided herein for the reasonable period of
time as the commissioner may by rules require. The com-
missioner is hereby authorized to prescribe by rules the
minimum information to be shown in the books, accounts
and records.

(b) Each licensee shall file with the commissioner on
or before the fifteenth day of April of each year a report
under oath or affirmation concerning his or her business
and operations in this state for the preceding license year
in the form prescribed by the commissioner, which shall
show the annual volume and outstanding amounts of sec-
ondary mortgage loans, the classification of the secondary
mortgage loans by size and by security, and the gross
income from, and expenses properly chargeable to, such
secondary mortgage loans.

(c) The commissioner may, at his or her discretion,
make or cause to be made an examination of the books,
accounts and records of every licensee pertaining to sec-
ondary mortgage loans made in this state under the provi-
sions of this article, for the purpose of determining wheth-
er each licensee is complying with the provisions hereof
and for the purpose of verifying each licensee's annual
report. If the examination is made outside this state, the
licensee shall pay the cost thereof in like manner as appli-
cants are required to pay the cost of investigations outside
this state.
(d) The commissioner shall publish annually an analysis of the information furnished in accordance with the provisions of subsection (b) of this section, but the individual reports shall not be public records and shall not be open to public inspection.

§31-17-12. Grounds for suspension or revocation of license; suspension and revocation generally; reinstatement or new license.

(a) The commissioner may suspend or revoke any license issued hereunder if he or she finds that the licensee and/or any owner, director, officer, member, partner, stockholder, employee or agent of such licensee:

(1) Has knowingly violated any provision of this article or any order, decision or rule of the commissioner lawfully made pursuant to the authority of this article; or

(2) Has knowingly made any material misstatement in the application for such license; or

(3) Does not have available the net assets required by the provisions of section four of this article; or

(4) Has failed or refused to keep the bond required by section four of this article in full force and effect; or

(5) In the case of a foreign corporation, does not remain qualified to do business in this state; or

(6) Has committed any fraud or engaged in any dishonest activities with respect to such secondary mortgage loan business in this state, or failed to disclose any of the material particulars of any secondary mortgage loan transaction in this state to anyone entitled to the information; or

(7) Has otherwise demonstrated bad faith, dishonesty or any other quality indicating that the business of the licensee in this state has not been or will not be conducted honestly or fairly within the purpose of this article. It shall be a demonstration of bad faith and an unfair or deceptive act or practice to engage in a pattern of making loans where the consumer has insufficient sources of income to timely repay the debt, and the lender had the primary
intent to acquire the property upon default rather than to
derive profit from the loan. This section shall not limit
any right the consumer may have to bring an action for a
violation of section one hundred forty, article six, chapter
forty-six-a of this code in an individual case.

The commissioner may also suspend or revoke the
license of a licensee if he or she finds the existence of any
ground upon which the license could have been refused,
or any ground which would be cause for refusing a license
to such licensee were he then applying for the same. The
commissioner may also suspend or revoke the license of a
licensee pursuant to his or her authority under section
thirteen, article two, chapter thirty-one-a of this code.

(b) The suspension or revocation of the license of any
licensee shall not impair or affect the obligation of any
preexisting lawful secondary mortgage loan between such
licensee and any obligor.

(c) The commissioner may reinstate a suspended li-
cense, or issue a new license to a licensee whose license has
been revoked, if the grounds upon which any such license
was suspended or revoked have been eliminated or cor-
corrected and the commissioner is satisfied that the grounds
are not likely to recur.

§31-17-13. Notice of refusal, or suspension or revocation, of
license; relinquishing license.

(a) Whenever the commissioner shall refuse to issue a
license, or shall suspend or revoke a license, he shall make
and enter an order to that effect and shall cause a copy of
such order to be served in person or by certified mail,
return receipt requested, or in any other manner in which
process in a civil action in this state may be served, on the
applicant or licensee, as the case may be.

(b) Whenever a license is suspended or revoked, the
commissioner shall in the order of suspension or revoca-
tion direct the licensee to return to the commissioner its
license. It shall be the duty of the licensee to comply with
any such order: (i) Immediately if the license was sus-
pended either following a hearing or for failure to keep
14 the bond required by the provisions of section four of this
15 article in full force and effect; or otherwise (ii) following
16 expiration of the period provided in section fourteen of
17 this article in which such licensee, if not previously provid-
18 ed the opportunity to a hearing on the matter, may de-
19 mand a hearing before the commissioner without such
20 demand having been timely made.

§31-17-14. Hearing before commissioner; provisions pertain-
ing to hearing.

(a) Any applicant or licensee, as the case may be, ad-
versely affected by an order made and entered by the
commissioner in accordance with the provisions of section
thirteen of this article, if not previously provided the op-
portunity to a hearing on the matter, may in writing de-
mand a hearing before the commissioner. The written
demand for a hearing must be filed with the commissioner
within thirty days after the date upon which the applicant
or licensee was served with a copy of such order. The
timely filing of a written demand for hearing shall stay or
suspend execution of the order in question, pending a
final determination, except for an order suspending a
license for failure of the licensee to maintain the bond
required by section four of this article in full force and
effect. If a written demand is timely filed as aforesaid, the
aggrieved party shall be entitled to a hearing as a matter of
right.

(b) All of the pertinent provisions of article five, chap-
ter twenty-nine-a of this code shall apply to and govern
the hearing and the administrative procedures in connec-
tion with and following such hearing, with like effect as if
the provisions of said article were set forth in extenso in
this subsection.

(c) For the purpose of conducting any such hearing
hereunder, the commissioner shall have the power and
authority to issue subpoenas and subpoenas duces tecum,
in accordance with the provisions of section one, article
five, chapter twenty-nine-a of this code. All subpoenas
and subpoenas duces tecum shall be issued and served in
the manner, within the time and for the fees and shall be
enforced, as specified in said section, and all of the said
section provisions dealing with subpoenas and subpoenas
duces tecum shall apply to subpoenas and subpoenas
duces tecum issued for the purpose of a hearing hereunder.

(d) Any such hearing shall be held within twenty days
after the date upon which the commissioner received the
timely written demand therefor, unless there is a postpone-
ment or continuance. The commissioner may postpone or
continue any hearing on his own motion, or for good
cause shown upon the application of the aggrieved party.
At any such hearing, the aggrieved party may represent
himself or be represented by any attorney-at-law admitted
to practice before any circuit court of this state.

(e) After such hearing and consideration of all of the
testimony, evidence and record in the case, the commis-
sioner shall make and enter an order affirming, modifying
or vacating his earlier order, or shall make and enter such
order as is deemed appropriate, meet and proper. Such
order shall be accompanied by findings of fact and con-
clusions of law as specified in section three, article five,
chapter twenty-nine-a of this code, and a copy of such
order and accompanying findings and conclusions shall
be served upon the aggrieved party and his attorney of
record, if any, in person or by certified mail, return receipt
requested, or in any other manner in which process in a
civil action in this state may be served. The order of the
commissioner shall be final unless vacated or modified on
judicial review thereof in accordance with the provisions
of section fifteen of this article.


(a) Any person adversely affected by a final order
made and entered by the commissioner after hearing held
in accordance with the provisions of section fourteen of
this article is entitled to judicial review thereof. All of the
pertinent provisions of section four, article five, chapter
twenty-nine-a of this code shall apply to and govern such
review with like effect as if the provisions of said section
were set forth in extenso in this section.
§31-17-16. Actions to enjoin violations.

(a) Whenever it appears to the commissioner that any person has been or is violating or is about to violate any provision of this article, any rules of the commissioner or any final order of the commissioner, the commissioner may apply in the name of the state, to the circuit court of the county in which the violation or violations, or any part thereof, has occurred, is occurring or is about to occur, or the judge thereof in vacation, for an injunction against such person and any other persons who have been, are or are about to be, involved in, or in any way participating in, any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or shall result in prosecution or conviction under the provisions of section eighteen of this article.

(b) Upon application by the commissioner as aforesaid, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article, any rules of the commissioner and all final orders of the commissioner. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed.

(c) The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be
sought in the manner and within the time provided by law for appeals from circuit courts in other civil cases.

(d) The commissioner shall upon request be represented in all such proceedings by the attorney general or his assistants, all without additional compensation.

§31-17-18. Violations and penalties.

(a) Any person, or any member, officer, director, agent or employee of such person, who violates or participates in the violation of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars, or imprisoned in a county or regional jail for not more than six months, or both fined and imprisoned, at the discretion of the court.

(b) The penalties and remedies embodied in this article are not exclusive, but are cumulative with other applicable provisions of this code, including, but not limited to, the consumer protection laws in chapter forty-six-a of this code.

§31-17-20. Effective date.

The amendments to this article enacted during the first extraordinary session of the Legislature in the year one thousand nine hundred ninety-six shall be effective as of the seventh day of June, one thousand nine hundred ninety-six.

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 2. DIVISION OF BANKING.

§31A-2-6. Commissioner's examinations of financial institution; reports; records; communications from commissioner to institution; examination by federal agency in lieu of commissioner's examination.

§31A-2-7. Duties of officers, employees, etc., of financial institution in connection with examination; examination under oath; offenses and penalties.

§31A-2-16. Effective date.

§31A-2-6. Commissioner's examinations of financial institution; reports; records; communications from commissioner to institution; examination by
The commissioner of banking shall make, at least once every eighteen months, a thorough examination of all the books, accounts, records and papers of every depository financial institution. He or she shall carefully examine all of the assets of each such institution, including its notes, drafts, checks, mortgages, securities deposited to assure the payment of debts unto it, and all papers, documents and records showing, or in any manner relating to, its business affairs, and shall ascertain the full amount and the nature in detail of all of its assets and liabilities. The commissioner may also, at his or her discretion, make or cause to be made, an annual or periodic examination of the books, accounts, records and papers of other financial institutions under his or her supervision for the purposes of determining compliance with applicable consumer and credit lending laws, and verifying information provided in any license application or annual report submitted to the commissioner. The commissioner may also make such examination of any subsidiaries or affiliates of a financial institution as he or she may deem necessary to ascertain the financial condition of the financial institution, the relations between the financial institution and its subsidiaries and affiliates and the effect of the relations upon the affairs of such financial institution. A full report of every examination shall be made and filed and preserved in the office of the commissioner and a copy thereof forthwith mailed to the institution examined. Every institution shall retain all of its records of final entry for the period of time as required in section thirty-five, article four of this chapter for banking institutions. Unless otherwise covered by assessments or a specific provision of this code, the cost of examinations made pursuant to this section shall be borne by the financial institution at a rate of fifty dollars per each examiner hour expended.

Every official communication from the commissioner to any institution, or to any officer thereof, relating to an examination or an investigation of the affairs of the institution conducted by the commissioner or containing suggestions or recommendations as to the manner of con-
ducting the business of the institution, shall be read to the board of directors at the next meeting after the receipt thereof, and the president, or other executive officer, of the institution shall forthwith notify the commissioner in writing of the presentation and reading of the communication and of any action taken thereon by the institution.

The commissioner of banking, in his or her discretion, may accept a copy of a reasonably current examination of any banking institution made by the federal deposit insurance corporation or the federal reserve system in lieu of an examination of the banking institution required or authorized to be made by the laws of this state, and the commissioner may furnish to the federal deposit insurance corporation or the federal reserve system or to any official or examiner thereof, any copy or copies of the commissioner's examinations of and reports on the banking institutions; but nothing herein shall be construed to limit the duty and responsibility of banking institutions to comply with all provisions of law relating to examinations and reports, nor to limit the powers and authority of the commissioner of banking with reference to examinations and reports under existing laws.

§31A-2-7. Duties of officers, employees, etc., of financial institution in connection with examination; examination under oath; offenses and penalties.

All officers, directors, employees and other persons connected with any financial institution, upon request of the commissioner of banking, or his or her duly authorized representative, shall furnish and give full access to all of the books, papers, notes, bills and other evidences of debts due to the institution; produce and furnish all documents, records, writings and papers relating to the business of the institution which the commissioner is authorized to examine; disclose fully, accurately and in detail all of the debts and liabilities of the institution; and furnish the clerical aid and assistance as may be required in the performance of the commissioner's duties as provided by law. The commissioner or his or her representative, as the case may be, shall have the right and authority to administer oaths and to examine under oath each officer, director, employee or other person connected with the institution
§31A-2-16. Effective date.

The amendments to this article enacted during the first extraordinary session of the Legislature in the year one thousand nine hundred ninety-six shall be effective as of the seventh day of June, one thousand nine hundred ninety-six.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.

§46A-1-105. Exclusions.

(a) This chapter does not apply to:

(1) Extensions of credit to government or governmental agencies or instrumentalities;

(2) The sale of insurance by an insurer, except as otherwise provided in this chapter;

(3) Transactions under public utility or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment; or

(4) Licensed pawnbrokers.

(b) Secondary mortgage lender and broker licensees are excluded from the provisions of this chapter to the extent those provisions directly conflict with any section of article seventeen, chapter thirty-one of this code.
AN ACT to amend and reenact section two, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the admissibility of extrajudicial statements made by juveniles to law-enforcement officers or while in custody.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-2. Juvenile jurisdiction of circuit courts, magistrate courts and municipal courts; constitutional guarantees; hearings; evidence and transcripts.

(a) The circuit court shall have original jurisdiction of proceedings brought under this article.

(b) If during a criminal proceeding in any court it is ascertained or appears that the defendant is under the age of nineteen years and was under the age of eighteen years at the time of the alleged offense, the matter shall be immediately certified to the juvenile jurisdiction of the circuit court. The circuit court shall assume jurisdiction of the case in the same manner as cases which are originally instituted in the circuit court by petition.

(c) Notwithstanding any other provision of this article, magistrate courts shall have concurrent juvenile jurisdiction with the circuit court for a violation of a traffic law of West Virginia or for any violation of chapter twenty of this code. Juveniles shall be liable for punishment for violations of such laws in the same manner as adults except
that magistrate courts shall have no jurisdiction to impose a sentence of incarceration for the violation of such laws.

(d) Notwithstanding any other provision of this article, municipal courts shall have concurrent juvenile jurisdiction with the circuit court for a violation of any municipal ordinance regulating traffic or for any municipal curfew ordinance which is enforceable. Municipal courts may impose the same punishment for such violations as a circuit court exercising its juvenile jurisdiction could properly impose, except that municipal courts shall have no jurisdiction to impose a sentence of incarceration for the violation of such laws.

(e) A juvenile may be brought before the circuit court for proceedings under this article only by the following means:

(1) By a juvenile petition requesting that the juvenile be adjudged neglected or delinquent;

(2) By certification or transfer to the juvenile jurisdiction of the circuit court from the criminal jurisdiction of the circuit court, from any foreign court, or from any magistrate court or municipal court in West Virginia; or

(3) By a warrant, capias or attachment which charges a juvenile with an act of delinquency, is issued by a judge, referee or magistrate, and is returnable to the circuit court.

(f) If a juvenile commits an act which would be a crime if committed by an adult, and the juvenile is adjudged a delinquent for such act, the jurisdiction of the court which adjudged the juvenile a delinquent shall continue until the juvenile becomes twenty-one years of age. The court shall have the same power over the person that it had before he or she became an adult, and shall have the further power to sentence the person to a term of incarceration which cannot exceed six months. This authority shall not preclude the court from exercising criminal jurisdiction over the person if he or she violates the law after becoming an adult or if the proceedings have been transferred to the court's criminal jurisdiction pursuant to section ten of this article.
(g) A juvenile shall be entitled to be admitted to bail or recognizance in the same manner as an adult and shall have the protection guaranteed by Article III of the West Virginia Constitution.

(h) A juvenile shall have the right to be effectively represented by counsel at all stages of proceedings under the provisions of this article. If the juvenile or the juvenile's parents or custodian executes an affidavit showing that the juvenile cannot afford an attorney, the court shall appoint an attorney, who will be paid in accordance with article twenty-one, chapter twenty-nine of this code.

(i) In all proceedings under this article, the juvenile shall have a meaningful opportunity to be heard. This includes the opportunity to testify and to present and cross-examine witnesses. The general public shall be excluded from all such proceedings except persons whose presence is requested by the parties and other persons whom the circuit court determines have a legitimate interest in the proceedings.

(j) At all adjudicatory hearings held under this article, all procedural rights afforded to adults in criminal proceedings shall be applicable unless specifically provided otherwise in this chapter.

(k) At all adjudicatory hearings held under this article, the rules of evidence applicable in criminal cases shall apply, including the rule against written reports based upon hearsay.

(l) Extrajudicial statements, other than res gestae, which were made by a juvenile under fourteen years of age to law-enforcement officials or while in custody shall not be admissible unless such statements were made in the presence of the juvenile's counsel. Extrajudicial statements, other than res gestae, which were made by a juvenile who is under sixteen years of age but above the age of thirteen to law-enforcement officers or while in custody, shall not be admissible unless made in the presence of the juvenile's counsel or made in the presence of, and with the consent of, the juvenile's parent or custodian who has been fully informed regarding the juvenile's right to a prompt deten-
CHAPTER 5

(H. B. 109—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)

[By Request of the Executive]

[Passed July 16, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article six, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the requirements for an enhanced emergency telephone system; and describing the territory which may be included in an enhanced emergency telephone system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-5. Enhanced emergency telephone system requirements.

1 (a) An enhanced emergency telephone system, at a minimum, shall provide that:
(1) All the territory in the county, including every municipal corporation in the county, which is served by telephone company central office equipment that will permit such a system to be established shall be included in the system: Provided, That if a portion of the county or a portion of a municipal corporation within the county is already being served by an enhanced emergency telephone system, that portion of the county or municipality may be excluded from the county enhanced emergency telephone system;

(2) Every emergency service provider that provides emergency service within the territory of a county participate in the system;

(3) Each county answering point be operated constantly;

(4) Each emergency service provider participating in the system maintain a telephone number in addition to the one provided for in the system; and

(5) If the county answering point personnel reasonably determine that a call is not an emergency, the personnel provide the caller with the number of the appropriate emergency service provider.

(b) To the extent possible, enhanced emergency telephone systems shall be centralized.

(c) In developing an enhanced emergency telephone system, the county commission or the West Virginia State Police shall seek the advice of both the telephone companies providing local exchange service within the county and the local emergency providers.

(d) As a condition of continued employment, persons employed to dispatch emergency calls shall successfully complete a forty-hour nationally recognized training course for dispatchers within one year of the date of their employment; except that persons employed to dispatch emergency calls prior to the effective date of this subsection, as a condition of continuing employment, shall successfully complete such a course not later than the first day of July, one thousand nine hundred ninety-five.
(e) Each county or municipality shall appoint for each answering point an enhanced emergency telephone system advisory board consisting of at least six members to monitor the operation of the system. The board shall be appointed by the county or municipality and shall include at least one member from affected fire service providers, law-enforcement providers, emergency medical providers and emergency services providers participating in the system and at least one member from the county or municipality. The board may make recommendations to the county or municipality concerning the operation of the system.

In addition, the director of the county or municipal enhanced telephone system shall serve as an ex officio member of the advisory board. The initial advisory board shall serve staggered terms of one, two and three years. The initial terms of these appointees shall commence on the first day of July, one thousand nine hundred ninety-four. All future appointments shall be for terms of three years, except that an appointment to fill a vacancy shall be for the unexpired term. All members shall serve without compensation. The board shall adopt such policies, rules and regulations as are necessary for its own guidance. The board shall meet monthly on the day which the board may designate. The board may make recommendations to the county or municipality concerning the operation of the system.

(f) Any advisory board established prior to the first day of January, one thousand nine hundred ninety-four, shall have three years to meet the criteria of subsection (e) of this section.

(g) Nothing herein contained shall be construed to prohibit or discourage in any way the establishment of multijurisdictional or regional systems, or multijurisdictional or regional agreements for the establishment of enhanced emergency telephone systems, and any system established pursuant to this article may include the territory of more than one public agency, or may include only a portion of the territory of a public agency.
AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter twenty-four-c, relating to underground facilities damage prevention; declaring legislative purpose; defining certain terms; requiring operators of underground facilities to be members of a one-call system; exempting certain entities and activities from such requirement; authorizing voluntary membership of certain exempted entities; setting forth duties and responsibilities of members of a one-call system; providing for the operation and responsibilities of a one-call system; requiring certification of one-call systems by the public service commission; exceptions; setting forth duties and responsibilities of persons who perform excavation or demolition work; establishing standard color code for temporary markings of underground facilities and work site boundaries; creating exceptions from notification requirements in emergency situations; providing for liberal construction of article; and preserving sovereign immunity of state agencies.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 24C. UNDERGROUND FACILITIES DAMAGE PREVENTION.

ARTICLE 1. ONE-CALL SYSTEM.

§ 24C-1. Purpose.
§ 24C-1-2. Definitions.
§ 24C-1-3. Duties and responsibilities of operators of underground facilities; failure of operator to comply.
§24C-1-4. Qualifications for certification and responsibilities of a one-call system.
§24C-1-5. Duties and responsibilities of excavators; failure of excavator to comply.
§24C-1-7. Exceptions during emergencies.
§24C-1-8. Construction; sovereign immunity.

§24C-1-1. Purpose.

It is hereby declared to be the purpose and policy of the Legislature in enacting this article to enhance the safety of the citizens of this state and to provide increased protection to underground facilities from damage due to excavation or demolition by providing for the operation of a one-call system for use by operators of underground facilities and by persons engaged in excavation or demolition in the vicinity of underground facilities.

§24C-1-2. Definitions.

As used in this chapter, unless the context clearly requires a different meaning:

(a) "Damage" means any impact or contact with or weakening of the support for an underground facility, its appurtenances, protective casing, coating or housing, which, according to the operation practices of the operator or state or federal regulation, requires repair.

(b) "Demolish" or "demolition" means any operation by which a structure or mass of material is wrecked, razed, rendered, moved, or removed by means of any tools, equipment or discharge of explosives which could damage underground facilities: Provided, That "demolish" and "demolition" do not include earth-disturbing activities authorized pursuant to the provisions of article three, chapter twenty-two of this code or article two, chapter twenty-two-a of this code.

(c) "Emergency" means:

(1) A condition constituting a clear and present danger to life, health or property by reason of escaping toxic, corrosive or explosive product, oil or oil-gas or natural gas
(2) A condition that requires immediate correction to assure continuity of service provided by or through an underground facility.

(d) "Equipment operator" means any individual in physical control of powered equipment or explosives when being used to perform excavation work or demolition work.

(e) "Excavate" or "excavation" means any operation in which earth, rock or other material in the ground is moved, removed or otherwise displaced by means of any tools, equipment or explosives, and includes, without limitation, grading, trenching, digging, ditching, dredging, drilling, auguring, tunnelling, moleing, scraping, cable or pipe plowing and driving, wrecking, razing, rendering, moving or removing any structure or mass of material, but does not include underground or surface mining operations or related activities or the tilling of soil for agricultural purposes or for domestic gardening. Further, for purposes of this article, the terms "excavate" and "excavation" do not include routine maintenance of paved public roads or highways by employees of state, county or municipal entities or authorities which:

(1) Perform all work within the confines of the traveled portion of the paved public way; and

(2) Do not excavate to a depth greater than twelve inches measured from the top of the paved road surface.

(f) "Excavator" means any person intending to engage or engaged in excavation or demolition work.

(g) "Member" means a member of a one-call system as authorized by this article.

(h) "One-call system" means a communication system that receives notification from excavators of intended excavation work and prepares and transmits such notification to operators of underground facilities in accordance with this article.
(i) "Operator" means any person who owns or operates an underground facility used in the providing or transmission of any of the goods or services described in subsection (1) of this section.

(j) "Person" means any individual, firm, joint venture, partnership, corporation, association, state agency, county, municipality, cooperative association or joint stock association, and any trustee, receiver, assignee, agency or personal representative thereof.

(k) "Powered equipment" means any equipment energized by an engine, motor or hydraulic, pneumatic or electrical device and used in excavation or demolition work.

(l) "Underground facility" means any underground pipeline facility, owned by a utility and regulated by the public service commission, which is used in the transportation or distribution of gas, oil or a hazardous liquid; any underground pipeline facility, owned by a company subject to the jurisdiction of the federal energy regulatory commission, which is used in the gathering, transportation or distribution of gas, oil or a hazardous liquid; any underground facility used as a water main, storm sewer, sanitary sewer or steam line; any underground facility used for electrical power transmission or distribution; any underground cable, conductor, waveguide, glass fiber or facility used to transport telecommunications, optical, radio, telemetry, television, or other similar transmissions; and any facility used in connection with any of the foregoing facilities on a bridge, a pole or other span, or on the surface of the ground, any appurtenance, device, cathodic protection system, conduit, protective casing or housing used in connection with any of the foregoing facilities: Provided, That "underground facility" does not include underground or surface coal mine operations.

(m) "Workday" means any day except Saturday, Sunday or a federal or state legal holiday.

(n) "Work site" means the location of excavation or demolition work as described by an excavator, operator, or person or persons performing the work.
§24C-1-3. Duties and responsibilities of operators of underground facilities; failure of operator to comply.

(a) Each operator of an underground facility in this state, except any privately owned public water utility regulated by the public service commission, any state agency, any municipality or county, or any municipal or county agency, shall be a member of a one-call system for the area in which the underground facility is located. Privately owned public water utilities regulated by the public service commission, state agencies, municipalities and counties and municipal and county agencies may be voluntary members of such a one-call system.

(b) Each member shall provide the following information to the one-call system on forms developed and provided for that purpose by the one-call system:

(1) The name of the member;

(2) The geographic location of the member's underground facilities as prescribed by the one-call system; and

(3) The member's office address and telephone number to which inquiries may be directed as to the locations of the operator's underground facilities.

(c) Each member shall revise in writing the information required by subsection (b) of this section as soon as reasonably practicable, but not to exceed one hundred eighty days, after any change.

(d) Within forty-eight hours, excluding Saturdays, Sundays and legal federal or state holidays, after receipt of a notification by the one-call system from an excavator of a specific area where excavation or demolition will be performed, the operator of underground facilities shall:

(1) Respond to such notification by providing to the excavator the approximate location, within two feet horizontally from the outside walls of such facilities, and type of underground facilities at the site; and

(2) Use the color code prescribed in section six of this article when providing temporary marking of the approximate location of underground facilities.
(e) Failure of an operator who is required to be a member to comply with the provisions of this article may not prevent the excavator from proceeding but shall bar the operator from recovery of any costs associated with damage to its underground facilities resulting from such failure, except for damage caused by the willful or intentional act of the excavator.

(f) Notwithstanding the provisions of subsection (e) of this section, such a member is not barred from recovery under subsection (e) for failure to comply with subdivision (1), subsection (d) of this section, but shall have his or her right to recover, if any, determined by common law, if the operator responded to one-call notification in a timely manner, but was unable to accurately locate lines because such lines were nonmetallic and had no locating wire or other marker.

§24C-1-4. Qualifications for certification and responsibilities of a one-call system.

(a) In order to qualify for certification as a one-call system under the provisions of this article, a one-call system shall be operated on a not-for-profit basis but may be operated by any one or more of the following:

(1) A person who operates underground facilities;

(2) A private contractor;

(3) A state or local government agency; or

(4) A person who is otherwise eligible under state or federal law to operate a one-call system.

(b) A one-call system which complies with the requirements set forth in subsection (a) of this section shall be certified by the public service commission for the area in which it will conduct operations prior to commencing such operations: Provided, That any one-call system in operation prior to the first day of January, one thousand nine hundred ninety-six, may not be required to be so certified. The public service commission shall certify a one-call system where the public interest so requires and
when such system complies with the provisions of this article.

(c) A one-call system operating under the provisions of this article shall:

(1) Receive and record information from excavators about intended excavation or demolition activities;

(2) Promptly transmit to its affected members the information received from excavators about intended excavation or demolition;

(3) Maintain a record of each notice of intent to engage in excavation or demolition, provided pursuant to the requirements of section five of this article;

(4) Upon receipt of notification of intended excavation or demolition from an excavator, inform the person making such notification of the names of all members having underground facilities in the vicinity of the intended work site; and

(5) Assign a serial number for each notification received from an excavator and provide that serial number to both the excavator and affected members.

§24C-1-5. Duties and responsibilities of excavators; failure of excavator to comply.

(a) Except as provided in section seven of this article, any person who intends to perform excavation or demolition work shall:

(1) Not less than forty-eight hours, excluding Saturdays, Sundays and federal or state legal holidays, nor more than ten work days prior to the beginning of such work, notify the one-call system of the intended excavation or demolition and provide the following information:

(A) Name of the individual making the notification;

(B) Company name;

(C) Telephone number;

(D) Company address;
(E) Work site location; including county, nearest city or town, street location, nearest cross street and landmarks or other location information;

(F) Work to be performed;

(G) Whether or not use of explosives is planned;

(H) Name and telephone number of individual to contact; and

(I) Starting date and time;

(2) Notify the one-call system not less than twenty-four hours, excluding Saturdays, Sundays and federal or state legal holidays, in advance of any change in the starting date or time of the intended work; and

(3) Instruct each such equipment operator involved in the intended work:

(A) To perform all excavation or demolition work in such a manner as to avoid damage to underground facilities in the vicinity of the intended work site, including hand digging, when necessary;

(B) To report immediately any break or leak in underground facilities, or any dent, gouge, groove or other damage to such facilities, made or discovered in the course of the excavation or demolition, and to allow the operator a reasonable time to accomplish necessary repairs before continuing the excavation or demolition in the immediate area of such facilities;

(C) To immediately alert the public at or near the work site as to any emergency created or discovered at or near such work site;

(D) To maintain a clearance between each underground facility and the cutting edge or point of any powered equipment, taking into account the known limit of control of such cutting edge or point, as may be reasonably necessary for the protection of such facility;
(E) To protect and preserve markers, stakes and other
designations identifying the location of underground
facilities at the work site; and

(F) To provide such support for underground facili-
ties in the location of the work site, including during
backfilling operations, as may be reasonably necessary for
the protection of such facilities. Temporary support and
backfill shall provide support for such facilities at least
equivalent to the previously existing support.

(b) If any underground facility is damaged by a per-
son who has failed to comply with any provision of this
section, that person is liable to the operator of the under-
ground facility for the total cost to repair the damage in
an amount equal to that as is normally computed by the
operator, provided that the operator:

(1) Is a member of the one-call system covering the
area in which the damage to the facility takes place; and

(2) Upon receiving the proper notice in accordance
with this article, has complied with the provisions of sec-
tion three of this article: Provided, That a member is not
barred from recovering costs solely for his or her own
failure to comply with subdivision (1), subsection (d) of
said section, but shall have his or her right to recover, if
any, determined by common law, if the conditions of
subsection (f) of said section are met.

The liability of such person for such damage is not
limited by reason of this article.

(c) If any excavation or demolition causes damage to
any underground facilities owned by an operator who is
not required to be a member of a one-call system, and
who is not a member of such a system at the time of dam-
age, the liability of the person causing such damage shall
be determined solely by applicable principles of common
law.

(d) Nothing in this chapter may be construed to re-
strict or expand the rights, duties and liabilities provided in
common law or by other provisions of this code of an
operator who is not required to be a member of a one-call system and who is not a member of such a system.


Temporary marking provided by operators and excavators to indicate the approximate location of underground facilities and work site boundaries shall utilize the following color code:

<table>
<thead>
<tr>
<th>Facility Type</th>
<th>Identifying Color or Equivalent</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Electrical power distribution and transmission</td>
<td>Safety Red</td>
</tr>
<tr>
<td>(b) Municipal electric systems</td>
<td>Safety Red</td>
</tr>
<tr>
<td>(c) Gas distribution and transmission</td>
<td>High Visibility Safety Yellow</td>
</tr>
<tr>
<td>(d) Oil and petroleum transmission</td>
<td>High Visibility Safety Yellow</td>
</tr>
<tr>
<td>(e) Dangerous materials, product lines, steam lines</td>
<td>High Visibility Safety Yellow</td>
</tr>
<tr>
<td>(f) Telephone and telegraph systems</td>
<td>Safety Alert Orange</td>
</tr>
<tr>
<td>(g) Police and fire communications</td>
<td>Safety Alert Orange</td>
</tr>
<tr>
<td>(h) Cable television</td>
<td>Safety Alert Orange</td>
</tr>
<tr>
<td>(i) Water systems</td>
<td>Safety Precaution Blue</td>
</tr>
<tr>
<td>(j) Slurry systems</td>
<td>Safety Precaution Blue</td>
</tr>
<tr>
<td>(k) Sewer systems</td>
<td>Safety Green</td>
</tr>
<tr>
<td>(l) Proposed excavations</td>
<td>White</td>
</tr>
</tbody>
</table>

§24C-1-7. Exceptions during emergencies.
(a) Compliance with the notification requirements of section five of this article is not required of any person engaging in excavation or demolition in the event of an emergency: Provided, That the person gives oral notification of the emergency work as soon as reasonably practicable to the one-call system.

(b) During any emergency, excavation or demolition may begin immediately: Provided, That reasonable precautions are taken to protect underground facilities: Provided, however, That such precautions may not serve to relieve the excavator from liability for damage to underground facilities. The one-call system shall accept all emergency notifications and shall provide immediate notice to the affected members and indicate the emergency nature of the notice.

§24C-1-8. Construction; sovereign immunity.

(a) This article shall be liberally construed so as to effectuate the public policy set forth in section one of this article.

(b) Nothing in this article may be construed as imposing liability upon a state agency from which the agency is otherwise immune.

CHAPTER 7

(H. B. 103—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)

[By Request of the Executive]

[Passed July 16, 1996; in effect from passage. Approved by the Governor.]
fund under specific circumstances; and requiring repayment of borrowed funds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. FINANCE DIVISION.

§5A-2-20. Reduction of appropriations; powers of governor; revenue shortfall reserve fund and permissible expenditures therefrom.

(a) Notwithstanding any provision of this section, the governor may reduce appropriations according to any of the methods set forth in sections twenty-one and twenty-two of this article. The governor may, in lieu of imposing a reduction in appropriations, request an appropriation by the Legislature from the revenue shortfall reserve fund established in this section.

(b) A revenue shortfall reserve fund is hereby continued within the state treasury. The revenue shortfall reserve fund shall be funded as set forth in this subsection from surplus revenues, if any, in the state fund, general revenue, as the surplus revenues may accrue from time to time. Within sixty days of the end of each fiscal year, the secretary shall cause to be deposited into the revenue shortfall reserve fund the first fifty percent of all surplus revenues, if any, determined to have accrued during the fiscal year just ended. The revenue shortfall reserve fund shall be funded continuously and on a revolving basis in accordance with this subsection up to an aggregate amount not to exceed five percent of the total appropriations from the state fund, general revenue, for the fiscal year just ended. If at the end of any fiscal year the revenue shortfall reserve fund is funded at an amount equal to or exceeding five percent of the state's general revenue fund budget for the fiscal year just ended, then there shall be no further obligation of the secretary under the provisions of this
section to apply any surplus revenues as set forth in this subsection until such time as the revenue shortfall reserve fund balance is less than five percent of the total appropriations from the state fund, general revenue.

(c) Not earlier than the first day of November of each calendar year, if the state's fiscal circumstances are such as to otherwise trigger the authority of the governor to reduce appropriations under section twenty, twenty-one or twenty-two of this article, then in that event the governor may notify the presiding officers of both houses of the Legislature in writing of his or her intention to convene the Legislature pursuant to section 19, article VI of the West Virginia Constitution for the purpose of requesting the introduction of a supplementary appropriation bill or to request a supplementary appropriation bill at the next preceding regular session of the Legislature to draw money from the surplus revenue shortfall reserve fund to meet any anticipated revenue shortfall. If the Legislature fails to enact a supplementary appropriation from the revenue shortfall reserve fund during any special legislative session called for the purposes set forth in this section or during the next preceding regular session of the Legislature, then the governor may proceed with a reduction of appropriations pursuant to sections twenty-one and twenty-two of this article. Should any amount drawn from the revenue shortfall reserve fund pursuant to an appropriation made by the Legislature prove insufficient to address any anticipated shortfall, then the governor may also proceed with a reduction of appropriations pursuant to sections twenty-one and twenty-two of this article.

(d) Upon the creation of the fund, the Legislature is authorized and may make an appropriation from the revenue shortfall reserve fund for revenue shortfalls, for emergency revenue needs caused by acts of God or natural disasters or for other fiscal needs as determined solely by the Legislature.

(e) Prior to the thirty-first day of October, in any fiscal year in which revenues are inadequate to make timely payments of the state's obligations, the governor may
by executive order, after first notifying the presiding officers of both houses of the Legislature in writing, borrow funds from the revenue shortfall reserve fund. The amount of funds borrowed under this subsection shall not exceed one percent of the general revenue estimate for the fiscal year in which the funds are to be borrowed, or the amount the governor determines is necessary to make timely payment of the state's obligations, whichever is less. Any funds borrowed pursuant to this subsection shall be repaid, without interest, and redeposited to the credit of the revenue shortfall reserve fund within ninety days of their withdrawal.

CHAPTER 8

(Com. Sub. for H. B. 101—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed July 16, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine-hundred thirty-one, as amended, by adding thereto two new articles, designated articles six-e and thirteen-I, generally relating to taxation and economic development; setting forth short titles; defining terms, specifying the valuation of specialized manufacturing production property for purposes of the ad valorem property tax; specifying initial determination of whether a given item of property is specialized manufacturing production property to be made by county assessor of the county; setting forth methods and procedures for protest and appeal and time limitations therefor; setting forth effective date; establishing the natural gas industry jobs retention tax credit; specifying the amount of credit allowed; application of annual tax credit; annual computation of the number of jobs held by qualified employees; methods for determining jobs in place during the tax year; treatment of any decreases in the number of West Virginia employees during the taxable year; the tax commissioner's authority to prescribe alternative methods for determining
the number of jobs held by qualified employees during the taxable year; availability of tax credit to successors of eligible taxpayers; allocation of credit between predecessor eligible taxpayers and successor taxpayers in the year of transfer or successorship; methods for computation of jobs held by qualified employees of successors to qualified taxpayers; requirements for recapture of credit; interest penalties and additions to tax; specifying the statute of limitations; and setting forth effective date.

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 two new articles, designated articles six-e and thirteen-l, all to read as follows:

Article
6E. Special Method for Valuation of Certain Manufacturing Production Property.

ARTICLE 6E. SPECIAL METHOD FOR VALUATION OF CERTAIN MANUFACTURING PRODUCTION PROPERTY.

§11-6E-1. Short title.
§11-6E-2. Definitions.
§11-6E-3. Valuation of specialized manufacturing production property.
§11-6E-4. Initial determination by county assessor.
§11-6E-5. Protest and appeal.
§11-6E-6. Effective date.

§45-6E-1. Short title.

1 This article shall be known and cited as the "Specialized Manufacturing Production Property Valuation Act".

§11-6E-2. Definitions.

1 (a) When used in this article, or in the administration of this article, terms defined in subsection (b) of this section 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.

6 (b) Terms defined.
(1) "Die" means a device for shaping, forming or stamping material by pressure or by a blow, or for impressing a figure or design on material by pressure or by a blow, and other devices as set forth in this subdivision.

(A) The term "die" means and includes:

(i) Dies used in compression molding, transfer molding, injection molding, blow molding or blowing, vacuum forming and extrusion molding;

(ii) Extrusion dies and drawing dies consisting of a block made of metal or other material which is perforated by a hole having a particular cross section which imparts a shape to plastic, thermoplastic, hot or ductile metal or other material that is extruded through the hole by ramming or pressure, or drawn through the hole;

(iii) A block made of metal or other material which is pressed into a blank of material, often sheet metal, positioned between the die and a mold, so that the material is pressed into the mold by the die and caused to assume a desired shape in manufacturing; and

(iv) A block or blocks of metal or other material constructed in halves, which operate in such a way that, when a blank of sheet metal is positioned between the halves of the die and pressed between the halves of the die, a desired shape is imparted to the sheet metal.

(B) The term "die" does not include threading dies, screwing dies, chasers, or any die holder or die stock for threading dies, screwing dies or chasers. For purposes of this section, the terms "threading die", "screwing die" or "chaser" mean one or more blocks made of steel, or other material, threaded internally with cutting points, or surfaces for producing screw threads. Threading dies, screwing dies or chasers can be made in a single block or in segments.

(2) "Directly used in manufacturing", in relation to specialized manufacturing production property directly used in manufacturing, means directly used in those activities or operations which constitute an integral and essential part of the manufacturing activity, as contrasted with and
distinguished from those activities or operations which are simply incidental, convenient or remote to the manufacturing activity.

Those uses of specialized manufacturing production property which constitute direct use in the activity of manufacturing include only:

(A) Use of the property to cause a direct physical change upon property undergoing manufacturing;

(B) In the case of jigs, use of the property to physically control or direct the physical movement or operation of property undergoing manufacturing in conjunction with and during the making of a direct physical change upon that property, or use of a jig in direct physical contact with the property undergoing manufacturing as a checking fixture, to test the property undergoing manufacturing or part for conformity to specifications;

(C) In the case of patterns, use of a pattern in each production cycle to make a new mold in the ongoing manufacturing process, where the mold made from the pattern is directly used to cause a direct physical change upon property undergoing manufacturing; and

(D) In the case of templates, use of templates by placing them in physical contact with property undergoing manufacturing for the direct marking of, or direct location of, holes, contours, cuts, cutout sections or shapes to be incorporated into the manufactured property.

(3) "Form" means a mold, as defined in this section, or a frame, shape, body or implement around which or on which a manufactured product is shaped or made, and which is designed to cause the manufactured product to take on a specific particular shape.

(4) "Jig" means and includes a mechanical device used to accurately guide or locate a tool or other implement that causes a direct physical change in property undergoing manufacturing or used to maintain the correct position between property undergoing manufacturing and a tool or implement. The jig is mainly used for producing interchangeable parts or exact reproductions of the same
manufactured item or product. The term "jig" shall not include any conveyor belt, roller conveyor, track conveyor, crane, chain line, chain conveyor or other apparatus which serves merely to move property from one operation or place in the manufacturing process to another operation or place. The term "jig" includes a checking fixture, which is a jig built to test manufactured parts produced from a set of dies or other manufactured parts, for conformity to specifications.

(5) "Manufacturer" means a person engaged in the activity of manufacturing in this state.

(6) "Manufacturing" means a systematic operation or integrated series of systematic operations engaged in as a business or segment of a business which transforms or converts tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed. In no case shall the term "manufacturing" include the activities of building construction, construction of other structures or facilities affixed to or on realty, retailing or agriculture, food processing or food manufacturing, the operation of any restaurant or retail food preparation or sales operation, the production of any natural resource, contract mining or any other activity of severing, producing, processing or extracting any natural resource. Manufacturing production begins with the arrival of raw materials and ends when the property has reached that point where no further chemical, physical or other changes are to be made to the resultant property in the production process.

(7) "Manufacturing service provider" means a person engaged in a manufacturing activity who does not have legal title to or any economic interest in the tangible personal property transformed or converted by the manufacturing process, and who engages in the manufacturing activity as a service to another person.

(8) "Mold" means a form, block, vessel or matrix containing a cavity or cavities into which fluid, molten material, plastic material or malleable material is poured, pressed, rammed or injected to form a manufactured object conforming to the contours of the mold and having
the desired shape, pattern or relief. The term "mold" includes molds and mold cavities used in compression molding, transfer molding, injection molding, blow molding or blowing, and vacuum forming.

For purposes of this article, the term "mold" does not include any sand casting flask or other apparatus or equipment used in conjunction with sand casting. However, patterns used in sand casting may constitute specialized manufacturing production property, as defined in this section.

(9) "Pattern" means a model for making a mold, as defined in this section, where production of the manufactured product by use of the mold entails the destruction of the mold with each production cycle, such as sand casting. The term "pattern" includes a model for making a sand casting mold into which molten metal is poured to form a casting.

A pattern qualifies as specialized manufacturing production property under this article only where the pattern must be repeatedly used in each production cycle to make a new mold in the ongoing manufacturing process, and where the mold made from the pattern is directly used in manufacturing to cause a direct physical change upon property undergoing manufacturing.

For purposes of this subdivision, the term "model" means a shape or figure made of wood, metal or other material having the basic shape of the manufactured product, with such appropriate sprues, runners and other necessary additional features as may be needed for efficient casting or production of the manufactured product.

(10) "Person" means and includes any state, or its political subdivisions or an agency of the state of West Virginia or its political subdivisions, or any individual, firm, partnership, joint venture, joint stock company, the government of the United States or its agencies, any public or private corporation, municipal corporation, cooperative, estate, trust, business trust, receiver, executor, administrator, any other fiduciary, any representative appointed by order
of any court or otherwise acting on behalf of others, or
any other group or combination acting as a unit.

(11) "Salvage value" means the lower of fair market
salvage value or five percent of the original cost of the
property.

(12) "Specialized manufacturing production prop-
erty" means molds, jigs, dies, forms, patterns or templates, as
defined in this section, directly used in manufacturing.
Molds, jigs, dies, forms, patterns and templates directly
used in manufacturing may qualify as specialized manu-
facturing production property notwithstanding the fact
that the molds, jigs, dies, forms, patterns and templates
may be owned by a person other than the West Virginia
manufacturer or the West Virginia manufacturing service
provider. In no case shall specialized manufacturing pro-
duction property include any property not actively and
directly used by a West Virginia manufacturer or West
Virginia manufacturing service provider in the activity of
manufacturing.

For purposes of this article, specialized manufacturing
production property does not include:

(A) Research and development equipment used in
developing new products or improving present products;

(B) Computers and computer software;

(C) Layout and design equipment, including comput-
ers and computer software;

(D) Machinery, tools, parts and materials used to re-
pair equipment, including equipment directly used in the
manufacturing process;

(E) Drawings, blueprints or blueprinting equipment;

(F) Tangible personal property used in testing and
inspecting products on the production line or elsewhere
for quality control purposes: Provided, That this exclu-
sion shall not apply to tangible personal property which
would otherwise meet the definition of a jig;
(G) Equipment, and supplies used in packaging or packing manufactured products for sale; and

(H) Any sand casting flask or sand casting equipment or other apparatus used in conjunction with sand casting. However, patterns used in sand casting may constitute specialized manufacturing production property.

(I) Any equipment or property other than molds, jigs, dies, forms, patterns or templates, as defined in this section.

(13) "Template" means an instrument or implement, often in the form of a flat or contoured sheet, plate, or strip of metal, plastic, wood or other material, having markings or lines, perforations, cuts, cutout sections, or one or more edges shaped to conform to a desired shape or any combination of perforations, cuts, cutout sections or shaped edges, to be used as a guide or gauge for marking locations for, or otherwise locating the placement of cuts, cutout sections, holes or a desired shape to be transferred to the property undergoing manufacturing. Only those templates, as defined in this section, which are physically placed upon the property undergoing manufacturing for the direct marking of, or direct location of, holes, contours, cuts, cutout sections or shapes to be incorporated into the property qualify as specialized manufacturing production property for purposes of this article.

In no case shall templates constitute specialized manufacturing production property for purposes of this article if the templates are used in:

(A) Drafting, drawing or design;

(B) Research and development;

(C) Layout and design of products or production equipment;

(D) Set up, adjustment, ongoing operation or repair of production machinery, tools and parts or other machinery, tools and parts;

(E) Testing and inspecting products on the production line or elsewhere for quality control purposes: Pro-
vided, That this exclusion shall not apply to tangible personal property which would otherwise meet the definition of a jig; or

(F) Packaging or packing manufactured products for sale.

§11-6E-3. Valuation of specialized manufacturing production property.

Notwithstanding any other provision of this code to the contrary, the value of specialized manufacturing production property, for the purpose of ad valorem property taxation under this chapter and under Article X of the Constitution of this State, shall be its salvage value.

§11-6E-4. Initial determination by county assessor.

The assessor of the county in which a specific item of property is located shall determine, in writing, whether that specific item of property is specialized manufacturing production property subject to valuation in accordance with this article. Upon making a determination that a taxpayer has specialized manufacturing production property, the county assessor shall notify the tax commissioner of that determination, and shall provide such information to the tax commissioner as the tax commissioner may require relating to that determination.

§11-6E-5. Protest and appeal.

At any time after the property is returned for taxation but prior to the first day of January of the assessment year, any taxpayer may apply to the county assessor for information regarding the issue of whether any particular item or items of property constitute specialized manufacturing property under this article which should be subject to valuation in accordance with this article. If the taxpayer believes that some portion of the taxpayer's property is subject to the provisions of this article, the taxpayer shall file objections in writing with the county assessor. The county assessor shall decide the matter by either sustaining the protest and making proper corrections, or by stating, in writing if requested, the reasons for the county assessor's refusal. The county assessor may,
and if the taxpayer requests, the county assessor shall, before the first day of January of the assessment year, certify the question to the tax commissioner in a statement sworn to by both parties, or if the parties are unable to agree, in separate sworn statements. The sworn statement or statements shall contain a full description of the property and any other information which the tax commissioner may require.

The tax commissioner shall, as soon as possible on receipt of the question, but in no case later than the twenty-eighth day of February of the assessment year, instruct the county assessor as to how the property shall be treated. The instructions issued and forwarded by mail to the county assessor are binding upon the county assessor, but either the county assessor or the taxpayer may apply to the circuit court of the county for review of the question of the applicability of this article to the property in the same fashion as is provided for appeals from the county commission in section twenty-five, article three of this chapter. The tax commissioner shall prescribe forms on which the questions under this section shall be certified and the tax commissioner has the authority to pursue any inquiry and procure any information which may be necessary for disposition of the matter.

§11-6E-6. Effective date.

This article shall be effective on and after the first day of July, one thousand nine hundred ninety-seven.

ARTICLE 13L. THE NATURAL GAS INDUSTRY JOBS RETENTION ACT.

§11-13L-1. Short title.
§11-13L-3. Eligibility for tax credits; creation of the credit.
§11-13L-4. Amount of credit allowed.
§11-13L-5. Application of annual credit allowance.
§11-13L-6. Annual computation of the number of jobs held by qualified employees.
§11-13L-7. Availability of credit to successors.
§11-13L-8. Credit recapture; interest; penalties; additions to tax; statute of limitations.
§11-13L-1. Short title.

This article shall be known and cited as the "Natural Gas Industry Jobs Retention Act".


(a) General. — When used in this article, or in the administration of this article, terms defined in subsection (b) of this section 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.

(b) Terms defined.

(1) "Affiliate" means and includes all persons, as defined in this section, which are affiliates of each other when either directly or indirectly:

(A) One person controls or has the power to control the other, or

(B) A third party or third parties control or have the power to control two persons, the two thus being affiliates.

In determining whether concerns are independently owned and operated and whether or not an affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management and contractual relationships.

(2) "Commissioner" or "tax commissioner" means the tax commissioner of the state of West Virginia, or the tax commissioner's delegate.

(3) "Corporation" means any corporation, joint-stock company or association, and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

(4) "Delegate", when used in reference to the tax commissioner, means any officer or employee of the tax division of the department of tax and revenue duly authorized by the tax commissioner directly, or indirectly by
one or more redelegations of authority, to perform the
functions mentioned or described in this article.

(5) "Eligible taxpayer" means any person subject to
the tax prescribed by section two-e, article thirteen of this
chapter that had at least one qualified employee on the
first day of January, one thousand nine hundred
ninety-six. "Eligible taxpayer" also means and includes
those members of an affiliated group of taxpayers en-
gaged in a unitary business, in which one or more mem-
bers of the affiliated group is a person subject to the tax
prescribed by section two-e, article thirteen of this chapter
that had at least one qualified employee on the first day of
January, one thousand nine hundred ninety-six. Affiliates
not engaged in the unitary business with an affiliated
group member subject to the tax prescribed by section
two-e, article thirteen of this chapter that had at least one
qualified employee on the first day of January, one thou-
sand nine hundred ninety-six, do not qualify as eligible
taxpayers.

(6) "Full-time employee" means an employee who
works, is on a work site, on paid vacation leave or other
paid leave, in the aggregate, at least one thousand five
hundred hours per year.

(7) "Natural person" or "individual" means a human
being.

(8) "New job" means a full-time employment position
held by a West Virginia resident domiciled in this state
which did not exist in this state with any employer prior to
the taxpayer's current taxable year.

(9) "Partnership" and "partner" means and includes a
syndicate, group, pool, joint venture or other unincorpo-
rated organization through or by means of which any
business, financial operation or venture is carried on, and
which is not a trust or estate, a corporation or a sole pro-
prietorship. The term "partner" includes a member in a
syndicate, group, pool, joint venture or organization.
(10) "Person" means and includes any natural person, corporation, limited liability company or partnership.

(11) "Qualified employee" means a West Virginia resident domiciled in this state who is a full-time employee of a taxpayer.

(12) "Related entity", "related person", "entity related to" or "person related to" means:

(A) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by the taxpayer;

(B) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer;

(C) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by an individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer; or

(D) A member of the same controlled group as the taxpayer.

For purposes of this article, "control", with respect to a corporation, means ownership, directly or indirectly, of stock possessing fifty percent or more of the total combined voting power of all classes of the stock of the corporation which entitles its owner to vote. "Control", with respect to a trust, means ownership, directly or indirectly, of fifty percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) of the United States Internal Revenue Code, as amended: Provided, That paragraph (3) of section 267(c) of the United States Internal Revenue Code shall not apply.
(13) "Tax year" or "taxable year" means the tax year of the taxpayer for federal income tax purposes.

(14) "Taxpayer" means any person subject to the tax prescribed by section two-e, article thirteen of this chapter.

(15) "Unitary business" means a business structured so that the operations of the business segments of a corporation, including segments consisting of members of an affiliated group of commonly owned and controlled corporations or entities, contribute to or depend on each other in such a way as to result in functional integration between business segments in engaging in the natural gas business. "Unitary natural gas business" includes business segments involved in the exploration, development, purchase, transportation, storage, marketing, distribution and sale of natural gas and distribution and sale of heavier hydrocarbons, such as propane, and such business segments or affiliates which provide services supporting any of the foregoing natural gas business activities. Where the taxpayer asserts that business segments are unitary, the taxpayer has the burden of proof.

§11-13L-3. Eligibility for tax credits; creation of the credit.

There shall be allowed to every eligible taxpayer a credit against the tax prescribed under section two-e, article thirteen of this chapter, as determined under this article.

§11-13L-4. Amount of credit allowed.

(a) Credit allowed. — Eligible taxpayers shall be allowed a credit against the tax prescribed by section two-e, article thirteen of this chapter, the application of which and the amount of which shall be determined as provided in this article.

(b) Amount of credit. —

(1) The amount of credit allowed to the eligible taxpayer is one thousand dollars multiplied by the number of qualified employees employed by the eligible taxpayer
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during the taxable year, as determined under section six of this article: Provided, That if the number of qualified employees employed by the eligible taxpayer during the taxable year, as determined under section six of this article, is less than sixty percent of the number of qualified employees employed by the eligible taxpayer on the first day of January, one thousand nine hundred ninety-six, as adjusted under subdivision (2) of this subsection, then no credit shall be allowed for the taxable year.

(2) For purposes of this section, the tax commissioner shall adjust the number of qualified employees determined to be in place on the first day of January, one thousand nine hundred ninety-six, to reflect a sale, transfer or spin off of an affiliate or segment of the business of an eligible taxpayer in circumstances where the sale, transfer or spin off does not result in a decrease in the number of jobs in place in this state. A sale, transfer or spin off that results in no loss of jobs in this state shall not cause the eligible taxpayer to lose entitlement to the credit in circumstances where the sixty percent limitation set forth in this section would otherwise operate to cause a disallowance of the credit. This subsection shall not be construed to prevent adjustment of the amount of credit allowed to the eligible taxpayer based upon the number of qualified employees employed by the eligible taxpayer during the taxable year, as determined under section six of this article.

(3) For any taxable year subsequent to a taxable year when credit was disallowed by reason of employment falling below the sixty percent level, an eligible taxpayer may be allowed credit under this article if the number of qualified employees employed by the eligible taxpayer during the taxable year, as determined under section six of this article, has increased to a number equal to or greater than sixty percent of the number of qualified employees employed by the eligible taxpayer on the first day of January, one thousand nine hundred ninety-six.

§11-13L-5. Application of annual credit allowance.
(a) Application of credit. — The amount of credit allowed shall be taken against the tax liabilities of the eligible taxpayer for the current taxable year prescribed by section two-e, article thirteen of this chapter. Any credit remaining after application of the credit against the tax liabilities for the current taxable year is forfeited and shall not carry back to any prior taxable year and shall not carry forward to any subsequent taxable year. The credit allowed under this article shall be applied after application of all other applicable tax credits allowed for the taxable year against the tax prescribed by section two-e, article thirteen of this chapter.

(b) For purposes of asserting the credit against tax, the taxpayer shall prepare and file with the monthly tax return filed under section two-e, article thirteen of this chapter for the last month of the taxpayer's tax year, an annual schedule showing the amount of tax paid for the taxable year, and the amount of credit allowed under this article. The annual schedule shall set forth the information and be in the form prescribed by the tax commissioner. The credit allowed under this article shall be allowed against a pro rata portion of monthly tax liabilities of the qualified taxpayer under section two-e, article thirteen of this chapter, in accordance with the procedures and requirements prescribed by the tax commissioner. The annual total tax liability and total tax credit allowed under this article are subject to adjustment and reconciliation pursuant to the filing of the annual schedule. The taxpayer shall pay any tax due or claim any credit allowable for the taxable year and shown on the annual schedule, with the monthly tax return filed under section two-e, article thirteen of this chapter for the last month of the taxpayer's tax year.

§11-13L-6. Annual computation of the number of jobs held by qualified employees.

(a) The taxpayer shall determine the number of jobs held by qualified employees of the taxpayer in the taxable year by calculating the average number of qualified employees holding jobs for each month of the taxable year.
by averaging the beginning and ending monthly employment of qualified employees, then totalling the monthly averages and dividing that total by twelve.

(b) If, as a result of business growth, merger, expansion or any other growth in the number of jobs in place, the number of full-time employees employed by a taxpayer in the taxable year exceeds (1) the number of qualified employees employed by the taxpayer on the first day of January, one thousand nine hundred ninety-six, or (2) the number of qualified employees employed by the taxpayer during the prior taxable year, then only that portion of the increase in the number of full-time jobs that results from the creation of new jobs, as defined in section two of this article, shall be counted, along with qualified jobs in place from the prior taxable year, as part of the total number of qualified jobs in place for the taxable year. Preexisting jobs carried over from a corporation or other entity merged with the taxpayer, and not reflective of a true increase in the number of jobs in West Virginia, or preexisting jobs formerly in place with a contract service provider which are taken over or supplanted by the internal operations of the taxpayer, or any other increase in the count of jobs in place with a taxpayer which is not reflective of new jobs, as defined in section two of this article, shall not count as qualified jobs for purposes of the credit allowed under this article.

(c) The tax commissioner may prescribe alternative methods for determining the number of jobs held by qualified employees in place in the taxable year upon a finding by the tax commissioner that an alternative method is appropriate for ascertaining an accurate and realistic determination of jobs held by qualified employees in the taxable year. For purposes of prescribing alternative methods, the tax commissioner may require the deduction or inclusion of jobs in place with contract service providers that provide or at any time provided any service to any eligible taxpayer or to any member of the affiliated group related to any eligible taxpayer or to any one or more entities related to the eligible taxpayer: Provided, That deduction, or inclusion of those jobs shall only pertain to jobs held by employees of the contract service provider
that are attributable or that were formerly attributable to
the service provided by the contract service provider to the
taxpayer. The tax commissioner may require any
deconsolidation of any filing entity, or may require an
alternative method based on separate accounting, unitary
combination, combination of the affiliated group or com-
bination of the taxpayer and one or more entities related
to the taxpayer, or any other method determined by the
tax commissioner to be appropriate for ascertaining an
accurate and realistic determination of jobs held by quali-

§11-13L-7. Availability of credit to successors.

(a) (1) Where there has been a transfer or sale of the
business assets of an eligible taxpayer to a successor tax-
payer which continues to operate the business in this state,
and remains subject to the tax prescribed under section
two-e, article thirteen of this chapter, the successor taxpay-
er is entitled to the credit allowed under this article:  Pro-
vided, That the successor taxpayer otherwise remains in
compliance with the requirements of this article for entitle-
ment to the credit.

(2) For any taxable year during which a transfer, or
sale of the business assets of an eligible taxpayer to a suc-
cessor taxpayer under this section occurs, or a merger
allowed under this section occurs, the credit allowed under
this article shall be apportioned between the predecessor
eligible taxpayer and the successor taxpayer based on the
number of days during the taxable year that each taxpayer
acted as the legal employer of qualified employees upon
which the credit allowed under this article is based and the
number of days during the taxable year that each taxpayer
owned the business assets transferred.

(b) Stock purchases. — Where a corporation which is
an eligible taxpayer entitled to the credit allowed under
this article is purchased through a stock purchase by a new
owner and remains a legal entity so as to retain its corpo-
rate identity, the entitlement of that corporation to the
credit allowed under this article will not be affected by the
ownership change.
28 (c) Mergers. —

29 (1) Where a corporation or other entity which is an eligible taxpayer entitled to the credit allowed under this article is merged with another corporation or entity, the surviving corporation or entity shall be entitled to the credit to which the predecessor eligible taxpayer was originally entitled only if the surviving corporation or entity otherwise complies with the provisions of this article.

36 (2) The amount of credit available in any taxable year during which a merger occurs shall be apportioned between the predecessor eligible taxpayer and the successor eligible taxpayer based on the number of days during the taxable year that each taxpayer acted as the legal employer of qualified employees upon which the credit allowed under this article is based and the number of days during the tax year that each owned the transferred business assets.

(d) No provision of this section or of this article shall be construed to allow sales or other transfers of the tax credit allowed under this article. The credit allowed under this article can be transferred only in circumstances where there is a valid successorship as described under this section.

§11-13L-8. Credit recapture; interest; penalties; additions to tax; statute of limitations.

1 (a) If it appears upon audit or otherwise that any person or entity has taken the credit against tax allowed under this article and was not entitled to take the credit, then the credit improperly taken under this article shall be recaptured. Amended returns shall be filed for any tax year for which the credit was improperly taken. Any additional taxes due under this chapter shall be remitted with the amended return or returns filed with the tax commissioner, along with interest, as provided in section seventeen, article ten of this chapter and a ten percent penalty and such other penalties and additions to tax as may be applicable pursuant to the provisions of article ten of this chapter.

(b) Recapture for jobs loss. —
(1) In any tax year when the number of qualified employees employed by the taxpayer, as determined under section six of this article, is less than sixty percent of the number of qualified employees employed by the taxpayer on the first day of January, one thousand nine hundred ninety-six, as adjusted, in addition to the loss of credit allowed under this article for the tax year, credit recapture shall apply, and the taxpayer shall return to the state an amount of tax determined by subtracting the number of qualified employees for such tax year from sixty percent of the number of qualified employees employed by the taxpayer as of the first day of January, one thousand nine hundred ninety-six, as adjusted, and multiplying the difference by one thousand dollars. An amended return shall be filed for the prior tax year for which credit recapture is required. Any additional taxes due under this chapter shall be remitted with the amended return filed with the tax commissioner, along with interest, as provided in section seventeen, article ten of this chapter, and a ten percent penalty and such other penalties and additions to tax as may be applicable pursuant to the provisions of article ten of this chapter.

(2) Notwithstanding the provisions of article ten of this chapter, penalties and additions to tax imposed under article ten of this chapter and the ten percent penalty imposed under this section may be waived at the discretion of the tax commissioner. However, interest is not subject to waiver.

(c) Notwithstanding the provisions of article ten of this chapter, the statute of limitations for the issuance of an assessment of tax by the tax commissioner shall be five years from the date of filing of any tax return on which this credit was taken or five years from the date of payment of any tax liability calculated pursuant to the assertion of the credit allowed under this article, whichever is later.


This article shall be effective for tax years beginning on or after the first day of October, one thousand nine hundred ninety-six.
A BILL to repeal section nine-b, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section nine-d of said article, all relating to repealing the current method for claiming exemptions, refunds of tax and credits against other taxes; providing for direct pay permits; validity of permit; promulgation of rules by the tax commissioner; filing of monthly returns by the permit holder along with remittance of the tax due; permitting quarterly or annual returns in lieu of the monthly returns; extensions of payment with interest; automatic renewal of the permit; notifying the vendor of the direct payment number; maintenance of records by the vendor; and expiration, cancellation or surrender of a direct pay permit.

Be it enacted by the Legislature of West Virginia:

That section nine-b, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section nine-d of said article be amended and reenacted to read as follows:

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-9d. Direct pay permits.

(a) Notwithstanding any other provision of this article, the tax commissioner may, pursuant to rules promulgated by him or her in accordance with article three, chapter twenty-nine-a of this code, authorize a person that is a user, consumer, distributor or lessee to which sales or leases of tangible personal property are made or services provided, to pay any tax levied by this article or article fifteen-a of this chapter directly to the tax commissioner and waive the collection of the tax by that person's vendor. No such authority shall be granted or exercised except...
upon application to the tax commissioner and after issuance by the tax commissioner of a direct pay permit. Each direct pay permit granted pursuant to this section is valid until surrendered by the holder or canceled for cause by the commissioner. The commissioner shall prescribe by rules promulgated in accordance with article three, chapter twenty-nine-a of this code, those activities which will cause cancellation of a direct pay permit issued pursuant to this section. Upon issuance of such a direct pay permit, payment of the tax imposed or assertion of the exemptions allowed by this article or article fifteen-a of this chapter on sales and leases of tangible personal property and sales of taxable services from the vendors thereof of the personal property or services shall be made directly to the tax commissioner by the permit holder.

(b) On or before the fifteenth day of each month, every permit holder shall make and file with the tax commissioner a consumers sales and use tax direct pay permit return for the preceding month in the form prescribed by the tax commissioner showing the total value of the tangible personal property used, the amount of taxable services purchased, the amount of consumers sales and use taxes due from the permit holder, which shall be paid to the tax commissioner with the return, and such other information as the tax commissioner considers necessary: Provided, That if the amount of consumers sales and use taxes due averages less than one hundred dollars per month, the tax commissioner may permit the filing of quarterly returns in lieu of monthly returns and the amount of tax shown on the returns to be due shall be remitted on or before the fifteenth day following the close of the calendar quarter; and if the amount due averages less than fifty dollars per calendar quarter, the tax commissioner may permit the filing of an annual direct pay permit return and the amount of tax shown on the return to be due shall be remitted on or before the last day of January each year. The tax commissioner, upon written request by the permit holder, may grant a reasonable extension of time, upon such terms as the tax commissioner may require, for the making and filing of direct pay permit returns and paying the tax due. Interest on the tax shall be chargeable on
every such extended payment at the rate specified in section seventeen, article ten of this chapter.

(c) A permit issued pursuant to this section is valid until expiration of the taxpayers registration year under article twelve of this chapter. This permit shall automatically be renewed when the taxpayers business registration certificate is issued for the next succeeding fiscal year, unless the permit is surrendered by the holder or canceled for cause by the tax commissioner.

(d) Persons who hold a direct payment permit which has not been canceled are not required to pay the tax to the vendor as otherwise provided in this article or article fifteen-a of this chapter. They shall notify each vendor from whom tangible personal property is purchased or leased or from whom services are purchased of their direct payment permit number and that the tax is being paid directly to the tax commissioner. Upon receipt of the notice, the vendor is absolved from all duties and liabilities imposed by this chapter for the collection and remittance of the tax with respect to sales of tangible personal property and sales of services to the permit holder. Vendors who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in such manner that the amount involved and identity of each purchaser may be ascertained.

(e) Upon the expiration, cancellation or surrender of a direct payment permit, the provisions of this chapter, without regard to this section, shall thereafter apply to the person who previously held the permit, and that person shall promptly notify in writing vendors from whom tangible personal property or services are purchased or leased of the cancellation or surrender. Upon receipt of the notice, the vendor is subject to the provisions of this chapter, without regard to this section, with respect to all sales, distributions, leases or storage of tangible personal property, thereafter made to or for that person.
RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 1

(By Mr. Speaker, Mr. Chambers, and Delegates J. Martin, Ashley, Douglas, Mezzatesta, Rowe, Michael, Kiss, Staton, Prezioso, Faircloth, Miller, Riggs, Border, Anderson, Azinger, Kime and Beane)

[Adopted July 16, 1996]

Changing the name of the Legislative Services Graduate Student Intern Program to the Robert W. Burk, Jr., Student Intern Program in honor of the late Minority Leader of the West Virginia House of Delegates.

WHEREAS, The Legislative Services Graduate Student Intern Program was created by the Joint Committee on Government and Finance in 1966 to provide an exceptional learning experience to qualified graduate students in West Virginia; and

WHEREAS, Over the past thirty years, nearly 100 students have participated in the program, learning the art of bill drafting, acquiring legal research skills, assisting legislators, staffing committees, analyzing issues, observing the making of public policy, studying the legislative process, and gaining insight into the inner workings of politics; and

WHEREAS, Following the successful completion of the internship program, many former interns have gone on to build careers in public service as legislators or other government officials; and

WHEREAS, The Honorable Robert W. Burk, Jr., was elected to the House of Delegates in 1966, re-elected in 1968, appointed to the State Senate in 1969, and after a voluntary hiatus from legislative service was appointed to the House in 1986 and re-elected to four consecutive terms; and

WHEREAS, In 1988 Bob Burk was elected as the House of Delegates' Minority Leader, a position he held until his untimely passing in 1994; and
WHEREAS, Bob Burk loved the Legislature and the legislative process, and was known as a gentleman willing to work with all members, regardless of political party, to develop remedies to the problems facing our State, and

WHEREAS, Bob Burk was considerate, articulate, well-liked by his peers, respected by those in the political community, and is remembered by all as a true statesman; and

WHEREAS, Recognizing legislative internships as vital to the complete educational experience of West Virginia students, during his tenure as House Republican Leader, Bob Burk hosted several legislative interns during the sessions where he offered support, guidance and direction; therefore be it

Resolved by the Legislature of West Virginia:

That the memory and public service of the late Bob Burk be honored by renaming the Legislative Services Graduate Student Intern Program as the Robert W. Burk, Jr., Student Intern Program; and be it

Further Resolved, That the Clerk of the House of Delegates hereby be directed to forward copies of this resolution to the members of his family.

HOUSE RESOLUTION 3

(By Delegates Trump, Douglas, Faircloth, Overington, Doyle and Manuel)

[Adopted July 16, 1996]

In memory of the Honorable Terry Harden, public servant and former member of the House of Delegates.

WHEREAS, Terry Thomas Harden passed away on Wednesday, April 3, 1996, at Winchester, Va. Medical Center.

Terry Harden was born January 17, 1937, in Morgan County, to the late Thomas Hunton and Mary Alma (Everett) Harden. He attended the public schools and was a graduate of Shepherd College and a veteran of the United States Air Force.

Terry Harden was a former member of the West Virginia House of Delegates, where he served with pride and dedication
for three terms from 1977 to 1982. In the private sector, he also operated a life insurance agency and was a real estate developer.

Mr. Harden was civic-minded and was active with the American Red Cross, and held membership in the Kentucky Colonels and the National Rifle Association.

Mr. Harden is survived by his two sons, Tom H. II and John W. Harden, and daughter Eloise Hall. He was also the loving grandfather of one granddaughter and one step-granddaughter; therefore, be it

Resolved by the House of Delegates:

That sincere regret is hereby expressed concerning the death of Terry T. Harden and his House of Delegates laments his passing and extends heartfelt sympathy to his survivors; and, be it

Further Resolved, That the Clerk of the House of Delegates be hereby directed to forward appropriate copies of this resolution to Tom H., II, and John W. Harden, sons, and to Eloise Hall daughter of the deceased.
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, 1996

HOUSE BILLS

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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, 1996

SENATE BILLS

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