

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1998
First Extraordinary Session, 1998
Second Extraordinary Session, 1998

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* * * * *

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FOREWORD

These volumes contain the Acts of the Second Regular Session and the First Extraordinary Session of the 73rd Legislature, 1998.

Second Regular Session, 1998

The Second Regular Session of the 73rd Legislature convened on January 14, 1998. The Constitutional sixty-day limit on the duration of the session was midnight, March 14, 1998. The Governor issued a proclamation on March 11, 1998, extending the session for a period not to exceed seven days for the purpose of considering the Budget and supplementary appropriation bills, and the Legislature adjourned *sine die* on March 21, 1998.

Bills totaling 1881 were introduced in the two houses during the session (1095 House, 380 of which were carryover bills from the 1997 Regular Session, and 786 Senate). The Legislature passed 343 bills, 194 House and 149 Senate.

The Governor vetoed sixteen bills (H. B. 2252, Requiring executive agencies to report notices of disallowances or potential disallowances of federal funds within sixty days of receipt; H. B. 2650, Limiting the power of counties and municipalities from passing ordinances relating to weapons and ammunition; H. B. 4007, Relating to the West Virginia corporate headquarters relocation tax credit; H. B. 4472, Relating to the wildlife endowment fund and creating the Ohio River management fund advisory board; H. B. 4473, Allowing members of public bodies to participate in a meeting by video-teleconference when a medical condition prevents the member from attending; H. B. 4535, Permitting certain public offices to satisfy financial examination requirements by having a review rather than an audit; H. B. 4634, Requiring spousal consent for election of straight life annuity under any retirement system administered by the Consolidated Public Retirement Board; H. B. 4699, Creating a pilot program to evaluate the efficacy of requiring the hiring of workers from the local labor market in publicly funded construction projects; H. B. 4702, Providing for investing one hundred fifty million dollars from PERS in the state's regional jail and correctional facility system; S. B. 108, Including use of mace or pepper spray in definition of aggravated robbery; S. B.

214, Creating misdemeanor offense for unauthorized use of cable television services; S. B. 232, Relating to public employees insurance agency; drug formulary change notice; S. B. 444, Authorizing municipalities to connect to sewer service outside corporate limits; S. B. 716, Requiring nonresidents severing state timber prepay severance tax or post bond; S. B. 774, Requiring information regarding federally mandated changes in state law; penalty; and S. B. 782, Making supplemental appropriation to department of agriculture). The Legislature amended and again passed H. B. 4007, H. B. 4472, H. B. 4702, S. B. 444 and S. B. 716. The Governor again vetoed S. B. 444, leaving a net total of 331 bills, 188 House and 143 Senate, which became law.

There were 113 Concurrent Resolutions introduced during the session, 76 House and 37 Senate, of which 30 House and 14 Senate were adopted. Thirty-two House Joint Resolutions (sixteen of which were carryover resolutions from the 1997 Regular Session) and fifteen Senate Joint Resolutions were introduced, proposing amendments to the State Constitution. Two House Joint Resolutions, H. J. R. 104, Local Option Economic Development Amendment, and H. J. R. 116, Judicial Reform Amendment, were adopted by the Legislature. The House introduced 38 House Resolutions and the Senate introduced 41 Senate Resolutions, of which 25 House and 40 Senate were adopted.

The Senate failed to pass 82 House bills passed by the House, and 75 Senate bills failed passage by the House. Three House bills and one Senate bill died in conference: H. B. 2165, Providing employer immunity from civil liability for information disclosed regarding former law-enforcement employees; H. B. 4177, Rulemaking, Department of Tax and Revenue; H. B. 4500, Making it unlawful to hunt while under the influence of alcohol, controlled substances or drugs; and S. B. 247, Eliminating certain requirements for issuance of marriage licenses.

First Extraordinary Session, 1998

The Proclamation calling the Legislature into Extraordinary Session immediately following the conclusion of business and adjournment *sine die* of the Regular Session, contained four items for consideration.

The Legislature passed 9 bills, 8 House and 1 Senate. The Senate adopted four Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* on March 21, 1998.

Second Extraordinary Session, 1998

The Proclamation calling the Legislature into Extraordinary Session at 5:00 P.M., July 14, 1998, contained four items for consideration.

The Legislature passed four bills, three House Bills and one Senate Bill. The Legislature adopted one concurrent resolution, House Concurrent Resolution 1, providing for an adjournment of the Legislature until the 20th day of October, 1998, and for reconvening prior thereto by the Joint Committee on Rules. The House adopted one House Resolution and the Senate adopted one Senate Resolution.

The Legislature adjourned the Extraordinary Session pursuant to House Concurrent Resolution 1 on July 14, 1998.

* * * * *

These volumes will be distributed as provided by sections thirteen and nineteen, article one, chapter four of the Code of West Virginia.

These Acts may be purchased from the Office of the Clerk of the House or from the Department of Administration, Purchasing Division Section, State Capitol, Charleston, West Virginia 25305.

GREGORY M. GRAY
*Clerk of the House and
Keeper of the Rolls.*



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- *H.C.R. 62 Providing for the Issuance of Two Hundred
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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1998

OFFICERS

Speaker—Robert S. Kiss, Beckley*Clerk*—Gregory M. Gray, Charleston*Sergeant at Arms*—Oce Smith, Fairmont*Doorkeeper*—John A. Roberts, Hedgesville

District	Name	Address	Prior Legislative Service
First	Jeff Davis (D)	New Cumberland ..	
	Tamara Pettit (D)	New Cumberland ..	Appt. 12/1/89, 69th; 70th-72nd
Second	Timothy R. Ennis (D)	Wellsburg	72nd
	Roy E. Givens (D)	Wellsburg	64th-69th; 72nd
Third	Tal Hutchins (D)	Wheeling	72nd
	L. Gil White (R)	Wheeling	70th-71st
Fourth	Kenneth D. Tucker (D)	Moundsville	
	Scott G. Varner (D)	Moundsville	71st-72nd
Fifth	Charles Clements (R)	New Martinsville ..	72nd
Sixth	James E. Willison (R)	Sistersville	69th-72nd
Seventh	Otis A. Leggett (R)	St. Marys	68th-72nd
Eighth	Everette W. Anderson, Jr. (R) ..	Williamstown	71st-72nd
Ninth	Larry Border (R)	Davisville	70th-72nd
	Tom Azinger (R)	Vienna	72nd
Tenth	J. D. Beane (D)	Parkersburg	70th-72nd
	Fred Gillespie (R)	Parkersburg	
Eleventh	Bob Ashley (R)	Spencer	67th-72nd
Twelfth	Karen L. Facemyer (R)	Ripley	71st-72nd
Thirteenth	Jerry K. Kelley (D)	Red House	72nd
	Gary Otho Tillis (D)	Eleanor	72nd
Fourteenth	Kelly L. Given (R)	Hurricane	72nd
	William Michael Hall (R)	Hurricane	72nd
Fifteenth	Arley R. Johnson (D)	Huntington	72nd
	Margarette R. Leach (D)	Huntington	71st-72nd
	Mark Forest Underwood (D) ..	Huntington	
Sixteenth	Susan Hubbard (D)	Huntington	72nd
	Evan H. Jenkins (D)	Huntington	72nd
	Jody G. Smirl (R)	Huntington	58th-61st; 67th; 72nd
Seventeenth	Jerry Mike Damron (D)	Wayne	
Eighteenth	Larry Jack Heck (D)	Huntington	71st-72nd
Nineteenth	K. Steven Kominar (D)	Kermit	72nd
	Harry Keith White (D)	Gilbert	Appt. 9/11/92, 70th; 71st
Twentieth	Greg A. Butcher (D)	Chapmanville	
	Sammy D. Dalton (D)	Harts	62nd-67th; 69th; (Senate 70th-71st)
	Tracy Dempsey (D)	Harts	70th-72nd
	Tom Tomblin (D)	Logan	72nd
Twenty-first	Earnest H. Kuhn (D)	Van	72nd
Twenty-second ..	Lacy Wright, Jr. (D)	Welch	62nd-64th; (Senate 65th-66th)
	Emily W. Yeager (D)	Welch	Appt. 3/10/93, 71st; 72nd
Twenty-third	Joe Sparks (D)	Pineville	
	W. Richard Staton (D)	Mullens	69th-72nd
Twenty-fourth ..	Eustace Frederick (D)	Bluefield	Appt. 10/17/93, 71st; 72nd
Twenty-fifth	Richard D. Flanigan (D)	Princeton	66th-71st
	Elizabeth Osborne (D)	Princeton	Appt. 10/20/94, 71st; 72nd
Twenty-sixth	Mary Pearl Compton (D)	Union	69th-72nd
Twenty-seventh ..	Robert S. Kiss (D)	Beckley	69th-72nd
	Virginia Mahan (D)	Elton	
	Warren R. McGraw II (D)	Beckley	71st-72nd
	Robert P. Pulliam (D)	Beckley	71st-72nd
	Ron Thompson (D)	Beckley	72nd

HOUSE OF DELEGATES

Twenty-eighth ..	Thomas W. Campbell (D)	Lewisburg	
	Carroll Willis (D)	Alderson	
Twenty-ninth ...	William R. Laird IV (D)	Fayetteville	
	Tom Louisos (D)	Oak Hill	67th-68th; 70th-72nd
	John Pino (D)	Oak Hill	67th-68th; 72nd
Thirtieth	Jon Amores (D)	Charleston	72nd
	Shelley Moore Capito (R)	Charleston	
	Margaret Miller (R)	South Charleston ...	69th-72nd
	Larry L. Rowe (D)	Malden	
	Rudy Seacrist (D)	Charleston	Appt. 7/25/77, 63rd; 65th-69th; 72nd
	Joe F. Smith (D)	Charleston	71st
	Sharon Spencer (D)	Charleston	66th; 68th-71st
Thirty-first	Mark A. Hunt (D)	Charleston	72nd
Thirty-second ...	Steve Harrison (R)	Nitro	71st-72nd
	Dick Henderson (R)	St. Albans	71st-72nd
	Ronald Neal Walters (R)	Cross Lanes	71st-72nd
	Rusty Webb (R)	Cross Lanes	
Thirty-third	William Stemple (D)	Arnoldsburg	
Thirty-fourth	Brent Boggs (D)	Gassaway	
Thirty-fifth	John W. Shelton (D)	Summersville	
Thirty-sixth	C. Randy White (D)	Webster Springs ...	
Thirty-seventh .	Joe Martin (D)	Elkins	Appt. 6/15/78, 63rd; 64th-72nd
	William Proudfoot (D)	Elkins	70th-72nd
Thirty-eighth ...	Douglas K. Stalaker (R)	Weston	72nd
Thirty-ninth	Dale F. Riggs (R)	Buckhannon	69th-72nd
Fortieth	Richard H. Everson (D)	Philippi	71st-72nd
Forty-first	Samuel J. Cann (D)	Bridgeport	72nd
	Ron Fragale (D)	Clarksburg	70th-72nd
	Larry A. Lynch (D)	Bridgeport	71st-72nd
	Barbara A. Warner (D)	Bridgeport	69th-72nd
Forty-second ...	Tom Coleman (D)	Grafton	
Forty-third	Michael Caputo (D)	Fairmont	
	Nick Fantasia (D)	Kingmont	52nd-53rd; 57th-60th; 62nd; 69th; Appt. 2/23/93, 71 st; 72nd
	Paul E. Prunty (D)	Fairmont	61st; 63rd-65th; 67th-68th; 70th; 72nd
Forty-fourth	Robert C. Beach (D)	Core	Appt. 7/27/90, 69th; 70th-72nd
	Mike Buchanan (D)	Morgantown	68th-69th
	Eugene Claypole (D)	Granville	(Senate 70th-71st)
	Barbara Evans Fleischauer (D)	Morgantown	72nd
Forty-fifth	Larry A. Williams (D)	Tunnelton	Appt. 10/08/93, 71st; 72nd
Forty-sixth	David Collins (D)	Davis	70th-72nd
Forty-seventh ...	Harold K. Michael (D)	Moorefield	69th-72nd
Forty-eighth	Allen V. Evans (R)	Dorcas	70th-72nd
Forty-ninth	Carl C. Thomas (R)	Keyser	72nd
Fiftieth	Jerry L. Mezzatesta (D)	Romney	68th-72nd
Fifty-first	Charles S. Trump IV (R)	Berkeley Springs ...	71st-72nd
Fifty-second	Vicki V. Douglas (D)	Martinsburg	70th-72nd
Fifty-third	Larry V. Faircloth (R)	Inwood	65th-72nd
Fifty-fourth	John Overington (R)	Martinsburg	67th-72nd
Fifty-fifth	John Doyle (D)	Shepherdstown	66th; 71st-72nd
Fifty-sixth	Dale Manuel (D)	Charles Town	69th-72nd

(D) Democrats	74
(R) Republicans	26
TOTAL	100

¹Appointed Aug. 27, 1997, to fill the vacancy created by the death of Joe Farris.

MEMBERS OF THE SENATE

REGULAR SESSION, 1998

OFFICERS

President—Earl Ray Tomblin, Chapmanville

Clerk—Darrell E. Holmes, Charleston

Sergeant at Arms—Tony DeRaimo, Leewood

Doorkeeper—Andrew J. Trail, Charleston

District	Name	Address	Prior Legislative Service
First	Edwin J. Bowman (D)	Weirton	72nd
	Andy McKenzie (R)	Wheeling	
Second	¹ Jeffrey Kessler (D)	Glen Dale	
	Don Macnaughtan (D)	New Martinsville	70th-72nd
Third	Donna Jean Boley (R)	St. Marys	Appt. 5/14/85, 67th; 68th-72nd (House 52nd-56th); 57th-62nd; 64th-65th; (House 69th); 72nd
	J. Frank Deem (R)	Vienna	(House 65th); 66th-72nd
Fourth	Oshel B. Craig (D)	Hurricane	69th-72nd
	Robert L. Dittmar (D)	Ravenswood	71st-72nd
Fifth	Robert H. Plymale (D)	Ceredo	72nd
	Thomas F. Scott (R)	Huntington	66th-72nd
Sixth	H. Truman Chafin (D)	Williamson	58th-64th; 67th-68th
	John Pat Fanning (D)	Jaeger	68th-69th; 72nd
Seventh	Lloyd G. Jackson II (D)	Hamlin	(House 62nd-64th); 65th-72nd
	Earl Ray Tomblin (D)	Chapmanville	72nd
Eighth	Jack Buckalew (R)	Charleston	(House 72nd)
	Vic Sprouse (R)	South Charleston	Appt. 1/9/91, 70th; 71st-72nd
Ninth	Billy Wayne Bailey, Jr. (D) ..	Alpoa	(House 63rd-67th; 69th); 70th-72nd
	William R. Wooton (D)	Beckley	70th-72nd
Tenth	Leonard W. Anderson (D) ..	Hinton	(House 72nd)
	Homer Ball (D)	Athens	72nd
Eleventh	Shirley D. Love (D)	Oak Hill	(House 69th-70th); Appt. 9/27/93, 71st; 72nd
	Randy Schoonover (D)	Lewisburg	55th-64th; 67th-72nd
Twelfth	William R. Sharpe, Jr. (D) ..	Weston	72nd
	Rebecca I. White (D)	Jane Lew	(House 71st); 72nd
Thirteenth	Michael A. Oliverio II (D) ..	Morgantown	(House 69th-72nd)
	Roman W. Prezioso (D)	Fairmont	72nd
Fourteenth	Jon Blair Hunter (D)	Morgantown	72nd
	Sarah M. Minear (R)	Parsons	(House 1 yr., 69th); Appt. 9/13/89, 69th; 70th-72nd
Fifteenth	Walt Helmick (D)	Marlinton	71st-72nd
	Mike Ross (D)	Coalton	72nd
Sixteenth	Harry E. Dugan (R)	Martinsburg	72nd
	Herb Snyder (D)	Shenandoah Junction	72nd
Seventeenth	Larry Kimble (R)	Charleston	(House 70th); 71st-72nd
	Martha Yeager Walker (D) ..	Charleston	

(D)	Democrats	25
(R)	Republicans	9
	TOTAL	34

¹Appointed Nov. 10, 1997, to fill the vacancy created by the death of Larry Wiedebusch.

COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 1998

STANDING

AGRICULTURE AND NATURAL RESOURCES

Beach (*Chair of Agriculture*), Kelley (*Vice Chair of Agriculture*), Proudfoot (*Chair of Natural Resources*), Tillis (*Vice Chair of Natural Resources*), Boggs, Buchanan, Caputo, Claypole, Damron, Davis, Dempsey, Ennis, Flanigan, Heck, Prunty, Stemple, Tomblin, Williams, Willis, Anderson, Border, Evans, Riggs, Leggett and Overington.

BANKING AND INSURANCE

Thompson (*Chair of Banking*), Kominar (*Vice Chair of Banking*), Beane (*Chair of Insurance*), Johnson (*Vice Chair of Insurance*), Amores, Dempsey, Fantasia, Flanigan, Heck, Hunt, Hutchins, Jenkins, Laird, Seacrist, Smith, Tillis, Tomblin, H. White, Wright, Azinger, Clements, Faircloth, Gillespie, Walters and L. White.

CONSTITUTIONAL REVISION

Fleischauer (*Chair*), Osborne (*Vice Chair*), Collins, Dalton, Frederick, Givens, Kominar, Laird, Leach, Linch, Martin, McGraw, Pino, Rowe, Underwood, Varner, H. White, Wright, Capito, Given, Harrison, Leggett, Overington, Smirl and Webb.

EDUCATION

Mezzatesta (*Chair*), Manuel (*Vice Chair*), Beach, Boggs, Caputo, Damron, Dempsey, Ennis, Fragale, Hubbard, Martin, Osborne, Shelton, Sparks, Spencer, Stemple, C. White, Williams, Yeager, Anderson, Gillespie, Hall, Harrison, Henderson and Webb.

FINANCE

Michael (*Chair*), Doyle (*Vice Chair*), Beane, Campbell, Cann, Compton, Fantasia, Frederick, Jenkins, Kelley, Laird, Leach, Mezzatesta, Pettit, Proudfoot, Pulliam, Seacrist, Warner, Border, Clements, Evans, Facemyer, Leggett, Miller and Walters.

GOVERNMENT ORGANIZATION

Douglas (*Chair*), Collins (*Vice Chair*), Butcher, Claypole, Davis, Everson, Flanigan, Heck, Kuhn, Louisos, McGraw, Prunty, Smith, Thompson, Tucker, Varner, H. White, Willis, Azinger, Capito, Given, Harrison, Overington, Stalnaker and Willison.

HEALTH AND HUMAN RESOURCES

Compton (*Chair*), Hutchins (*Vice Chair*), Amores, Beach, Caputo, Doyle, Fleischauer, Hubbard, Kelley, Leach, Louisos, Mahan, Manuel, Osborne, Pino, Rowe, Smith, Stemple, Capito, Facemyer, Gillespie, Given, Henderson, Miller and Thomas.

INDUSTRY AND LABOR

Pettit (*Chair*), Kuhn (*Vice Chair*), Butcher, Cann, Caputo, Claypole, Coleman, Dalton, Doyle, Frederick, Linch, Louisos, Mahan, Prunty, Smith, Sparks, Tillis, Tucker, Williams, Border, Evans, Harrison, Overington, Walters and Webb.

JUDICIARY

Staton (*Chair*), Amores (*Vice Chair*), Buchanan, Coleman, Dalton, Fleischauer, Givens, Hunt, Hutchins, Johnson, Kominar, Linch, Mahan, Pino, Rowe, Stemple, Tillis, Tomblin, Underwood, Faircloth, Riggs, Smirl, Thomas, Trump and L. White.

POLITICAL SUBDIVISIONS

Seacrist (*Chair*), Yeager (*Vice Chair*), Beane, Campbell, Damron, Everson, Fantasia, Flanigan, Givens, Johnson, Kuhn, Louisos, Pettit, Proudfoot, Pulliam, Underwood, C. White, Willis, Facemyer, Miller, Smirl, Stalnaker, Trump, L. White and Willison.

ROADS AND TRANSPORTATION

Warner (*Chair*), Everson (*Vice Chair*), Boggs, Butcher, Coleman, Damron, Davis, Ennis, Hubbard, Kominar, Manuel, McGraw, Pulliam, Shelton, Spencer, Thompson, Varner, C. White, Yeager, Border, Clements, Evans, Hall, Miller and Stalnaker.

RULES

Kiss (*Chair*), Douglas, Givens, Manuel, Martin, Mezzatesta, Michael, Pino, Staton, Varner, Ashley, Faircloth, Miller and Riggs.

VETERANS' AFFAIRS

Givens (*Chair*), Frederick, (*Vice Chair*), Buchanan, Campbell, Coleman, Collins, Doyle, Everson, Hutchins, Kelley, Kuhn, Linch, Seacrist, Sparks, Spencer, Thompson, Tucker, Yeager, Anderson, Azinger, Facemyer, Henderson, Stalnaker, Thomas and Willison.

JOINT

ENROLLED BILLS

Fantasia (*Chair*), Dempsey (*Vice Chair*), Fragale and Overington.

GOVERNMENT AND FINANCE

Kiss (*Chair*), Martin, Mezzatesta, Michael, Staton, Ashley and Trump.

GOVERNMENT OPERATIONS

Douglas (*Chair*), Collins, Varner, Stalnaker and Willison.

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Hunt (*Chair*), Linch (*Vice Chair*), Compton, Jenkins, Faircloth and Riggs.

PENSIONS AND RETIREMENT

Jenkins (*Chair*), Hubbard (*Vice Chair*), Campbell, Smith, Williams, Clements and Hall.

RULES

Kiss (*Chair*), Martin and Ashley.

STATUTORY LEGISLATIVE COMMISSIONS**FOREST MANAGEMENT REVIEW**

Williams (*Chair*), Heck (*Vice Chair*), Martin, Shelton, Proudfoot and Willison.

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Beane (*Chair*), Amores, Doyle, Jenkins, Yeager, Ashley and Walters.

**OVERSIGHT COMMISSION ON
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**OVERSIGHT COMMISSION ON HEALTH
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REGIONAL JAIL AND CORRECTIONAL FACILITY**

Manuel (*Chair*), Linch (*Vice Chair*), Compton, Jenkins, Faircloth and Riggs.

SPECIAL INVESTIGATIONS

Kiss (*Chair*), Martin, Staton, Faircloth and Trump.

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Regular Session, 1998

STANDING

AGRICULTURE

Anderson (*Chair*), White (*Vice Chair*), Ball, Dittmar, Helmick, Love, Ross, Dugan, Minear and Sprouse.

BANKING AND INSURANCE

Helmick (*Chair*), Snyder (*Vice Chair*), Chafin, Craigo, Dittmar, Fanning, Kessler, Prezioso, Sharpe, Wooton, Deem, Kimble and Scott.

CONFIRMATIONS

Love (*Chair*), Chafin (*Vice Chair*), Bailey, Bowman, Jackson, White, Wooton, McKenzie and Scott.

EDUCATION

Jackson (*Chair*), Plymale (*Vice Chair*), Bailey, Ball, Fanning, Helmick, Hunter, Oliverio, Schoonover, White, Boley, Dugan, McKenzie and Minear.

ENERGY, INDUSTRY AND MINING

Sharpe (*Chair*), Fanning (*Vice Chair*), Anderson, Helmick, Hunter, Kessler, Macnaughtan, Oliverio, Ross, Snyder, Deem, Dugan, McKenzie and Minear.

FINANCE

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HEALTH AND HUMAN RESOURCES

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INTERSTATE COOPERATION

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JUDICIARY

Wooton (*Chair*), Snyder, (*Vice Chair*), Ball, Bowman Dittmar, Fanning, Hunter, Kessler, Oliverio, Ross, Schoonover, White, Buckalew, Deem, Kimble and Scott.

LABOR

Macnaughtan (*Chair*), Schoonover (*Vice Chair*), Bowman, Hunter, Kessler, Love, Prezioso, Deem, Dugan and Minear.

MILITARY

Prezioso (*Chair*), Hunter (*Vice Chair*), Bailey, Dittmar, Helmick, Oliverio, Wooton, Buckalew and Kimble.

NATURAL RESOURCES

Dittmar (*Chair*), Love (*Vice Chair*), Anderson, Bowman, Craigo, Macnaughtan, Plymale, Ross, Snyder, White, Boley, Deem, Minear and Sprouse.

PENSIONS

Plymale (*Chair*), Prezioso (*Vice Chair*), Fanning, Jackson, Walker, Kimble and Sprouse.

RULES

Tomblin (*Chair*), Anderson, Chafin, Craigo, Sharpe, Walker, Wooton, Boley, Buckalew and Dugan.

SMALL BUSINESS

Oliverio (*Chair*), Fanning (*Vice Chair*), Anderson, Ball, Bowman, Craigo, Plymale, Ross, Sharpe, Buckalew, Kimble and Sprouse.

TRANSPORTATION

Ross (*Chair*), Ball (*Vice Chair*), Dittmar, Kessler, Love, Oliverio, Schoonover, Buckalew and McKenzie.

JOINT

ENROLLED BILLS

Schoonover (*Chair*), Bailey, Snyder, Walker and Kimble.

GOVERNMENT AND FINANCE

Tomblin (*Chair*), Chafin, Craigo, Sharpe, Wooton, Buckalew and Deem.

GOVERNMENT OPERATIONS

Bowman (*Chair*), Bailey, Craigo, Walker and Minear.

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Ross (*Chair*), Anderson (*Vice Chair*), Bowman, Macnaughtan, Boley and Buckalew.

PENSIONS AND RETIREMENT

Plymale (*Chair*), Prezioso (*Vice Chair*), Fanning, Jackson, Walker, McKenzie and Sprouse.

RULES

Tomblin (*Chair*), Chafin and Buckalew.

STATUTORY LEGISLATIVE COMMISSIONS

FOREST MANAGEMENT REVIEW

Plymale (*Chair*), Bowman, Helmick, Love, Ross and Minear.

INTERSTATE COOPERATION

White (*Chair*), Anderson (*Vice Chair*), Bowman, Prezioso, Schoonover, Deem and Scott.

**OVERSIGHT COMMISSION ON
EDUCATION ACCOUNTABILITY**

Jackson (*Chair*), Bailey, Craigo, Plymale, Prezioso and Dugan.

**OVERSIGHT COMMISSION ON HEALTH AND
HUMAN RESOURCES ACCOUNTABILITY**

Walker (*Chair*), Craigo, Hunter, Prezioso, Sharpe, Snyder and Scott.

**OVERSIGHT COMMISSION ON REGIONAL
JAIL AND CORRECTIONAL FACILITY**

Love (*Chair*), Bailey, Craigo, Helmick, Hunter and Buckalew.

SPECIAL INVESTIGATIONS

Tomblin (*Chair*), Sharpe, Wooton, Buckalew and Sprouse.

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND REGULAR SESSION, 1998

CHAPTER 1

(S. B. 774—By Senators Wooton, Ball, Bowman, Dittmar, Fanning,
Hunter, Kessler, Oliverio, Ross, Schoonover, Snyder,
White, Buckalew, Deem, Kimbie and Scott)

[Passed March 13, 1998: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen, relating to limiting the liability of physicians who render voluntary services for certain athletic events.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-19. Liability of physicians who render services at school athletic events; limiting liability; exceptions.

1 (a) Any person licensed to practice medicine and

2 surgery pursuant to the provisions of article three, chapter
3 thirty of this code or any person licensed to practice
4 medicine and surgery as an osteopathic physician and
5 surgeon pursuant to the provisions of article fourteen,
6 chapter thirty of this code: (1) Who is acting in the
7 capacity of a volunteer team physician in attendance at an
8 athletic event sponsored by a public or private elementary
9 or secondary school; and (2) who gratuitously and in
10 good faith prior to the athletic event agrees to render
11 emergency care or treatment to any participant during
12 such event in connection with an emergency arising
13 during or as the result of such event, without objection of
14 such participant, shall not be held liable for any civil
15 damages as a result of such care or treatment, or as a result
16 of any act or failure to act in providing or arranging
17 further medical treatment, to an extent greater than the
18 applicable limits of his or her professional liability
19 insurance policy or policies when such care or treatment
20 was rendered in accordance with the acceptable standard
21 of care established in section three, article seven-b of this
22 chapter.

23 (b) The limitation of liability established by the
24 provisions of this section shall not apply to acts or
25 omissions constituting gross negligence. For purposes of
26 this section, the term "athletic event" includes scheduled
27 practices for any athletic event.

CHAPTER 2

(H. B. 4454—By Delegates Beach, Williams and Evans)

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article ten-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to creating the West Virginia egg marketing law of 1998; providing a purpose; definitions; requiring permits and registration; exemptions; container

requirements; standards, grades and weight classes; acts which are prohibited; requiring certain labels and furnishing of invoices; advertising required for certain quality eggs; powers and duties of the commissioner of agriculture; requirements of egg handling facilities; authorizing entry of facilities by commissioner; providing civil and criminal penalties for violations; requiring commissioner to cooperate with other entities; and prohibiting commissioner from divulging trade secrets.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 10A. THE WEST VIRGINIA EGG MARKETING LAW
OF 1998.**

- §19-10A-1. Purpose; and short title.
- §19-10A-2. Definitions.
- §19-10A-3. Permits and registration.
- §19-10A-4. Exemptions.
- §19-10A-5. Container requirements.
- §19-10A-6. Prohibited acts.
- §19-10A-7. Labeling.
- §19-10A-8. Invoice requirements.
- §19-10A-9. Advertising.
- §19-10A-10. Powers and duties of the commissioner.
- §19-10A-11. Egg handling facilities, temperature and humidity, sanitation and cleaning.
- §19-10A-12. Access to premises.
- §19-10A-13. Penalties.
- §19-10A-14. Persons punishable as principals.
- §19-10A-15. Cooperation with other entities.
- §19-10A-16. Confidentiality of trade secrets.

§19-10A-1. Purpose; and short title.

- 1 (a) The intent of this article is to protect and promote
- 2 the public health and general welfare and to prevent fraud
- 3 and deception in the production, processing, sale and
- 4 distribution of eggs. This article provides for the
- 5 registration of business houses engaged in selling, trading

6 or traffic of eggs; establishes standards for the grading,
7 classification and marketing of eggs; provides a penalty
8 for the failure to comply with the provisions of this article;
9 and provides for other purposes. This article shall be
10 known as "The West Virginia Egg Marketing Law of
11 1998". All provisions of this code in conflict with this
12 article are repealed.

13 (b) Except where otherwise indicated, it is the intent of
14 the Legislature that this article substantially conform with
15 the federal laws and regulations promulgated under the
16 auspices of the United States secretary of agriculture and
17 the United States secretary of health and human services in
18 order to provide movement of eggs in intrastate and
19 interstate commerce with a minimum of economic
20 barriers.

§19-10A-2. Definitions.

1 (a) "Ambient temperature" means the atmospheric
2 temperature surrounding or encircling shell eggs.

3 (b) "Candle" means to determine the interior quality
4 based on the use of a candling light as defined in federal
5 standards adopted in section ten of this article.

6 (c) "Case" means a container that is not a carton and
7 that is used to pack eggs for distribution or sale to the
8 consumer. A case may contain either loose or cartoned
9 eggs.

10 (d) "Commissioner" means the commissioner of
11 agriculture for the state of West Virginia or his or her duly
12 authorized agent.

13 (e) "Container" means any carton, basket, case, cart,
14 pallet or other receptacle.

15 (f) "Consumer" means any person using eggs for
16 food and shall include restaurants, hotels, cafeterias,
17 hospitals, state institutions and any other establishment
18 serving food to be consumed or produced on the
19 premises, but shall not include the armed forces or any
20 other federal agency or institution.

21 (g) "Denatured" means rendering unfit for human
22 food by treatment or the addition of a foreign substance
23 as approved by the United States department of
24 agriculture (USDA), agriculture marketing service (AMS),
25 administrator.

26 (h) "Distributor" means a person or firm engaged in
27 the business of buying eggs from producers or other
28 persons on his or her own account and selling or
29 transferring eggs to other distributors or retailers. A
30 distributor further means a person or firm engaged in
31 producing eggs from his or her own flock and marketing
32 of any portion of this production on a graded basis.

33 (i) "Egg" means the product of the domesticated
34 chicken hen or any other eggs offered for sale for human
35 consumption.

36 (j) "Embargo" means a written stop sale order issued
37 by the commissioner of agriculture prohibiting the sale,
38 use of or transportation of eggs in any manner until the
39 embargo is released by the commissioner.

40 (k) "General embargo" means a statewide written
41 stop sale order issued by the commissioner of agriculture
42 prohibiting the sale, use of or transportation of eggs in
43 any manner until the embargo is released by the
44 commissioner.

45 (l) "Graded egg" means an egg which is classified in
46 accordance with the standards established by the United
47 States department of agriculture.

48 (m) "Inedible" and "unfit for human food" means
49 eggs described as black rots, yellow rots, white rots, mixed
50 rots (addled eggs), sour eggs, eggs with green whites, eggs
51 with stuck yolks, moldy eggs, musty eggs, eggs showing
52 blood rings, eggs containing embryo chicks (at or beyond
53 the blood ring state), and any eggs that are adulterated as
54 that term is defined in the federal food, drug and cosmetic
55 act.

56 (n) "Packer" means any person who grades, sizes,
57 candles or packs eggs for the purpose of resale.

58 (o) "Person" means any partnership, association,
59 business trust, corporation or any organized group of
60 persons, whether incorporated or not.

61 (p) "Possession" means the fact of possession by any
62 person engaged in the sale of a commodity is prima facie
63 evidence that the commodity is for sale.

64 (q) "Processor" means a person who operates a plant
65 for the purpose of breaking eggs for freezing, drying or
66 commercial food manufacturing.

67 (r) "Producer" means any person owning laying hens
68 who markets eggs.

69 (s) "Repacker" means any person who packs
70 previously graded and packed shell eggs for resale.

71 (t) "Retailer" means any person who sells eggs
72 directly to the consumer.

73 (u) "Sell" means to offer for sale, expose for sale,
74 have in possession for sale, exchange, barter or trade.

§19-10A-3. Permits and registration.

1 (a) The commissioner shall issue an "Egg Distributor
2 Permit" to every person distributing eggs in West
3 Virginia. Each egg distributor shall apply to the
4 commissioner of agriculture for this permit on forms
5 provided by the commissioner at least thirty days prior to
6 distributing eggs in West Virginia and shall renew his or
7 her permit annually at least thirty days prior to the
8 expiration of his or her current permit.

9 (b) For the purposes of financing the administration
10 and enforcement of this article, the state of West Virginia,
11 through the West Virginia department of agriculture shall
12 collect an inspection and permit fee from the distributor
13 first introducing the eggs into West Virginia trade
14 channels.

15 (c) The commissioner shall set an inspection fee and
16 annual permit fee by legislative rule for the distribution of
17 all shell eggs processed or sold in the state of West
18 Virginia.

19 (d) All fees, interest, penalties or other moneys
20 collected by the commissioner under the provisions of this
21 article shall be paid into a special account and be
22 expended upon the order of the commissioner for the
23 purpose of the enforcement and administration of this
24 article.

25 (e) An egg distributor shall conspicuously post his or
26 her permit in the place of business to which it applies.
27 The permit year is twelve months or any fraction thereof
28 beginning the first day of July and ending the thirtieth
29 day of June of each year.

30 (f) No permit is transferable. Each physical location
31 where eggs are stored for distribution shall have a separate
32 egg distributor permit.

33 (g) Producers exempted by the commissioner by
34 legislative rule shall register with the West Virginia
35 department of agriculture but are exempt from paying the
36 permit or inspection fee pursuant to the provisions of
37 section four of this article.

38 (h) The provisions of this article are applicable to all
39 retailers, wholesalers, packers and distributors of eggs.

40 (i) The commissioner has the power to revoke or
41 suspend the certificate for failure to comply with the
42 provisions of this article and refuse to issue a certificate to
43 willful violators.

§19-10A-4. Exemptions.

1 Any person marketing eggs which he or she has
2 produced is exempt from the provisions of section seven
3 of this article except that carton labeling shall be
4 according to legislative rule, cartons shall be clean and
5 free of debris and eggs shall be held under refrigeration
6 according to legislative rule. The commissioner may
7 exempt small producers from portions of this article by
8 legislative rule.

§19-10A-5. Container requirements.

1 No distributor may market eggs unless there is clearly
2 designated on the container the consumer grade and size
3 or weight class established in accordance with the
4 provisions of this article and the eggs shall conform to the
5 designated grade and size or weight class, except when
6 sold on contract to an agency of the United States
7 government.

§19-10A-6. Prohibited acts.

1 (a) If an authorized representative of the West Virginia
2 department of agriculture determines, after an inspection,
3 that any lot of eggs is in violation of this article, the
4 representative may issue an embargo under the provisions
5 of section ten of this article. An embargo shall specify the
6 reason for its issuance and prohibit the sale, use of or
7 transportation of eggs in any manner until the embargo is
8 released by the commissioner.

9 The commissioner shall determine and assess
10 violations of this article to the packer, repacker, distributor
11 or retailer.

12 (b) No person, firm or corporation may sell, traffic in
13 or deliver to the retail or consuming trade, any eggs that
14 are:

15 (1) Loss, inedible, denatured or leaker eggs;

16 (2) Not refrigerated; or

17 (3) Mislabeled or deceptively advertised.

18 (c) No person may sell eggs for resale to consumers
19 below "U.S. Consumer Grade B".

20 (d) No person may prepare, pack, place, deliver for
21 shipment, deliver for sale, load, ship, transport, offer for
22 sale in bulk containers or advertise by sign, placard or
23 otherwise any eggs for human consumption which are
24 mislabeled or deceptive.

25 (e) No person or retailer may repack eggs in cartons
26 which were previously used and labeled by a packer,
27 except as outlined in legislative rule.

28 (f) No person may distribute eggs without a valid egg
29 distributor's permit.

30 (g) No person may store or transport eggs unless held
31 under refrigeration as outlined in legislative rule.

32 (h) No person may offer for sale or expose for sale
33 shell eggs that are in containers that are dirty, broken or
34 not free from foreign odor.

§19-10A-7. Labeling.

1 (a) Any container or subcontainer in which eggs are
2 marketed to consumers shall bear on the exterior of the
3 container the following:

4 (1) The identity of the packer by registry of USDA
5 plant number or by state permit number or name and
6 address of the packer, distributor, retailer or repacker;

7 (2) The correct grade and size or weight classification;

8 (3) The term "EGGS";

9 (4) The quantity of eggs per retail unit (i.e. one dozen,
10 eighteen count, etc.) or dozens per case when packing
11 loose eggs for institutional use or an accurate statement of
12 the quantity of the contents in terms of numerical count;

13 (5) The words "keep refrigerated" in a plain and
14 conspicuous manner on each container or consumer
15 receptacle of shell eggs;

16 (6) Use by or expiration date; and

17 (7) Additional labeling according to legislative rule.

18 (b) Loose eggs shall be labeled according to legislative
19 rule.

§19-10A-8. Invoice requirements.

1 (a) Every person, firm or corporation selling eggs to a
2 retailer or manufacturer shall furnish an invoice showing
3 the size and quality of the eggs according to the standards
4 prescribed by this article together with the name and
5 address of the person by whom the eggs were sold and

6 date of the sale. This invoice shall be retained for one
7 year.

8 (b) The commissioner of agriculture is authorized to
9 examine the invoices and such other records needed to
10 determine the cause and place of any violation of this
11 article.

§19-10A-9. Advertising.

1 (a) All eggs offered for sale at retail shall be plainly
2 marked as to grade and size with letters not less than three-
3 eighths inch in height.

4 (b) All eggs advertised or displayed for sale for
5 human food at a given price shall be advertised or
6 displayed in the manner adopted by legislative rule.

7 (c) Restaurants, hotels, delicatessens and other eating
8 places using eggs below "A" quality shall advertise this
9 fact to the public according to legislative rule.

§19-10A-10. Powers and duties of the commissioner.

1 (a) The commissioner shall by legislative rule establish
2 standards for the grading, classification and marketing of
3 shell eggs bought and sold by any person, firm or
4 corporation in the state of West Virginia. These standards
5 shall conform to, on date of the sale to the consumer, the
6 minimum standards promulgated by the U. S. department
7 of agriculture as defined in the "United States Standards,
8 Grades and Weight Classes for Shell Eggs", authorized
9 under Section 205, 60 Stat. 1091, Public Law 135, 82nd
10 Congress; 7 U.S.C. 1624, effective July 11, 1952, as
11 amended.

12 (b) All duties and functions required to be performed
13 by the West Virginia department of agriculture under the
14 provisions of this article shall be performed by the
15 commissioner of agriculture.

16 (c) The commissioner of agriculture shall enforce the
17 provisions of this article and may make and propose those
18 rules for promulgation as may be necessary for the
19 enforcement of this article.

20 (d) The commissioner has the power to issue an
21 embargo or general embargo for any product which is or
22 is believed to be adulterated, mislabeled or is not in
23 compliance with this article and to cause the distributing
24 of that product to cease. Nothing in this article may be
25 construed as to requiring the commissioner to issue
26 embargoes for minor violations of this article when the
27 commissioner believes that a written notice of violation
28 will serve the public interest.

29 (e) Audits:

30 (1) The West Virginia department of agriculture may
31 conduct annual audits of all permit holders, including out-
32 of-state permit holders to ensure proper reporting of egg
33 inspection fees.

34 (2) Out-of-state permit holders shall reimburse the
35 department for travel expenses incurred in conducting
36 out-of-state audits. The state of West Virginia's out-of-
37 state daily allowance for meals and lodging is the
38 maximum amount reimbursable, plus travel expenses to
39 and from locations of permit holders.

§19-10A-11. Egg handling facilities, temperature and humidity, sanitation and cleaning.

1 (a) Any packer or distributor engaged in the
2 assembling, marketing or the processing of eggs for
3 marketing shall maintain egg handling facilities in a
4 manner commensurate with laws governing food
5 establishments.

6 (b) All eggs shall be stored or transported under
7 refrigeration as required by legislative rule.

8 (c) The commissioner shall set standards for egg
9 handling facilities, humidity, sanitation and the cleaning of
10 eggs by legislative rule.

§19-10A-12. Access to premises.

1 (a) The commissioner of agriculture may enter any
2 store, vehicle, market or any other business or place where
3 eggs are bought, stored, processed, packed or offered for

4 sale and to make inspections as needed to determine
5 compliance with this article and rules adopted under the
6 authority of this article. During an inspection the
7 commissioner of agriculture may also candle and weigh
8 eggs to determine if the grades and sizes of the eggs
9 conform to grades and sizes labeled on the exterior of the
10 container.

11 (b) All eggs are considered the property of the person
12 in whose possession they are found except those in the
13 custody of common carriers or public warehouses where
14 the owner is identified by record.

§19-10A-13. Penalties.

1 (a) *Criminal penalties.* — Any person violating any
2 provision of this article or any rule adopted under the
3 authority of this article is guilty of a misdemeanor and,
4 upon conviction thereof, shall be fined not less than one
5 hundred dollars nor more than five hundred dollars for
6 the first offense, and for the second or subsequent offense,
7 shall be fined not less than five hundred dollars nor more
8 than one thousand dollars, or imprisoned not more than
9 six months, or both fined and imprisoned. Magistrates
10 have concurrent jurisdiction with circuit courts to enforce
11 the provisions of this article.

12 (b) *Civil penalties.* — Any person violating a
13 provision of this article or any rules adopted under the
14 authority of this article may be assessed a civil penalty by
15 the commissioner of agriculture. In determining the
16 amount of any civil penalty, the commissioner shall give
17 due consideration to the history of previous violations of
18 any person, the seriousness of the violation, including any
19 irreparable harm to the environment, any hazards to the
20 health and safety of the public, any economic damages to
21 the public and the demonstrated good faith of any person
22 charged to achieve compliance with this article before and
23 after written notification of the violation:

24 (1) The commissioner may assess a civil penalty of up
25 to one thousand dollars for a violation;

26 (2) The civil penalty is payable to the state of West
27 Virginia and is collectible in any manner now or hereafter
28 provided for collection of debt. If any person liable to
29 pay a civil penalty neglects or refuses to pay the civil
30 penalty, the amount of the civil penalty, together with
31 interest at ten percent, is a lien in favor of the state of West
32 Virginia upon the property, both real and personal, of that
33 person after the lien has been entered and docketed to
34 record in the county where the property is situated. The
35 clerk of the county, upon receipt of the certified copy of
36 the lien, shall enter it to record without requiring the
37 payment of costs as a condition precedent to recording.

38 (c) Notwithstanding any other provision of law to the
39 contrary, the commissioner may propose for
40 promulgation and adopt rules which permit consent
41 agreement or negotiated settlements for the civil penalties
42 assessed as a result of violation of the provision of this
43 article.

44 (d) Upon application by the commissioner for an
45 injunction, the circuit court of the county in which the
46 violation is occurring, has occurred or is about to occur, as
47 the case may be, may grant a temporary or permanent
48 injunction restraining any person from violating or
49 continuing to violate any provision of this article or any
50 rule promulgated under this article, notwithstanding the
51 existence of other remedies of law. Any such injunction
52 shall be issued without bond.

53 (e) No state court may allow for the recovery of
54 damages for any administrative action taken, if the court
55 finds that there was a probable cause for that action.

56 (f) It is the duty of the prosecuting attorney of the
57 county in which the violation occurred to represent the
58 department of agriculture, to institute proceedings and to
59 prosecute the person charged with that violation.

60 (g) *Hearings and appeals.* —

61 (1) Any person aggrieved by any action taken under
62 this article shall be afforded the opportunity for a hearing
63 before the commissioner under the rules promulgated by
64 the commissioner;

65 (2) Hearings shall be conducted in accordance with
66 procedures set forth by rule;

67 (3) All the testimony and evidence at a hearing shall
68 be recorded by mechanical means, which may include the
69 use of tape recordings. The mechanical record shall be
70 maintained for ninety days from the date of the hearing
71 and a transcript shall be made available to the aggrieved
72 party;

73 (4) Any person who feels aggrieved of the suspension,
74 revocation or denial order may appeal within sixty days to
75 the circuit court of the county in which the person has
76 located its principal place of business.

§19-10A-14. Persons punishable as principals.

1 (a) Whoever commits any act prohibited by any
2 section of this article, or aids, abets, induces or procures its
3 commission, is punishable as a principal.

4 (b) Any person who causes an act to be done which if
5 directly performed by him or her or another would be a
6 violation of the provisions of this article is punishable as a
7 principal.

§19-10A-15. Cooperation with other entities.

1 The commissioner may cooperate with and enter into
2 agreements with governmental agencies of this state, other
3 states, agencies of the federal government, agencies of
4 foreign governments and private associations in order to
5 carry out the purpose and provisions of this article.

§19-10A-16. Confidentiality of trade secrets.

1 The commissioner may not make public information
2 which contains or relates to trade secrets, commercial or
3 financial information obtained from a person or
4 privileged or confidential information: *Provided*, That
5 when the information is needed to carry out the provisions
6 of this article, this information may be revealed, subject to
7 a protective order, to any federal, state or local agency
8 consultant or may be revealed, subject to a protective
9 order, at a closed hearing or in findings of fact issued by
10 the commissioner.

CHAPTER 3

(H. B. 4332—By Delegates Beach and Williams)

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article sixteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to rewriting the agricultural and forest seed law and designating the article as the West Virginia seed law; providing definitions; labeling requirements for agricultural, vegetable, tree and shrub seeds and seed potatoes; certificates of registration requirements, seed fees and use of the fees by the commissioner of agriculture; prohibiting distributions or transportations of certain seeds and other acts; exemptions; power and authority of the commissioner of agriculture; right of embargo and seizure by commissioner; and providing civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. WEST VIRGINIA SEED LAW.

- §19-16-1. Definitions.
- §19-16-2. Label requirements for agricultural crops, lawn and turf, vegetable, tree and shrub seeds and seed potatoes.
- §19-16-3. Certificate of registration; seed fees; payment of fees; disposition of funds.
- §19-16-4. Prohibitions.
- §19-16-5. Exemptions.
- §19-16-6. Duties and authority of commissioner of agriculture.
- §19-16-7. Stop sale orders or embargo; seizure.
- §19-16-8. Penalties and prosecutions.

§19-16-1. Definitions.

1 (a) "Agricultural seed" includes forage seeds (grasses
2 and legumes), tobacco, soybeans, cereal, oil, fiber, and
3 other kinds of crop seeds commonly recognized within
4 this state as agricultural seeds, lawn and turf seeds and
5 combinations of those seeds, and may include noxious
6 weed seeds when the commissioner determines that the
7 seed is being used as agricultural seed.

8 (b) "Blend" means seed consisting of more than one
9 variety of a kind, each in excess of five percent by weight
10 of the whole.

11 (c) "Brand" means a word, name, symbol, number,
12 design or device, or any combination thereof, identifying
13 the seed of one person and distinguishing it from all
14 others.

15 (d) "Bulk" means seed when loose in vehicles of
16 transportation or in storage, or in retail displays and not in
17 seed bags or other containers.

18 (e) "Certifying agency" means: (1) An agency
19 authorized under the laws of a state, territory or possession
20 to officially certify seed and which has standards and
21 procedures approved by the United States secretary of
22 agriculture to assure the genetic purity and identity of the
23 seed certified; or (2) an agency of a foreign country
24 determined by the United States secretary of agriculture to
25 adhere to procedures and standards for seed certification
26 comparable to those adhered to generally by seed
27 certifying agencies under subdivision (1) of this
28 subsection.

29 (f) "Coated" means a seed unit covered with any
30 substance which changes the size, shape or weight of
31 original seed. Seeds coated with ingredients, such as, but
32 not limited to, rhizobia, dyes and pesticides, are not
33 considered coated seeds.

34 (g) "Commissioner" refers to the commissioner of
35 agriculture of the state of West Virginia or a duly
36 authorized employee.

37 (h) "Complete record" means any and all information
38 which relates to the origin, treatment, germination, purity,

39 kind and variety of each lot of agricultural seed sold in
40 this state, or which relates to the treatment, germination,
41 kind and variety of each lot of vegetable, or tree and shrub
42 seed sold in this state. The information shall include seed
43 samples and records of declarations, labels, purchases,
44 sales, conditioning, bulking, treatment, handling, storage,
45 analyses, tests and examinations.

46 (i) "Conditioning" means drying, cleaning, scarifying
47 and other operations which may change the purity or
48 germination of the seed and require the seed lot to be
49 retested to determine the label information.

50 (j) "Dealer" means any person who exclusively sells,
51 exposes for sale, offers for sale, exchanges or barter seed
52 for sowing purposes within this state to the ultimate
53 consumer.

54 (k) "Distribute" means to offer for sale, sell, expose for
55 sale, exchange or barter seed for sowing purposes within
56 the state.

57 (l) "Distributor" means any person who sells, exposes
58 for sale, offers for sale, exchanges, barter, gives, parcels
59 out, allots, shares or dispenses a seed for sowing purposes
60 within the state.

61 (m) "Dormant" means viable seed, excluding hard
62 seed, which fail to germinate when provided the specified
63 germination conditions for the kind of seed in question.

64 (n) "Genuine growers declaration" means a statement
65 signed by the grower which gives for each lot of seed the
66 lot number, kind, variety (if known), origin, weight, year
67 of production, date of shipment and to whom the
68 shipment was made.

69 (o) "Germination" means the emergence and
70 development from the seed embryo of those essential
71 structures which, for the kind of seed in question, are
72 indicative of the ability to produce a normal plant under
73 favorable conditions.

74 (p) "Hard seeds" means seeds which remain hard at the
75 end of the prescribed test period because they have not
76 absorbed water due to an impermeable seed coat.

77 (q) "Hybrid" means the first generation seed of a cross
78 produced by controlling the pollination and by
79 combining: (1) Two or more inbred lines; (2) one inbred
80 or a single cross with an open pollinated variety; or (3)
81 two varieties or species, except open-pollinated varieties of
82 corn (*Zea mays*). The second generation of subsequent
83 generations from the crosses shall not be regarded as
84 hybrids. Hybrid designations shall be treated as variety
85 names.

86 (r) "Inert matter" means all matter not seed, which
87 includes, but is not limited to, broken seeds, sterile florets,
88 chaff, fungus bodies and stones as determined by methods
89 defined by rule.

90 (s) "Kind" means one or more related species or
91 subspecies which singly or collectively is known by one
92 common name, for example, corn, oats, alfalfa and
93 timothy.

94 (t) "Label" means a display of written, printed or
95 graphic matter affixed to the container or package in
96 which seed is distributed; or affixed to the invoice,
97 delivery slip or other shipping document which
98 accompanies bulk lots of seed. All labels shall be legible
99 and in English.

100 (u) "Labeling" means all written, printed, or graphic
101 matter or advertisement referencing the seed.

102 (v) "Lot" means a definite quantity of seed identified
103 by a lot number, code number or other mark, every
104 portion or bag of which is uniform within recognized
105 tolerances for the factors which appear on the label.

106 (w) "Mixture", "mix", or "mixed" means seed
107 consisting of more than one kind, each in excess of five
108 percent by weight of the whole.

109 (x) "Mulch" means a protective covering of any
110 suitable substance placed with seed which acts to retain

111 sufficient moisture to support seed germination and
112 sustain early seedling growth and aid in the prevention of
113 the evaporation of soil moisture, the control of weeds and
114 the prevention of erosion.

115 (y) Noxious weed seeds are divided into two classes:
116 "Prohibited noxious weed seeds" and "restricted noxious
117 weed seeds" as defined in subdivisions (1) and (2) of this
118 subsection:

119 (1) The term "prohibited noxious weed seeds" are
120 those weed seeds which are prohibited from being present
121 in agricultural, vegetable, tree or shrub seed. They are the
122 seeds of weeds which are highly destructive and difficult
123 to control by good cultural practices and the use of
124 herbicides;

125 (2) The term "restricted noxious weed seeds or
126 undesirable grass seed" are those weed seeds which are
127 objectionable in agricultural crops, lawns and gardens of
128 this state and which can be controlled by good cultural
129 practices or the use of herbicides.

130 (z) "Off type" means any seed or plant not a part of
131 the variety in that it deviates in one or more characteristics
132 from the variety as described and may include: A seed or
133 plant of another variety; a seed or plant not necessarily
134 any variety; a seed or plant resulting from cross-
135 pollination by another kind or variety; a seed or plant
136 resulting from uncontrolled self pollination during
137 production of hybrid seed; or segregates from any of the
138 off types set forth in this subsection.

139 (aa) "Official sample" means any sample of seed taken
140 by the commissioner in accordance with the provisions of
141 this article and rules promulgated under this article.

142 (bb) "Origin" for an indigenous stand of trees means
143 the area on which the trees are growing; for a
144 nonindigenous stand, it is the place from which the seeds
145 or plants were originally introduced.

146 (cc) "Other crop seed" means seed of plants grown as
147 crops (other than the kind or variety included in the pure
148 seed) as determined by methods defined by rule.

149 (dd) "Person" means an individual, partnership,
150 corporation, company, association, receiver, trustee, agent,
151 fiduciary, firm or any group of organized persons whether
152 incorporated or not.

153 (ee) "Pure seed" means seed exclusive of inert matter
154 and all other seeds not of the seed being considered as
155 determined by methods defined by rule.

156 (ff) "Registrant" means any person who registers as a
157 seedsman in order to distribute seed for sowing purposes
158 within the state.

159 (gg) "Seed potato" refers to the Irish potato (*Solanum*
160 *tuberosum*) which must grade equal to or better than the
161 minimum requirements of U.S. No. 1, from the standpoint
162 of physical defects, size or disease, and must be certified
163 by an official certifying agency.

164 (hh) "Seizure" means a legal process carried out by
165 court order against a definite amount of seed.

166 (ii) "Stop sale or embargo" means an administrative
167 order provided by this article, restraining the sale, use,
168 disposition and movement of a definite amount of seed.

169 (jj) "Treated" means that the seed has received an
170 application of a substance, or that it has been subjected to
171 a process for which a claim is made.

172 (kk) "Tree and shrub seeds" includes seeds of woody
173 plants commonly known and sold as tree and shrub seeds
174 in this state.

175 (ll) "Tree seed collector's declaration" means a
176 statement signed by a grower or person having knowledge
177 of the place of collection giving, for a lot of seed, the lot
178 number, common or scientific name of the species (and
179 subspecies, if appropriate), origin, elevation, and quantity
180 of tree and shrub seed.

181 (mm) "Type" means a group of varieties so nearly
182 similar that the individual varieties cannot be clearly
183 differentiated except under special conditions.

184 (nn) "Variant" means any seed or plant which: (A) Is
185 distinct within the variety but occurs naturally in the
186 variety; (B) is stable and predictable with a degree of
187 reliability comparable to other varieties of the same kind,
188 within recognized tolerances, when the variety is
189 reproduced or reconstituted; and (C) was originally a part
190 of the variety as released. A variant is not an off-type.

191 (oo) "Variety" means a subdivision of a kind which is
192 distinct, uniform and stable.

193 (1) "Distinct" means that the variety can be
194 differentiated by one or more identifiable morphological,
195 physiological or other characteristics from all other
196 varieties of public knowledge.

197 (2) "Uniform" means that the variations in essential
198 and distinctive characteristics are describable.

199 (3) "Stable" means that the variety will remain
200 unchanged in its essential and distinctive characteristics
201 and its uniformity when reproduced or reconstituted as
202 required by the different categories of varieties.

203 (pp) "Vegetable or herb seeds" includes the seeds of
204 those crops which are grown in gardens or on truck farms
205 and are generally known and sold under the name of
206 vegetable or herb seeds in this state.

207 (qq) "Weed seed" means the seeds of all plants
208 generally recognized as weeds within this state, as
209 determined by methods defined by rule, and includes the
210 categories of prohibited noxious weed seeds and restricted
211 noxious weed seeds.

**§19-16-2. Label requirements for agricultural crops, lawn and
turf, vegetable, tree and shrub seeds and seed
potatoes.**

1 Each container of agricultural or vegetable seeds
2 which is distributed or transported within this state for
3 sowing purposes shall bear on the container or have
4 attached to the container in a conspicuous place a plainly
5 written or printed label or tag in the English language.

6 (a) For all treated agricultural and vegetable seeds (for
7 which a separate label may be used) the label shall include
8 the following:

9 (1) A word or statement indicating that the seed has
10 been treated;

11 (2) The commonly accepted coined, chemical or
12 abbreviated chemical (generic) name of the applied
13 substance or description of the process used;

14 (3) A caution statement, such as "do not use for food,
15 feed or oil purposes", if the substance in the amount
16 present with the seed is harmful to human or other
17 vertebrate animals. The caution for toxic substances shall
18 be a poison statement or symbol or both a poison
19 statement and symbol; and

20 (4) The date beyond which the inoculant is not to be
21 considered effective (date of expiration), if the seed is
22 treated with an inoculant.

23 (b) For agricultural seeds, except for grass seed
24 mixtures, seed sold on a pure live seed basis or for hybrids
25 which contain less than ninety-five percent hybrid seed the
26 label shall include the following:

27 (1) The commonly accepted name of the kind and
28 variety for each agricultural seed component present in
29 excess of five percent of the whole and the percentage by
30 weight of each in order of its predominance: *Provided*,
31 That if the variety of those kinds generally labeled as to
32 variety is not stated, the label shall show the name of the
33 kind and the words, "Variety Not Stated." Hybrids shall be
34 labeled as hybrids;

35 (2) The lot number or other lot identification;

36 (3) The origin (state or foreign country), if known, of
37 alfalfa, red clover and field corn (except hybrid corn). If
38 the origin is unknown, that fact shall be stated;

39 (4) The percentage by weight of all weed seeds;

40 (5) The name and rate of occurrence per pound or
41 ounce of each kind of restricted noxious weed seed or

42 undesirable grass seed present. The name and
43 approximate number of each kind of noxious weed seed:
44 (A) Per ounce in *Agrostis* spp., *Poa* spp., Rhodes grass,
45 Bermuda grass, timothy, orchard grass, fescues, alsike and
46 white clover, reed canary grass, Dallas grass, ryegrass,
47 foxtail millet, alfalfa, red clover, sweet clovers, lespedezas,
48 smooth brome, crimson clover, *Brassica* spp., flax,
49 *Agropyron* spp., and other agricultural seeds of similar
50 size and weight, or mixtures within this group; and (B) per
51 pound in sudan grass, wheat, oats, rye, barley, buckwheat,
52 sorghums, vetches and other agricultural seeds of a size
53 and weight similar to or greater than those within this
54 group, or any mixtures within this group;

55 (6) The percentage by weight of agricultural seeds
56 (which may be designated as "crop seeds") other than
57 those required to be named on the label;

58 (7) The percentage by weight of inert matter;

59 (8) For each named agricultural seed:

60 (A) The percentage of germination, exclusive of hard
61 seed;

62 (B) The percentage of hard seed, if present;

63 (C) The calendar month and year the test was
64 completed to determine the percentages; and

65 (D) If the registrant chooses, the "total germination
66 and hard seed";

67 (9) The name and address of the person who labeled
68 the seed, or who distributes the seed within this state.

69 (c) For grass seed mixtures for lawn or turf purposes
70 the label shall include the following:

71 (1) The word "mixed" or "mixture" with the name of
72 the mixture;

73 (2) The heading "Pure Seed" and "Germination" or
74 "Germ" in the proper places;

75 (3) The commonly accepted name of kind or kind
76 and variety of each agricultural seed component in excess

77 of five percent of the whole, and the percentage by weight
78 of pure seed in order of its predominance and in
79 columnar form;

80 (4) The percentage by weight of agricultural seed
81 other than those required to be named on the label (which
82 shall be designated as "crop seed");

83 (5) The percentage by weight of inert matter not to
84 exceed ten percent by weight. Except for coating
85 material, fertilizer and mulch as provided by subdivision
86 (3), subsection (d) of this section, foreign material not
87 common to grass seed shall not be added;

88 (6) The percentage by weight of all weed seeds.
89 Maximum weed seed content may not exceed one half of
90 one percent by weight;

91 (7) Noxious weed seeds that are required to be labeled
92 by rule and listed under the heading "Noxious Weed
93 Seeds";

94 (8) For each agricultural seed named under
95 subdivision (3) of this subsection:

96 (A) The percentage of germination, exclusive of hard
97 seed;

98 (B) The percentage of hard seed, if present;

99 (C) The calendar month and year the test was
100 completed to determine the percentages. The most recent
101 available chronological test date shall be used;

102 (D) When only one test date is listed for the entire
103 mixture, the listed test date shall be the oldest
104 chronological test date of the components; and

105 (9) The name and address of the person who labeled
106 the seed, or who distributes the seed within the state.

107 (d) For agricultural seeds that are coated the label shall
108 include the following:

109 (1) The percentage by weight of pure seeds with
110 coating material removed;

- 111 (2) The percentage by weight of coating material;
- 112 (3) The percentage by weight of inert material
113 exclusive of coating material; and
- 114 (4) Percentage of germination, to be determined on
115 400 pellets with or without seeds.
- 116 (e) For vegetable seeds in packets as prepared for use
117 in home gardens or household plantings; or in preplanted
118 containers, mats, tapes or other planting devices the label
119 shall include the following:
- 120 (1) The name of kind and variety of seed;
- 121 (2) The lot number or other lot identification;
- 122 (3) The year for which the seed was packed for sale as
123 "Packed for _____" or the percentage
124 germination and the calendar month and year the test was
125 completed to determine the percentage; and
- 126 (4) The name and address of the person who labeled
127 the seed or who distributes the seed for sale within this
128 state.
- 129 (f) For seeds which germinate less than the standard as
130 established by rule promulgated under this article the label
131 shall include the following:
- 132 (1) The percentage of germination, exclusive of hard
133 seed;
- 134 (2) The percentage of hard seed, if present; and
- 135 (3) The words "Germination Below Standard" in not
136 less than eight-point type.
- 137 (g) For seeds placed in a germination medium, mat,
138 tape or other device in such a way as to make it difficult to
139 determine the quantity of seed without removing the seeds
140 from the medium, mat, tape or device, a statement to
141 include the minimum number of seeds in the container.
- 142 (h) For vegetable seeds in containers other than
143 packets prepared for use in home gardens or household
144 plantings and other than preplanted containers, mats, tapes

145 or other planting devices the label shall include the
146 following:

147 (1) The name of each kind and variety present in
148 excess of five percent and the percentage by weight of
149 each in order of its predominance;

150 (2) The lot number or other lot identification;

151 (3) For each named vegetable seed:

152 (A) The percentage germination exclusive of hard
153 seed;

154 (B) The percentage of hard seed, if present;

155 (C) The calendar month and year the test was
156 completed to determine the percentages; and

157 (D) If the registrant chooses, the "total germination
158 and hard seed";

159 (4) The name and address of the person who labeled
160 the seed, or who distributes the seed within this state.

161 (i) For agricultural and vegetable hybrid seed which
162 contain less than ninety-five percent hybrid seed the label
163 shall include the following:

164 (1) The kind or variety which must be labeled as
165 "hybrid";

166 (2) The percent which is hybrid, labeled
167 parenthetically in direct association following named
168 variety; such as, Comet (eighty-five percent Hybrid); and

169 (3) Varieties in which the pure seed contain less than
170 seventy-five percent hybrid seed which shall not be
171 labeled as hybrids.

172 (j) For agricultural and vegetable seeds, the label may
173 show an expiration date in lieu of:

174 (1) The calendar month and year of a germination test
175 or pure live seed test; and

176 (2) The year for which the seed was packaged;

177 (k) For combination mulch, seed and fertilizer
178 products the label shall include the following:

179 (1) The word "combination" followed by the words
180 "mulch - seed - fertilizer (if appropriate)" on the upper
181 thirty percent of the principal display panel. The word
182 "combination" must be the largest and most conspicuous
183 type on the container, equal to or larger than the product
184 name. The words "mulch - seed - fertilizer" shall be no
185 smaller than one-half the size of the word "combination"
186 and in close proximity to the word "combination." These
187 products shall contain a minimum of seventy percent
188 mulch; and

189 (2) For agricultural, lawn and turf seeds placed in a
190 germination medium, mat, tape or other device or mixed
191 with mulch:

192 (A) The product name;

193 (B) The lot number;

194 (C) The percentage by weight of pure seed of each
195 kind and variety named which may be less than five
196 percent of the whole;

197 (D) The percentage by weight of other crop seeds;

198 (E) The percentage by weight of inert matter which
199 shall not be less than seventy percent;

200 (F) The percentage by weight of weed seeds;

201 (G) The name and number of noxious weed seeds per
202 pound or ounce, if present;

203 (H) The percentage of germination (and hard seed if
204 appropriate) of each kind or kind and variety named and
205 date of test; and

206 (I) The name and address of the person who labeled
207 the seed, or who distributes the seed within this state.

208 (l) The labeling requirements for agricultural, and
209 vegetable seeds shall be considered to have been met if the
210 seed is weighed from a properly labeled bulk container in
211 the presence of the purchaser.

212 (m) Once a dealer has broken the seal on a container
213 of seed for any reason, the dealer is fully responsible for
214 its contents including the guarantees for purity,
215 germination rate and anything else pertaining to the
216 integrity of the opened seed container.

217 (n) Label requirements for tree and shrub seeds:

218 Each container of tree and shrub seed which is
219 distributed or transported within this state for sowing
220 purposes shall bear on the container or have attached on
221 the container in a conspicuous place a plainly written or
222 printed statement on the label or tag in the English
223 language, giving the information required under this
224 subsection. The statement may not be modified or denied
225 in the labeling or on another label attached to the
226 container — except that labeling of seed supplied under a
227 contractual agreement may be by invoice accompanying
228 the shipment or by an analysis tag attached to the invoice
229 if each bag or other container is clearly identified by a lot
230 number stenciled on the container, or if the seed is in
231 bulk. Each bag or container that is not identified shall
232 carry complete labeling.

233 (1) For all treated tree and shrub seeds as defined in
234 this article (for which a separate label may be used):

235 (A) A word or statement indicating that the seed has
236 been treated;

237 (B) The commonly accepted coined, chemical or
238 abbreviated chemical (generic) name of the applied
239 substance or description of the process used;

240 (C) A caution statement, such as "Do not use for food,
241 feed or oil purposes", if the substance in the amount
242 present with the seed may be harmful to human or other
243 vertebrate animals. The caution for mercurials and
244 similarly toxic substances shall be a poison statement and
245 symbol; and

246 (D) The date beyond which the inoculant is not to be
247 considered effective (date of expiration), if the seed has
248 been treated with an inoculant;

- 249 (2) For all tree and shrub seeds subject to the article:
- 250 (A) The common name of the species of seed (and
251 subspecies, if appropriate);
- 252 (B) The scientific name of the genus and species (and
253 subspecies, if appropriate);
- 254 (C) The lot number or other lot identification; and
- 255 (D) Their origin:
- 256 (i) For seed collected from a predominantly
257 indigenous stand, the area of collection given by latitude
258 and longitude, or geographic description, or political
259 subdivision such as state or county;
- 260 (ii) For seed collected from other than a
261 predominantly indigenous stand, the area of collection
262 and the origin of the stand or the statement "Origin not
263 Indigenous."
- 264 (E) The elevation or the upper and lower limits of
265 elevations within which the seed was collected;
- 266 (F) The purity as a percentage of pure seed by weight;
- 267 (G) For those species for which standard germination
268 testing procedures are prescribed by the commissioner, the
269 following:
- 270 (i) Percentage germination exclusive of hard seed;
- 271 (ii) Percentage of hard seed, if present;
- 272 (iii) The calendar month and year test was completed
273 to determine such percentages; or
- 274 (iv) In lieu of paragraphs (i), (ii) and (iii) of this
275 subparagraph, the seed may be labeled "Test is in process,
276 results will be supplied upon request";
- 277 (H) For those species for which standard germination
278 testing procedures have not been prescribed by the
279 commissioner, the calendar year in which the seed was
280 collected;

281 (I) The name and address of the person who labeled
282 the seed or who distributes the seed within this state.

283 (o) Label requirements for seed potatoes:

284 The following information shall appear on each label
285 attached to a bag or container of certified seed potato:

286 (A) The name of the person or agency certifying such
287 seed potato;

288 (B) The name of the official state or governmental
289 agency making the inspection upon which the certification
290 is made; and

291 (C) The name and address or identification number of
292 the grower of such seed potatoes.

**§19-16-3. Certificate of registration; seed fees; payment of
fees; disposition of funds.**

1 (a) No person may distribute any agricultural,
2 vegetable, tree and shrub seeds or seed potatoes without a
3 valid certificate of registration issued by the
4 commissioner. Application forms shall be provided by
5 the commissioner and the application fee shall be set forth
6 in a legislative rule. Each certificate of registration expires
7 on the thirty-first day of December following the next
8 date of issue. A dealer may not be required to register, if
9 he or she can prove that the person he or she is obtaining
10 the seed from has a valid certificate of registration.

11 (b) A person shall apply for a certificate of
12 registration at least fifteen days prior to the expiration of
13 the current registration; or at least fifteen days prior to the
14 date that the person intends to engage in business in this
15 state. Each application shall be accompanied by the
16 required application fee. The commissioner shall add a
17 penalty of two dollars to the fee for each registration that
18 is not applied for or renewed within the time limit.

19 (c) Certificates of registration are not transferable with
20 respect to persons or locations.

21 (d) The commissioner may refuse to grant, or may
22 suspend or revoke a certificate of registration when it is

23 determined that the applicant or registrant has violated the
24 provisions of this article or any rule promulgated under
25 this article: *Provided*, That the applicant or registrant may
26 request a hearing prior to the denial of the application or
27 suspension or revocation of the registration.

28 (e) Each person who holds a valid certificate of
29 registration is required to pay a tonnage fee on seed sold
30 in this state and shall report to the commissioner the net
31 pounds or kilograms of seeds distributed and sold by kind
32 or variety, except for seed potatoes, on a semiannual basis.
33 Each report shall be filed under oath and is due before the
34 thirty-first day of January and July of each year for the
35 preceding six-month period. He or she shall pay the
36 tonnage fee according to the fee schedule for agriculture,
37 vegetable, tree and shrub seeds as set by legislative rules.

38 (f) Persons distributing vegetable seeds packaged in
39 containers of eight ounces or 226.8 grams or less and sold
40 from display units are exempt from reporting poundage
41 and paying a poundage fee: *Provided*, That a seed stamp
42 be purchased from the commissioner, at the rate set by
43 legislative rules, and placed in a conspicuous place on
44 each display unit.

45 (g) Persons first distributing seed potatoes into West
46 Virginia trade channels shall report to the commissioner
47 the net pounds or kilograms of seed potatoes distributed
48 during the first six months of the year. The report and
49 appropriate fee is due by the thirty-first day of July as set
50 by legislative rules.

51 (h) A person who holds a valid certificate of
52 registration shall keep accurate records, as may be
53 necessary or required by the commissioner, to indicate the
54 pounds of agricultural, vegetable, or tree and shrub seeds
55 or seed potatoes distributed in this state.

56 (i) All fees and penalties collected under the
57 provisions of this article shall be deposited with the state
58 treasurer in a special revenue account. These moneys
59 shall be expended by the commissioner of agriculture for
60 inspection, sampling, analysis and other expenses
61 necessary for the administration of this article.

§19-16-4. Prohibitions.

1 (a) It is unlawful for any person to distribute or
2 transport for sale any agricultural, vegetable, tree and
3 shrub seeds or seed potatoes within this state:

4 (1) Which have not been tested to determine
5 germination rates as required under sections three and
6 four of this article;

7 (2) Which is not labeled in accordance with the
8 provisions of this article or has false or misleading
9 labeling;

10 (3) Which has been the subject of false or misleading
11 advertisement;

12 (4) Which consists of or contains prohibited noxious
13 weed seeds, subject to tolerances and methods of
14 determination as prescribed by rules promulgated under
15 this article;

16 (5) Which consists of or contains restricted noxious
17 weed seeds per pound or ounce in excess of the number
18 prescribed by rules promulgated under this article, or in
19 excess of the number declared on the label attached to the
20 container of the seed or associated with seed;

21 (6) Which contains more than two and one-half
22 percent by weight of all weed seeds;

23 (7) If any labeling, advertising or other representation
24 subject to this article represents the seed to be certified
25 seed or any class thereof unless:

26 (A) It has been determined by a seed certifying
27 agency that the seed conformed to standards of purity and
28 identity as to kind, species (and subspecies, if appropriate),
29 or variety, and also that tree seed was found to be of the
30 origin and elevation claimed, in compliance with the rules
31 of that agency pertaining to the seed; and

32 (B) That the seed bears an official label issued for that
33 seed by a seed certifying agency certifying that the seed is
34 of a specified class and a specified kind, species (and
35 subspecies, if appropriate) or variety;

36 (8) Labeled with a variety name but not certified by an
37 official seed certifying agency when it is a variety for
38 which a U. S. certificate of plant variety protection under
39 the Plant Variety Protection Act specifies sale only as a
40 class of certified seed: *Provided*, That seed from a
41 certified lot may be labeled as to variety name when used
42 in a mixture by, or with the approval of, the owner of the
43 variety.

44 (b) It is unlawful for any person within this state:

45 (1) To detach, alter, deface or destroy any label
46 provided for in this article or the rules promulgated under
47 this article, or to alter or substitute seed in a manner that
48 may defeat the purpose of this article;

49 (2) To disseminate any false or misleading
50 advertisement concerning seeds subject to this article in
51 any manner or by any means;

52 (3) To interfere with the commissioner's official
53 duties;

54 (4) To fail to comply with a "stop sale or embargo"
55 order or to move or otherwise handle or dispose of any lot
56 of seed held under a "stop sale or embargo" order or tags
57 attached to the lot of seed, unless released by the
58 commissioner, and for the purpose specified by the
59 commissioner;

60 (5) To use the word "trace" as a substitute for any
61 statement which is required;

62 (6) To use the word "type" in any labeling in
63 connection with the name of any agricultural seed variety;

64 (7) To distribute or knowingly use any agricultural,
65 vegetable or tree and shrub seed that is misbranded;

66 (8) To misbrand any agricultural, vegetable, or tree
67 and shrub seed or seed potato. An agricultural, vegetable,
68 tree or shrub seed or seed potato is misbranded:

69 (A) If its label or labeling is false or misleading;

70 (B) If it is not labeled as required by this article;

71 (C) If any word, statement or other information
72 required by this article to appear on the label is not
73 prominently and conspicuously placed so that it can be
74 read and understood by the ordinary individual under
75 customary conditions of purchase and use; and

76 (D) If any damage or inferiority has been concealed;

77 (9) To distribute or knowingly use any agricultural,
78 vegetable, or tree and shrub seed or seed potato that has
79 not had an accurate statement of poundage reported to the
80 commissioner in the previous reporting period;

81 (10) To use or imply the name West Virginia
82 department of agriculture, or reference any inspection or
83 sample findings made by the West Virginia department of
84 agriculture on labels or labeling of agricultural, vegetable,
85 or tree and shrub seed or seed potatoes; or

86 (11) To falsify any laboratory reports regarding seed
87 distributed within this state.

§19-16-5. Exemptions.

1 (a) The provisions of sections two, three, four and
2 eight of this article do not apply:

3 (1) To seed or grain not intended for sowing
4 purposes;

5 (2) To seed in storage, or seed being transported or
6 consigned to a cleaning or processing establishment for
7 cleaning or processing: *Provided*, That the invoice, label
8 or labeling accompanying any shipment of the seed bears
9 the statement "seeds for processing"; and that any label or
10 labeling or other representation which may be made with
11 respect to the uncleaned or unprocessed seed is subject to
12 this article; or

13 (3) To any carrier in respect to any seed transported
14 or delivered for transportation in the ordinary course of its
15 business as a carrier: *Provided*, That the carrier is not
16 engaged in producing, processing or marketing seeds
17 subject to the provisions of this article.

18 (b) No person is subject to the penalties of this article
19 for having sold or offered for sale seeds subject to

20 provisions of this article which were incorrectly labeled or
21 represented as to kind, species (and subspecies, if
22 appropriate), variety, type, or origin, elevation and year of
23 collection (if required), which cannot be identified by
24 examination, unless he or she has failed to obtain an
25 invoice, genuine grower's or tree seed collector's
26 declaration or other labeling information and to take such
27 other precautions as may be reasonable to ensure the
28 identity to be that which is stated. A genuine grower's
29 declaration of variety shall affirm that the grower holds
30 records of proof concerning parent seed, such as invoice
31 and labels.

32 (c) The provisions of sections two and three of this
33 article do not apply to tree seed produced by the
34 consumer.

§19-16-6. Duties and authority of commissioner of agriculture.

1 The commissioner may:

2 (a) Establish by legislative rule germination standards
3 for agricultural, forest, vegetable seeds;

4 (b) Enter and inspect, during reasonable hours, any
5 location where agricultural, vegetable, tree and shrub seeds
6 or seed potatoes for sowing purposes are manufactured,
7 distributed, transported or used, and where records relating
8 to the manufacture, distribution, shipment, labeling or sale
9 of seed are kept. This inspection shall include, but is not
10 limited to, examining, photographing, verifying, copying
11 and auditing records as is necessary to determine
12 compliance with this article, labels, consumer complaints,
13 and papers relating to the manufacturing, distribution,
14 sampling, testing and sale of agricultural, vegetable, tree
15 and shrub seeds or seed potatoes;

16 (c) Open, examine, sample and test agricultural,
17 vegetable, or tree and shrub seeds or seed potatoes,
18 equipment, containers, transport containers and packages
19 used or intended to be used in the manufacture and
20 distribution of seeds used for sowing purposes;

21 (d) Issue certificates of registration pursuant to this
22 article;

23 (e) Refuse applications for registration; or suspend or
24 revoke registrations as provided in this article;

25 (f) Issue "stop sale or embargo" orders as provided in
26 this article;

27 (g) Condemn and confiscate any agricultural,
28 vegetable, or tree and shrub seed or seed potato that is not
29 brought into compliance with this article;

30 (h) Collect fees and penalties and expend moneys
31 under the terms of this article;

32 (i) Conduct sampling in accordance with the official
33 methods as established by the association of analytical
34 chemists, the association of American seed control
35 officials, the United States department of agriculture or the
36 association of official seed analysts;

37 (j) Conduct hearings as provided by this article;

38 (k) Assess civil penalties and refer violations to a court
39 of competent jurisdiction;

40 (l) Obtain court orders directing any person refusing
41 to submit to inspection, sampling and auditing to submit;

42 (m) Establish and maintain seed testing facilities;
43 establish reasonable fees for the tests; incur expenses; and
44 conduct tests in accordance with the association of official
45 seed analysts;

46 (n) Be guided by the analytical results of the official
47 sample when determining whether the agricultural,
48 vegetable, or tree and shrub seed is deficient in any
49 component;

50 (o) Report the analytical results on all official deficient
51 samples to the registrant, dealer, purchaser if known and
52 or the distributor;

53 (p) Upon request made within thirty days from the
54 date the official sample results are reported, furnish a
55 portion of the official sample to the registrant;

56 (q) Publish and distribute annually a composite report
57 containing: (1) The sales of agricultural, vegetable, tree
58 and shrub seeds and seed potatoes during the preceding

59 period; (2) the results of analysis of official samples as
60 compared with the guarantee on the label; (3) the firms
61 responsible for the product; and (4) such other data the
62 commissioner considers necessary: *Provided*, That the
63 information on production and use provided does not
64 disclose the operations of any person;

65 (r) Cooperate with and enter into agreements with
66 governmental agencies of this state and other states,
67 agencies of the federal government and foreign
68 governments, and private associations in order to carry out
69 the purpose and provisions of this article;

70 (s) Establish fees by legislative rule;

71 (t) Propose rules for promulgation, in accordance with
72 article three, chapter twenty-nine-a of this code; and

73 (u) Promulgate emergency rules within ninety days of
74 the passage of this bill into law.

§19-16-7. Stop sale orders or embargo; seizure.

1 (a) Stop sale orders or embargos: When the
2 commissioner has reasonable cause to believe any lot of
3 seed or seed potato is being distributed or used in this state
4 in violation of the provisions of this article or any rule
5 promulgated under this article, then he or she may issue
6 and enforce a written stop sale order or embargo, warning
7 the custodian of the seed not to distribute, use, remove or
8 dispose of the seed in any manner until the stop sale order
9 or embargo is released by the commissioner or by court
10 order:

11 (1) When the stop sale or embargo order is issued, the
12 commissioner shall affix a tag or other marking to the
13 seed warning that the seed is under a stop sale order and
14 notify the custodian that he or she has a right to request an
15 immediate hearing.

16 (2) The commissioner shall release the stop sale or
17 embargo order when the seed has been brought into
18 compliance with this article and its rules.

19 (3) The commissioner has the authority to issue a stop
20 sale or embargo order against a perishable product, even if
21 the result is the involuntary disposal of the product.

22 (4) The commissioner may take action to seize any
23 seed not brought into compliance with this article and the
24 rules issued under this article, within ninety days of the
25 notice to the custodian.

26 (b) Seizure: Any lot of seed or seed potato not in
27 compliance with the provisions of this article is subject to
28 seizure on complaint of the commissioner to a court of
29 competent jurisdiction in the locality in which the seed or
30 seed potato is located. In the event the court finds the
31 seed to be in violation of this article and orders the
32 condemnation of the seed or seed potato, it shall be
33 denatured, processed, destroyed, relabeled or otherwise
34 disposed of in compliance with the laws of this state:
35 *Provided*, That in no instance may the court order the
36 disposition of the seed without first having given the
37 registrant an opportunity to apply to the court for the
38 release of the seed or seed potato or permission to process
39 or relabel it into compliance with this article.

§19-16-8. Penalties and prosecutions.

1 (a) *Criminal penalties.* — Any person violating any of
2 the provisions of this article is guilty of a misdemeanor
3 and, upon conviction thereof, shall be fined not less than
4 one hundred dollars nor more than five hundred dollars
5 for the first offense, and for each subsequent offense, shall
6 be fined not less than five hundred nor more than one
7 thousand dollars, or imprisoned in the county jail not
8 more than six months, or both fined and imprisoned.
9 Magistrates have concurrent jurisdiction with circuit courts
10 to enforce the provisions of this article.

11 (b) *Civil penalties.* —

12 (1) Any person violating any of the provisions of this
13 article or the rules adopted under this article may be
14 assessed a civil penalty by the commissioner. In
15 determining the amount of any civil penalty, the
16 commissioner shall give due consideration to the history

17 of previous violations of any person; the seriousness of the
18 violation, including any irreparable harm to the
19 environment, and the demonstrated good faith of any
20 person charged in attempting to achieve compliance with
21 this article after written notification of the violation.

22 (2) The commissioner may assess a penalty of not
23 more than five hundred dollars for the first offense or
24 nonserious violation, as determined by the commissioner
25 in accordance with the rules promulgated in accordance
26 with the provisions of article three, chapter twenty-nine-a
27 of this code, and not more than one thousand dollars for a
28 serious, repeat or intentional violation, as determined by
29 the commissioner in accordance with the promulgated
30 rules.

31 (3) The civil penalty is payable to the state of West
32 Virginia and is collectible in any manner now or hereafter
33 provided for collection of a debt. Any person liable to
34 pay the civil penalty and neglecting or refusing to pay the
35 civil penalty, shall be assessed interest at ten percent per
36 annum from the date the penalty was assessed. The
37 penalty and interest constitute a lien in favor of the state of
38 West Virginia and shall attach on the person's property
39 when the lien is properly recorded in the county where the
40 property is located. There may be no cost as a condition
41 precedent to recording.

42 (c) Notwithstanding any other provision of law to the
43 contrary, the commissioner may propose for
44 promulgation and adopt rules which permit consent
45 agreements or negotiated settlements for the civil penalties
46 assessed as a result of a violation of the provisions of this
47 article.

48 (d) Nothing in this article may be construed as to
49 require the commissioner to report minor violations of this
50 article when the commissioner believes that the public
51 interest will be best served by a written notice.

52 (e) No state court may allow the recovery of damages
53 for administrative action taken if the court finds that there
54 was probable cause for the action.

CHAPTER 4

(S. B. 585—By Senators Prezioso and Bowman)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article twenty-nine, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to leasing property owned by regional airport authorities; and eliminating certain restrictions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29. INTERGOVERNMENTAL RELATIONS — REGIONAL AIRPORTS.

§8-29-14. Authorities may lease facilities.

1 Each authority may lease its airport and all or any part
2 of the appurtenances and facilities therewith to any
3 available lessee, subject to all constitutional and statutory
4 limitations with respect thereto, at such rental and upon
5 such terms and conditions as the authority deems proper.
6 The leases shall be subordinate to any mortgage or deed
7 of trust executed by the authority. An authority may lease
8 land, the original taking of which was necessary for airport
9 purposes, for economic development purposes compatible
10 with, but not necessarily associated with, airport activities.

CHAPTER 5

(Com. Sub. for H. B. 2394—By Delegates Leach, Beane, Hubbard, Pulliam and Facemyer)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-five, relating to requiring all persons licensed to sell alcoholic liquor, wine or nonintoxicating beer at retail, either for consumption on-premises or off-premises, or both, to display signs warning of the possible danger of birth defects that may be caused by the consumption of alcohol during pregnancy; placement of signs; duties of commissioner to make signs available; imposition of civil administrative penalty for violation; legislative rules; creation of "fetal alcohol syndrome fund"; and disposition of moneys.

Be it enacted by the Legislature of West Virginia:

That article six, chapter sixty 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-five, to read as follows:

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-25. Mandatory signs to be posted warning of the possible dangers of consumption of alcohol during pregnancy.

1 (a) Beginning the first day of July, one thousand nine
2 hundred ninety-eight, all persons licensed to sell alcoholic
3 liquor, wine or nonintoxicating beer at retail, either for
4 consumption on-premises or off-premises, or both, shall
5 display signs provided by the alcohol beverage control
6 commissioner warning of the possible danger of birth
7 defects which may result from the consumption of alcohol
8 during pregnancy. These signs shall be displayed upon
9 the licensed premises in the following manner:

10 (1) If a licensee holds a license providing for the retail
11 sale of alcoholic liquor, wine or nonintoxicating beer for

12 on-premises consumption, the sign shall be posted in an
13 open and prominent place in the licensed portion of the
14 establishment: *Provided*, That self-service "mini-bars" in
15 hotel guest rooms are exempt: *Provided, however*, That
16 airports, convention centers, sports facilities and other
17 licensed premises with more than one authorized location
18 of sales, service and consumption shall post signs in plain
19 view to the majority of patrons entering or approaching
20 the licensed portion of the premises.

21 (2) If the licensee holds a license providing for the
22 retail sale of alcoholic liquor, wine or nonintoxicating beer
23 for off-premises consumption, the sign shall be posted in
24 plain view at the main entrance to the licensed premises.

25 (3) If the licensee is a liquor manufacturer, the notices
26 shall be posted in plain view at the main entrance to areas
27 where alcohol is sold for off-premises consumption. If a
28 manufacturer's tasting rooms have separate buildings or
29 separate entrances, the sign shall be posted in plain view at
30 the main entrance to the tasting area.

31 (b) The alcohol beverage control commissioner shall
32 make signs and replacements warning of the possible
33 danger of birth defects which may result from the
34 consumption of alcohol during pregnancy available to
35 each licensee governed by the provisions of this section.

36 (c)(1) Upon a determination by the commissioner that
37 a licensee has failed to comply with the provisions of this
38 section, the commissioner may impose a civil
39 administrative penalty of not less than one hundred dollars
40 nor more than one thousand dollars for each violation.
41 The provisions of section fifteen of this article shall not
42 apply to a violation of this section.

43 (2) The commissioner shall propose legislative rules
44 for promulgation pursuant to the provisions of chapter
45 twenty-nine-a of this code setting forth:

46 (A) Objective criteria against which the exercise of the
47 commissioner's discretion in the determination of whether
48 to impose a civil administrative penalty is to be measured;
49 and

50 (B) Procedures meeting the requirements of due
51 process through which an alleged violation of this section
52 may be contested.

53 (3) The proceeds of civil administrative penalties
54 collected for violations of this section shall be deposited in
55 a fund hereby established in the state treasury to be known
56 as the "fetal alcohol syndrome fund". The commissioner
57 shall expend the moneys deposited in the fund to educate
58 the public concerning the dangers of fetal alcohol
59 syndrome without appropriation except as provided in this
60 subsection. After the sum of five thousand dollars has
61 been deposited into the fund during a fiscal year, any
62 additional deposits shall be divided as follows: (1) An
63 amount necessary to allow the commissioner to carry out
64 his or her duties pursuant to this section, not to exceed one
65 half of such additional deposits, shall be deposited in the
66 alcohol beverage control administration fund; and (2) the
67 remainder of such additional deposits shall be made to the
68 state fund, general revenue. Any moneys remaining in the
69 fund on the thirtieth day of June of each year shall be
70 subject to reappropriation for expenditure during the
71 following fiscal year. The commissioner shall annually file
72 a report with the president of the Senate and the speaker
73 of the House of Delegates, informing the Legislature as to
74 the amounts deposited in the funds, and the purposes for
75 which the amounts deposited in the alcohol beverage
76 control administration fund were expended.

CHAPTER 6

(Com. Sub. for S. B. 150—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 21, 1998; in effect from passage. Approved by the Governor.]

AN ACT making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the constitution.

Be it enacted by the Legislature of West Virginia:

Title

- I. General Provisions.**
- II. Appropriations.**
- III. Administration.**

TITLE I—GENERAL PROVISIONS.

- §1. General policy.
- §2. Definitions.
- §3. Classification of appropriations.
- §4. Method of expenditure.
- §5. Maximum expenditures.

TITLE I—GENERAL PROVISIONS.

1 **Section 1. General policy.**—The purpose of this bill
 2 is to appropriate money necessary for the economical and
 3 efficient discharge of the duties and responsibilities of the
 4 state and its agencies during the fiscal year one thousand
 5 nine hundred ninety-nine.

1 **Sec. 2. Definitions.**—For the purpose of this bill:

2 "Governor" shall mean the governor of the state of
 3 West Virginia.

4 "Code" shall mean the code of West Virginia, one
 5 thousand nine hundred thirty-one, as amended.

6 "Spending unit" shall mean the department, division,
 7 office, board, commission, agency or institution to which
 8 an appropriation is made.

9 The "fiscal year one thousand nine hundred ninety-
 10 nine" shall mean the period from the first day of July, one
 11 thousand nine hundred ninety-eight, through the thirtieth
 12 day of June, one thousand nine hundred ninety-nine.

13 "General revenue fund" shall mean the general
 14 operating fund of the state and includes all moneys
 15 received or collected by the state except as provided in
 16 section two, article two, chapter twelve of the code or as
 17 otherwise provided.

18 "Special revenue funds" shall mean specific revenue
 19 sources which by legislative enactments are not required to
 20 be accounted for as general revenue, including federal
 21 funds.

22 "From collections" shall mean that part of the total
23 appropriation which must be collected by the spending
24 unit to be available for expenditure. If the authorized
25 amount of collections is not collected, the total
26 appropriation for the spending unit shall be reduced
27 automatically by the amount of the deficiency in the
28 collections. If the amount collected exceeds the amount
29 designated "from collections," the excess shall be set aside
30 in a special surplus fund and may be expended for the
31 purpose of the spending unit as provided by article two,
32 chapter five-a of the code.

1 **Sec. 3. Classification of appropriations.**—An appro-
2 priation for:

3 "Personal services" shall mean salaries, wages and other
4 compensation paid to full-time, part-time and temporary
5 employees of the spending unit but shall not include fees
6 or contractual payments paid to consultants or to
7 independent contractors engaged by the spending unit.

8 Unless otherwise specified, appropriations for
9 "personal services" shall include salaries of heads of
10 spending units.

11 "Annual increment" shall mean funds appropriated for
12 "eligible employees" and shall be disbursed only in
13 accordance with article five, chapter five of the code.

14 Funds appropriated for "annual increment" shall be
15 transferred to "personal services" or other designated items
16 only as required.

17 "Employee benefits" shall mean social security
18 matching, workers' compensation, unemployment
19 compensation, pension and retirement contributions,
20 public employees insurance matching, personnel fees or
21 any other benefit normally paid by the employer as a
22 direct cost of employment. Should the appropriation be
23 insufficient to cover such costs, the remainder of such cost
24 shall be transferred by each spending unit from its
25 "personal services" line item or its "unclassified" line item

26 to its "employee benefits" line item. If there is no
27 appropriation for "employee benefits," such costs shall be
28 transferred by each spending unit from its "personal
29 services" line item or its "unclassified" line item. Each
30 spending unit is hereby authorized and required to make
31 such payments in accordance with the provisions of article
32 two, chapter five-a of the code.

33 Each spending unit shall be responsible for all
34 contributions, payments or other costs related to coverage
35 and claims of its employees for unemployment
36 compensation. Such expenditures shall be considered an
37 employee benefit.

38 "Current expenses" shall mean operating costs other
39 than personal services and shall not include equipment,
40 repairs and alterations, buildings or lands.

41 Each spending unit shall be responsible for and
42 charged monthly for all postage meter service and shall
43 reimburse the appropriate revolving fund monthly for all
44 such amounts. Such expenditures shall be considered a
45 current expense.

46 "Equipment" shall mean equipment items which have
47 an appreciable and calculable period of usefulness in
48 excess of one year.

49 "Repairs and alterations" shall mean routine
50 maintenance and repairs to structures and minor
51 improvements to property which do not increase the
52 capital assets.

53 "Buildings" shall include new construction and major
54 alteration of existing structures and the improvement of
55 lands and shall include shelter, support, storage, protection
56 or the improvement of a natural condition.

57 "Lands" shall mean the purchase of real property or
58 interest in real property.

59 "Capital outlay" shall mean and include buildings,
60 lands or buildings and lands, with such category or item of

61 appropriation to remain in effect as provided by section
62 twelve, article three, chapter twelve of the code.

63 From appropriations made to the spending units of
64 state government, upon approval of the governor there
65 may be transferred to a special account an amount
66 sufficient to match federal funds under any federal act.

67 Appropriations classified in any of the above
68 categories shall be expended only for the purposes as
69 defined above and only for the spending units herein
70 designated: *Provided*, That the secretary of each
71 department shall have the authority to transfer within the
72 department those general revenue funds appropriated to
73 the various agencies of the department: *Provided*,
74 *however*, That no more than five percent of the general
75 revenue funds appropriated to any one agency or board
76 may be transferred to other agencies or boards within the
77 department: *Provided further*, That the secretary of each
78 department and the director, commissioner, executive
79 secretary, superintendent, chairman or any other agency
80 head not governed by a departmental secretary as
81 established by chapter five-f of the code shall have the
82 authority to transfer funds appropriated to "personal
83 services" and "employee benefits" to other lines within the
84 same account and no funds from other lines shall be
85 transferred to the "personal services" line: *And provided*
86 *further*, That upon written request of the speaker of the
87 house of delegates, the auditor shall transfer within the
88 general revenue fund amounts from the total
89 appropriations of the house of delegates to other agencies,
90 boards or departments: *And provided further*, That if the
91 Legislature by subsequent enactment consolidates
92 agencies, boards or functions, the secretary may transfer
93 the funds formerly appropriated to such agency, board or
94 function in order to implement such consolidation. No
95 funds may be transferred from a special revenue account,
96 dedicated account, capital expenditure account or any
97 other account or fund specifically exempted by the
98 Legislature from transfer, except that the use of the
99 appropriations from the state road fund transferred to the

100 office of the secretary of the department of transportation
 101 is not a use other than the purpose for which such funds
 102 were dedicated and is permitted.

103 Appropriations otherwise classified shall be expended
 104 only where the distribution of expenditures for different
 105 purposes cannot well be determined in advance or it is
 106 necessary or desirable to permit the spending unit the
 107 freedom to spend an appropriation for more than one of
 108 the above classifications.

1 **Sec. 4. Method of expenditure.**—Money appropri-
 2 ated by this bill, unless otherwise specifically directed,
 3 shall be appropriated and expended according to the
 4 provisions of article three, chapter twelve of the code or
 5 according to any law detailing a procedure specifically
 6 limiting that article.

7 Funds of the state of West Virginia not heretofore
 8 classified as to purpose and existing within the funds of
 9 the treasury shall be determined by the governor and
 10 transferred to a special account for the purpose of
 11 expenditure as part of the general fund of the state.

1 **Sec. 5. Maximum expenditures.**—No authority or
 2 requirement of law shall be interpreted as requiring or
 3 permitting an expenditure in excess of the appropriations
 4 set out in this bill.

TITLE II—APPROPRIATIONS.

§1. Appropriations from general revenue.

BUREAU OF COMMERCE

Board of Coal Mine Health and Safety—Fund No. 0280	109
Coal Mine Safety and Technical Review Committee— Fund No. 0285	109
Division of Forestry—Fund No. 0250	104
Division of Labor—Fund No. 0260	107
Division of Miners' Health, Safety and Training— Fund No. 0277	108
Division of Natural Resources—Fund No. 0265	108
Geological and Economic Survey—Fund No. 0253	104
West Virginia Development Office—Fund No. 0256	105

BUREAU OF ENVIRONMENT

Air Quality Board—Fund No. 0550	110
Division of Environmental Protection—Fund No. 0273	110
Environmental Quality Board—Fund No. 0270	109

Interstate Commission on Potomac River Basin— Fund No. 0263	110
Ohio River Valley Water Sanitation Commission— Fund No. 0264	110
BUREAU OF EMPLOYMENT PROGRAMS	
Bureau of Employment Programs— Fund No. 0572	111
BUREAU OF SENIOR SERVICES	
Bureau of Senior Services— Fund No. 0420	111
DEPARTMENT OF ADMINISTRATION	
Board of Risk and Insurance Management— Fund No. 0217	72
Commission on Uniform State Laws—Fund No. 0214	72
Committee for the Purchase of Commodities and Services from the Handicapped—Fund No. 0233	75
Consolidated Public Retirement Board— Fund No. 0195	70
Department of Administration—Office of the Secretary—Fund No. 0186	70
Division of Finance—Fund No. 0203	71
Division of General Services—Fund No. 0230	71
Division of Purchasing—Fund No. 0210	72
Education and State Employees Grievance Board— Fund No. 0220	73
Ethics Commission—Fund No. 0223	73
Public Defender Services—Fund No. 0226	74
Public Employees Insurance Agency—Fund No. 0200	75
West Virginia Prosecuting Attorneys Institute— Fund No. 0557	75
DEPARTMENT OF EDUCATION	
State Board of Education—Division of Educational Performance Audits—Fund No. 0573	79
State Board of Education—Vocational Division— Fund No. 0390	79
State Department of Education—Aid for Exceptional Children—Fund No. 0314	78
State Department of Education—Fund No. 0313	76
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State Department of Education—State Aid to Schools—Fund No. 0317	78
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§10. Special revenue appropriations.

§11. State improvement fund appropriations.

§12. Specific funds and collection accounts.

§13. Appropriations for refunding erroneous payment.

§14. Sinking fund deficiencies.

§15. Appropriations for local governments.

§16. Total appropriations.

§17. General school fund.

TITLE II—APPROPRIATIONS.

- 1 Section 1. Appropriations from general revenue.
- 2 —From the state fund, general revenue, there are hereby
- 3 appropriated conditionally upon the fulfillment of the
- 4 provisions set forth in article two, chapter five-a of the
- 5 code the following amounts, as itemized, for expenditure

6 during the fiscal year one thousand nine hundred ninety-
7 nine.

LEGISLATIVE

1—Senate

Fund 0165 FY 1999 Org 2100

	Activity	General Revenue Fund
1	Compensation of Members (R) 003	\$ 816,200
2	Compensation and Per Diem of	
3	Officers and Employees (R) 005	2,179,200
4	Employee Benefits (R) 010	414,000
5	Current Expenses and Contingent	
6	Fund (R) 021	560,000
7	Repairs and Alterations (R) 064	200,000
8	Computer Supplies (R) 101	15,000
9	Computer Systems (R) 102	200,000
10	Printing Blue Book (R) 103	150,000
11	Expenses of Members (R) 399	<u>445,000</u>
12	Total	\$ 4,979,400

13 The appropriations for the senate for the fiscal year
14 1997-98 are to remain in full force and effect and are
15 hereby reappropriated to June 30, 1999. Any balances so
16 reappropriated may be transferred and credited to the
17 1998-99 accounts.

18 Upon the written request of the clerk of the senate, the
19 auditor shall transfer amounts between items of the total
20 appropriation in order to protect or increase the efficiency
21 of the service.

22 The clerk of the senate, with the approval of the
23 president, is authorized to draw his or her requisitions
24 upon the auditor, payable out of the Current Expenses and
25 Contingent Fund of the senate, for any bills for supplies
26 and services that may have been incurred by the senate

27 and not included in the appropriation bill, for supplies and
28 services incurred in preparation for the opening, the
29 conduct of the business and after adjournment of any
30 regular or extraordinary session, and for the necessary
31 operation of the senate offices, the requisitions for which
32 are to be accompanied by bills to be filed with the auditor.

33 The clerk of the senate, with the written approval of
34 the president, or the president of the senate shall have
35 authority to employ such staff personnel during any
36 session of the Legislature as shall be needed in addition to
37 staff personnel authorized by the senate resolution
38 adopted during any such session. The clerk of the senate,
39 with the written approval of the president, or the president
40 of the senate shall have authority to employ such staff
41 personnel between sessions of the Legislature as shall be
42 needed, the compensation of all staff personnel during
43 and between sessions of the Legislature, notwithstanding
44 any such senate resolution, to be fixed by the president of
45 the senate. The clerk is hereby authorized to draw his or
46 her requisitions upon the auditor for the payment of all
47 such staff personnel for such services, payable out of the
48 appropriation for Compensation and Per Diem of Officers
49 and Employees or Current Expenses and Contingent Fund
50 of the senate.

51 For duties imposed by law and by the senate, the clerk
52 of the senate shall be paid a monthly salary as provided by
53 the senate resolution, unless increased between sessions
54 under the authority of the president, payable out of the
55 appropriation for Compensation and Per Diem of Officers
56 and Employees or Current Expenses and Contingent Fund
57 of the senate.

58 The distribution of the blue book shall be by the
59 office of the clerk of the senate and shall include
60 seventy-five copies for each member of the Legislature
61 and two copies for each classified and approved high
62 school and junior high school and one copy for each
63 elementary school within the state.

2—House of Delegates

Fund 0170 FY 1999 Org 2200

1	Compensation of Members (R)	003	\$ 2,200,000
2	Compensation and Per Diem of		
3	Officers and Employees (R)	005	521,162
4	Current Expenses and Contingent		
5	Fund (R)	021	3,500,000
6	Expenses of Members (R)	399	<u>1,120,000</u>
7	Total		\$ 7,341,162

8 The appropriations for the house of delegates for the
9 fiscal year 1997-98 are to remain in full force and effect
10 and are hereby reappropriated to June 30, 1999. Any
11 balances so reappropriated may be transferred and
12 credited to the 1998-99 accounts.

13 Upon the written request of the clerk of the house of
14 delegates, the auditor shall transfer amounts between items
15 of the total appropriation in order to protect or increase
16 the efficiency of the service.

17 The clerk of the house of delegates, with the approval
18 of the speaker, is authorized to draw his or her requisitions
19 upon the auditor, payable out of the Current Expenses and
20 Contingent Fund of the house of delegates, for any bills
21 for supplies and services that may have been incurred by
22 the house of delegates and not included in the
23 appropriation bill, for bills for services and supplies
24 incurred in preparation for the opening of the session and
25 after adjournment, and for the necessary operation of the
26 house of delegates' offices, the requisitions for which are
27 to be accompanied by bills to be filed with the auditor.

28 The speaker of the house of delegates, upon approval
29 of the house committee on rules, shall have authority to
30 employ such staff personnel during and between sessions
31 of the Legislature as shall be needed, in addition to
32 personnel designated in the house resolution, and the
33 compensation of all personnel shall be as fixed in such
34 house resolution for the session, or fixed by the speaker,
35 with the approval of the house committee on rules, during
36 and between sessions of the Legislature, notwithstanding
37 such house resolution. The clerk of the house is hereby
38 authorized to draw requisitions upon the auditor for such
39 services, payable out of the appropriation for the

40 Compensation and Per Diem of Officers and Employees
41 or Current Expenses and Contingent Fund of the house of
42 delegates.

43 For duties imposed by law and by the house of
44 delegates, including salary allowed by law as keeper of the
45 rolls, the clerk of the house of delegates shall be paid a
46 monthly salary as provided in the house resolution, unless
47 increased between sessions under the authority of the
48 speaker, with the approval of the house committee on
49 rules, and payable out of the appropriation for
50 Compensation and Per Diem of Officers and Employees
51 or Current Expenses and Contingent Fund of the house of
52 delegates.

3—Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 1999 Org 2300

1	Joint Committee on Government		
2	and Finance (R)	104	\$ 5,091,839
3	Legislative Printing (R)	105	940,000
4	Legislative Rule-Making Review		
5	Committee (R)	106	200,000
6	Legislative Computer System (R)	107	900,000
7	Joint Standing Committee on		
8	Education (R)	108	56,000
9	Tax Reduction and Federal Funding		
10	Increased Compliance (TRAFFIC) 642		<u>10,000,000</u>
11	Total		\$17,187,839

12 The appropriations for the joint expenses for the fiscal
13 year 1997-98 are to remain in full force and effect and
14 are hereby reappropriated to June 30, 1999. Any
15 balances so reappropriated may be transferred and
16 credited to the 1998-99 accounts.

17 Upon the written request of the clerk of the senate,
18 with the approval of the president of the senate, and the
19 clerk of the house of delegates, with the approval of the
20 speaker of the house of delegates, and a copy to the
21 legislative auditor, the auditor shall transfer amounts

22 between items of the total appropriation in order to protect
23 or increase the efficiency of the service.

24 The appropriation for the Tax Reduction and Federal
25 Funding Increased Compliance (TRAFFIC) (fund 0175,
26 activity 642) is intended for possible general state tax
27 reductions or the offsetting of any reductions in federal
28 funding for state programs. It is not intended as a general
29 appropriation for expenditure by the Legislature.

JUDICIAL

4—Supreme Court— General Judicial

Fund 0180 FY 1999 Org 2400

1	Personal Services (R)	001	\$29,934,022
2	Annual Increment (R)	004	456,350
3	Social Security Matching (R)	011	2,342,770
4	Public Employees' Insurance		
5	Matching (R)	012	3,441,820
6	Public Employees' Retirement		
7	Matching (R)	016	2,907,319
8	Other Expenses (R)	029	3,900,000
9	Judges' Retirement System (R)	110	5,416,036
10	Other Court Costs (R)	111	2,600,000
11	Judicial Training Program (R)	112	250,000
12	Mental Hygiene Fund (R)	113	975,000
13	Family Law Master Program (R)	190	1,324,055
14	Guardianship Attorney Fees (R)	588	<u>150,000</u>
15	Total		\$53,697,372

16 The appropriations to the supreme court of appeals for
17 the fiscal years 1995-96, 1996-97 and 1997-98 are to
18 remain in full force and effect and are hereby
19 reappropriated to June 30, 1999. Any balances so
20 reappropriated may be transferred and credited to the
21 1998-99 accounts.

22 This appropriation shall be administered by the
 23 administrative director of the supreme court of appeals,
 24 who shall draw his or her requisitions for warrants in
 25 payment in the form of payrolls, making deductions
 26 therefrom as required by law for taxes and other items.

27 The appropriation for the Judges' Retirement System is
 28 to be transferred to the consolidated public retirement
 29 board, in accordance with the law relating thereto, upon
 30 requisition of the administrative director of the supreme
 31 court of appeals.

EXECUTIVE

5—Governor's Office

(WV Code Chapter 5)

Fund 0101 FY 1999 Org 0100

1	Personal Services	001	\$ 1,699,351
2	Salary of Governor	002	90,000
3	Annual Increment	004	17,250
4	Employee Benefits	010	428,946
5	Unclassified	099	991,818
6	National Governors' Association	123	64,900
7	Southern States Energy Board	124	38,732
8	WV Human Resource		
9	Investment Council	294	260,000
10	Southern Growth Policies Board	299	24,339
11	Southern Technology Council	308	10,000
12	Southern Governors' Association	314	5,740
13	National Governors' Association		
14	for State Budget Officers	315	<u>11,100</u>
15	Total		\$ 3,642,176

*6—Governor's Office—
 Custodial Fund*

(WV Code Chapter 5)

Fund 0102 FY 1999 Org 0100

1 Unclassified—Total 096 \$ 501,241
 2 To be used for current general expenses, including
 3 compensation of employees, household maintenance, cost
 4 of official functions and additional household expenses
 5 occasioned by such official functions.

*7—Governor's Office—
 Governor's Cabinet on Children and Families*

(WV Code Chapter 5)

Fund 0104 FY 1999 Org 0100

1 Unclassified 099 \$ 305,304
 2 Starting Points Centers and Parent
 3 Education Services 316 1,244,500
 4 Total \$ 1,549,804

5 Any unexpended balance remaining in the
 6 appropriation for Governor's Cabinet on Children and
 7 Families - Total (fund 0104, activity 116) at the close of
 8 the fiscal year 1997-98 is hereby reappropriated for
 9 expenditure during the fiscal year 1998-99.

*8—Governor's Office—
 Civil Contingent Fund*

(WV Code Chapter 5)

Fund 0105 FY 1999 Org 0100

1 Civil Contingent Fund—Total (R) 114 \$ 150,000

2 Any unexpended balances remaining in the
 3 appropriations for Civil Contingent Fund-Total (fund
 4 0105, activity 114), Civil Contingent Fund-Surplus (fund
 5 0105, activity 263) and Unclassified-Surplus-Total (fund
 6 0105, activity 098) at the close of the fiscal year 1997-98
 7 are hereby reappropriated for expenditure during the
 8 fiscal year 1998-99.

9 From this appropriation there may be expended, at the
 10 discretion of the governor, an amount not to exceed one
 11 thousand dollars as West Virginia's contribution to the
 12 interstate oil compact commission.

13 The above appropriation is intended to provide
 14 contingency funding for accidental, unanticipated,

15 emergency or unplanned events which may occur during
 16 the fiscal year and is not to be expended for the normal
 17 day-to-day operations of the governor's office.

9—Auditor's Office—

General Administration

(WV Code Chapter 12)

Fund 0116 FY 1999 Org 1200

1	Personal Services	001	\$ 1,815,438
2	Salary of Auditor	002	70,000
3	Annual Increment	004	50,523
4	Employee Benefits	010	627,401
5	Unclassified (R)	099	590,283
6	Office Automation (R)	117	<u>790,000</u>
7	Total		\$ 3,943,645

8 Any unexpended balances remaining in the
 9 appropriations for Unclassified (fund 0116, activity 099)
 10 and Office Automation (fund 0116, activity 117), at the
 11 close of the fiscal year 1997-98 are hereby reappropriated
 12 for expenditure during the fiscal year 1998-99.

13 Any unexpended balances remaining in the
 14 appropriations for Image Processing and Printer
 15 Replacement (fund 0116, activity 240) and Encoding
 16 System and Printer Replacement-Surplus (fund 0116,
 17 activity 767) at the close of the fiscal year 1997-98 are
 18 hereby reappropriated for expenditure during the fiscal
 19 year 1998-99. Any balances so reappropriated are hereby
 20 redesignated Office Automation (fund 0116, activity 117).

10—Auditor's Office—

Family Law Masters

Administration Fund

(WV Code Chapter 48A)

Fund 0117 FY 1999 Org 1200

1	Unclassified—Total	096	\$ 450,000
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2 The above appropriation shall be expended for the
 3 administrative expenses of the family law masters

4 program, excluding personal services and employee
5 benefits.

11—Treasurer's Office

(WV Code Chapter 12)

Fund 0126 FY 1999 Org 1300

1	Personal Services	001	\$ 1,569,556
2	Salary of Treasurer	002	65,000
3	Annual Increment	004	34,856
4	Employee Benefits	010	538,087
5	Unclassified (R)	099	1,246,101
6	Abandoned Property Program	118	278,000
7	Debt Payment on Morris Street—		
8	Workers' Compensation Building.	290	2,000,000
9	Hardware/Software Upgrade	518	-0-
10	Tuition Trust Fund	692	152,210
11	School Building Sinking Fund		
12	Debt Service (R)	770	9,434,000
13	Debt Payment—Regional Jails and		
14	Correctional Facilities (R)	771	<u>-0-</u>
15	Total		\$15,317,810

16 Any unexpended balances remaining in the
17 appropriations for Unclassified (fund 0126, activity 099),
18 Imaging System (fund 0126, activity 006), School
19 Building Sinking Fund Debt Service (fund 0126, activity
20 770), Debt Payment - Regional Jails and Correctional
21 Facilities (fund 0126, activity 771) and Tuition Trust Fund
22 (fund 0126, activity 692) at the close of the fiscal year
23 1997-98 are hereby reappropriated for expenditure
24 during the fiscal year 1998-99.

12—Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 1999 Org 1400

1	Personal Services	001	\$ 3,178,115
2	Salary of Commissioner	002	70,000

3	Annual Increment	004	71,200
4	Employee Benefits	010	1,191,106
5	Unclassified (R)	099	1,004,955
6	Gypsy Moth Program (R).	119	820,055
7	Mingo County Surface Mine		
8	Project (R)	296	150,000
9	Moorefield Agriculture Center	786	251,430
10	Bee Research	691	70,000
11	Microbiology Program	785	150,000
12	Predator Control	470	90,000
13	Charleston Farmers Market	476	150,000
14	Central City Market Place	808	<u>90,000</u>
15	Total		\$ 7,286,861

16 Any unexpended balances remaining in the
 17 appropriations for Unclassified (fund 0131, activity 099),
 18 Gypsy Moth Program (fund 0131, activity 119), Mingo
 19 County Surface Mine Project (fund 0131, activity 296),
 20 Moorefield Field Office Furnishings - Surplus (fund 0131,
 21 activity 724) and Logan Farmers Market - Surplus (fund
 22 0131, activity 728) at the close of the fiscal year 1997-98
 23 are hereby reappropriated for expenditure during the
 24 fiscal year 1998-99.

25 A portion of the Unclassified appropriation may be
 26 transferred to a special revenue fund for the purpose of
 27 matching federal funds for marketing and development
 28 activities.

*13—Department of Agriculture—
 State Soil Conservation Committee*

(WV Code Chapter 19)

Fund 0132 FY 1999 Org 1400

1	Personal Services	001	\$ 417,844
2	Annual Increment	004	8,400
3	Employee Benefits	010	142,382
4	Unclassified (R)	099	282,455

5	Soil Conservation Projects (R)	120	2,500,000
6	Maintenance of Flood Control		
7	Projects (R)	522	<u>1,722,990</u>
8	Total		\$ 5,074,071

9 Any unexpended balances remaining in the
 10 appropriations for Unclassified (fund 0132, activity 099),
 11 Maintenance of Flood Control Projects (fund 0132,
 12 activity 522), Soil Conservation Projects (fund 0132,
 13 activity 120) and Soil Conservation Projects - Surplus
 14 (fund 0132, activity 269) at the close of the fiscal year
 15 1997-98 are hereby reappropriated for expenditure
 16 during the fiscal year 1998-99.

*14—Department of Agriculture—
Meat Inspection*

(WV Code Chapter 19)

Fund 0135 FY 1999 Org 1400

1	Personal Services	001	\$ 348,079
2	Annual Increment	004	8,696
3	Employee Benefits	010	129,944
4	Unclassified	099	<u>76,317</u>
5	Total		\$ 563,036

6 Any part or all of this appropriation may be
 7 transferred to a special revenue fund for the purpose of
 8 matching federal funds for the above-named program.

*15—Department of Agriculture—
Agricultural Awards*

(WV Code Chapter 19)

Fund 0136 FY 1999 Org 1400

1	Agricultural Awards	121	\$ -0-
2	Commissioner's Awards/Programs . . .	737	90,000
3	Fairs and Festivals	122	<u>382,000</u>
4	Total		\$ 472,000

16—Attorney General

(WV Code Chapters 5, 14, 46A and 47)

Fund 0150 FY 1999 Org 1500

1	Personal Services (R)	001	\$ 2,145,120
2	Salary of Attorney General	002	75,000
3	Annual Increment (R)	004	34,900
4	Employee Benefits (R)	010	632,441
5	Unclassified (R)	099	608,598
6	Better Government Bureau (R)	740	<u>237,943</u>
7	Total		\$ 3,734,002

8 Any unexpended balance remaining in the
 9 appropriation at the close of the fiscal year 1997-98 is
 10 hereby reappropriated for expenditure during the fiscal
 11 year 1998-99.

12 When legal counsel or secretarial help is appointed by
 13 the attorney general for any state spending unit, this ac-
 14 count shall be reimbursed from such spending unit's spe-
 15 cifically appropriated account or from accounts appropri-
 16 ated by general language contained within this bill: *Pro-*
 17 *vided*, That the spending unit shall reimburse at a rate and
 18 upon terms agreed to by the state spending unit and the
 19 attorney general: *Provided, however*, That if the spending
 20 unit and the attorney general are unable to agree on the
 21 amount and terms of the reimbursement, the spending unit
 22 and the attorney general shall submit their proposed reim-
 23 bursement rates and terms to the joint committee on gov-
 24 ernment and finance for final determination.

17—*Secretary of State*

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 1999 Org 1600

1	Personal Services	001	\$ 566,203
2	Salary of Secretary of State	002	65,000
3	Annual Increment	004	11,670
4	Employee Benefits	010	216,456
5	Unclassified (R)	099	<u>338,997</u>
6	Total		\$ 1,198,326

7 Any unexpended balances remaining in the
 8 appropriations for Unclassified (fund 0155, activity 099),
 9 Administrative Law Improvements (fund 0155, activity
 10 617), Technology Improvements (fund 0155, activity
 11 599) and Technology Improvements - Surplus (fund
 12 0155, activity 725) at the close of the fiscal year 1997-98
 13 are hereby reappropriated for expenditure during the
 14 fiscal year 1998-99.

18—State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 1999 Org 1601

1	Unclassified—Total	096	\$	12,000
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DEPARTMENT OF ADMINISTRATION

*19—Department of Administration—
Office of the Secretary*

(WV Code Chapter 5F)

Fund 0186 FY 1999 Org 0201

1	Unclassified	099	\$	245,197
2	Public Employees' Insurance			
3	Match (R)-Transfer	012		<u>3,550,000</u>
4	Total		\$	3,795,197

5 The above appropriation for Public Employees'
 6 Insurance Match (R)-Transfer (fund 0186, activity 012)
 7 shall be used to offset the January 1, 1999 increases in
 8 deductibles and copayments proposed for all state
 9 employees.

20—Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 1999 Org 0205

1 The division of highways, division of motor vehicles,
 2 bureau of employment programs, public service
 3 commission and other departments or divisions operating
 4 from special revenue funds and/or federal funds shall pay
 5 their proportionate share of the retirement costs for their
 6 respective divisions. When specific appropriations are not
 7 made, such payments may be made from the balances in

8 the various special revenue funds in excess of specific
9 appropriations.

21—*Division of Finance*

(WV Code Chapter 5A)

Fund 0203 FY 1999 Org 0209

1	Personal Services	001	\$	524,650
2	Annual Increment	004		11,090
3	Employee Benefits	010		153,362
4	Unclassified	099		549,175
5	GAAP Project (R)	125		<u>1,263,808</u>
6	Total		\$	2,502,085

7 Any unexpended balance remaining in the
8 appropriation for GAAP Project (fund 0203, activity 125)
9 at the close of the fiscal year 1997-98 is hereby
10 reappropriated for expenditure during the fiscal year
11 1998-99.

22—*Division of General Services*

(WV Code Chapter 5A)

Fund 0230 FY 1999 Org 0211

1	Personal Services	001	\$	467,904
2	Annual Increment	004		20,300
3	Employee Benefits	010		215,206
4	Unclassified	099		956,441
5	Capitol Complex-Capital Outlay	417		500,000
6	Fire Service Fee	126		<u>13,440</u>
7	Total		\$	2,173,291

1 Any unexpended balances remaining in the
2 appropriations for Capitol Building Preservation (fund
3 0230, activity 503), Capitol Building Preservation-Surplus
4 (fund 0230, activity 675), Capital Improvements-Capitol
5 Complex-Surplus (fund 0230, activity 676), Capitol
6 Complex-Capital Outlay (fund 0230, activity 417), Capitol
7 Complex-Capital Outlay-Surplus (fund 0230, activity
8 526), Capitol Complex Master Plan-Total-Surplus (fund

9 0230, activity 606), Chilled Water Plant-Phase III (fund
 10 0230, activity 291), Capital Improvements-Capitol
 11 Complex-Surplus (fund 0230, activity 676) and Capitol
 12 Complex-Capital Outlay-Total-Surplus (fund 0230,
 13 activity 777) at the close of the fiscal year 1997-98 are
 14 hereby reappropriated for expenditure during the fiscal
 15 year 1998-99.

23—Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 1999 Org 0213

1	Personal Services	001	\$	570,000
2	Annual Increment	004		14,982
3	Employee Benefits	010		193,051
4	Unclassified	099		131,584
5	Purchasing Card Program	711		<u>121,788</u>
6	Total		\$	1,031,405

7 The division of highways shall reimburse the
 8 Unclassified appropriation (fund 2031, activity 099)
 9 within the division of purchasing for all actual expenses
 10 incurred pursuant to the provisions of section thirteen,
 11 article two-a, chapter seventeen of the code.

24—Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 1999 Org 0217

1	Unclassified—Total	096	\$	22,000
2	To pay expenses of members of the commission on			
3	uniform state laws.			

25—Board of Risk and Insurance Management

(WV Code Chapter 29)

Fund 0217 FY 1999 Org 0218

1	Unclassified	099	\$	10,454,116
2	Retro Payments	523		<u>4,850,000</u>
3	Total		\$	15,304,116

4 The above appropriation includes funding for the
 5 purpose of paying premiums, self-insurance losses, loss
 6 adjustment expenses and loss prevention engineering fees
 7 for property, casualty and fidelity insurance for the
 8 various state agencies, except those operating from special
 9 revenue funds, with such special revenue fund agencies to
 10 be billed by the board of risk and insurance management
 11 and with such costs to be a proper charge against such
 12 spending units.

13 These funds may be transferred to a special account
 14 for the payment of premiums, self-insurance losses, loss
 15 adjustment expenses and loss prevention engineering fees
 16 and may be transferred to a special account for
 17 disbursement for payment of premiums and insurance
 18 losses.

*26—Education and State Employees’
 Grievance Board*

(WV Code Chapter 18)

Fund 0220 FY 1999 Org 0219

1	Personal Services	001	\$ 660,822
2	Annual Increment	004	7,683
3	Employee Benefits	010	192,839
4	Unclassified	099	<u>169,678</u>
5	Total		\$ 1,031,022

27—Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 1999 Org 0220

1	Personal Services	001	\$ 190,262
2	Annual Increment	004	1,650
3	Employee Benefits	010	57,149
4	Unclassified	099	<u>119,979</u>
5	Total		\$ 369,040

28—Public Defender Services
(WV Code Chapter 29)

Fund 0226 FY 1999 Org 0221

1	Personal Services	001	\$	252,039
2	Annual Increment	004		4,050
3	Employee Benefits	010		85,260
4	Unclassified (R)	099		95,540
5	Appointed Counsel Fees and Public			
6	Defender Corporations (R)	127		-0-
7	Appointed Counsel Fees	788		13,337,469
8	Public Defender Corporation-			
9	1st Judicial Circuit	789		662,930
10	Public Defender Corporation-			
11	2nd Judicial Circuit	790		359,158
12	Public Defender Corporation-			
13	5th Judicial Circuit	791		371,200
14	Public Defender Corporation-			
15	6th Judicial Circuit	792		883,180
16	Public Defender Corporation-			
17	7th Judicial Circuit	793		353,935
18	Public Defender Corporation-			
19	8th Judicial Circuit	794		328,370
20	Public Defender Corporation-			
21	9th Judicial Circuit	795		536,330
22	Public Defender Corporation-			
23	10th Judicial Circuit	796		530,675
24	Public Defender Corporation-			
25	12th Judicial Circuit	797		315,200
26	Public Defender Corporation-			
27	13th Judicial Circuit	798		2,136,183
28	Public Defender Corporation-			
29	15th Judicial Circuit	799		633,625
30	Public Defender Corporation-			
31	23rd Judicial Circuit	800		1,065,280

32	Public Defender Corporation-		
33	28th Judicial Circuit	801	197,215
34	Public Defender Corporation-		
35	30th Judicial Circuit	802	<u>400,155</u>
36	Total		\$22,547,794
37	Any unexpended balances remaining in the		
38	appropriations for Unclassified (fund 0226, activity 099)		
39	and Appointed Counsel Fees and Public Defender		
40	Corporations (fund 0226, activity 127) at the close of the		
41	fiscal year 1997-98 are hereby reappropriated for		
42	expenditure during the fiscal year 1998-99.		

*29—Committee for the Purchase of
Commodities and Services from the Handicapped*
(WV Code Chapter 5A)

Fund 0233 FY 1999 Org 0224

1	Unclassified—Total	096	\$ 4,656
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30—Public Employees Insurance Agency
(WV Code Chapter 5)

Fund 0200 FY 1999 Org 0225

1 The division of highways, division of motor vehicles,
2 bureau of employment programs, public service
3 commission and other departments or divisions operating
4 from special revenue funds and/or federal funds shall pay
5 their proportionate share of the public employees health
6 insurance cost for their respective divisions.

*31—West Virginia Prosecuting
Attorneys' Institute*

Fund 0557 FY 1999 Org 0228

1	Federal Funds/Grant Match	749	\$ 80,000
2	Forensic Medical Examinations—Total	681	<u>251,346</u>
3	Total		\$ 331,346

DEPARTMENT OF EDUCATION

*32—State Department of Education—
School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 0303 FY 1999 Org 0402

1	Personal Services	001	\$	164,282
2	Annual Increment	004		3,291
3	Employee Benefits	010		56,364
4	Unclassified	099		<u>1,781,744</u>
5	Total		\$	2,005,681

*33—State FFA-FHA Camp and
Conference Center*

(WV Code Chapters 18 and 18A)

Fund 0306 FY 1999 Org 0402

1	Personal Services	001	\$	138,057
2	Annual Increment	004		3,250
3	Employee Benefits	010		63,073
4	Unclassified	099		<u>162,360</u>
5	Total		\$	366,740

34—State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 1999 Org 0402

1	Personal Services	001	\$	2,392,225
2	Annual Increment	004		38,524
3	Employee Benefits	010		831,619
4	Unclassified	099		3,580,027
5	WV Education Information			
6	System (WVEIS)	138		2,929,971
7	34/1000 Waiver	139		500,000
8	Increased Enrollment	140		3,373,070
9	National Science Foundation Match	142		139,500
10	Safe Schools	143		2,000,000
11	Computer Basic Skills (R)	145		-0-

12	Implementation of Norm Referenced		
13	Testing Program	297	1,473,433
14	Technology Repair and		
15	Modernization	298	750,000
16	Curriculum Technology		
17	Resource Center	300	251,490
18	Employment Programs Rate Relief . . .	401	720,000
19	Three Tier Funding	411	1,000,000
20	Educational Enhancements	695	2,427,000
21	Governor's Honors Academy	478	190,000
22	WVGC Writing Project	482	-0-
23	Marshall University Graduate		
24	College Writing Project	807	25,000
25	Micro Computer Network	506	150,000
26	Technology and Telecommuni-		
27	cations Initiative (R)	596	2,003,119
28	Professional Certification	615	-0-
29	Adult Advisory Council	621	268,710
30	Foreign Student Education (R)	636	102,676
31	Technology Demonstration Project . . .	639	150,000
32	State Teacher of the Year	640	34,748
33	Principals Mentorship	649	100,000
34	Mingo County Board of Education-		
35	Tax Assessment Error	693	-0-
36	Allowance for Work Based Learning ..	744	50,000
37	Pickens School Support	758	150,000
38	Webster County Board of		
39	Education/Hacker Valley	809	<u>100,000</u>
40	Total		\$25,731,112

41 The above appropriation includes the state board of
42 education and their executive office.

43 Any unexpended balances remaining in the
44 appropriations for Computer Basic Skills (fund 0313,

45 activity 145), Technology and Telecommunications
 46 Initiative (fund 0313, activity 596), Foreign Student
 47 Education (fund 0313, activity 636) and Technology and
 48 Telecommunications Initiative - Surplus (fund 0313,
 49 activity 774) at the close of the fiscal year 1997-98 are
 50 hereby reappropriated for expenditure during the fiscal
 51 year 1998-99.

35—*State Department of Education—
 Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Fund 0314 FY 1999 Org 0402

1	Special Education—Counties	159	\$ 7,336,561
2	Special Education—Institutions	160	2,889,663
3	Education of Juveniles Held in		
4	Predispositional Juvenile		
5	Detention Centers	302	466,450
6	Education of Institutionalized		
7	Juveniles and Adults	472	4,829,705
8	Potomac Center	810	<u>292,805</u>
9	Total		\$15,815,184

10 From the above appropriations, the superintendent
 11 shall have authority to expend funds for the costs of
 12 special education for those children residing in out-of-
 13 state placements.

36—*State Department of Education—
 State Aid to Schools*

(WV Code Chapters 18 and 18A)

Fund 0317 FY 1999 Org 0402

1	Professional Educators	151	\$ 698,871,871
2	Service Personnel	152	217,738,033
3	Fixed Charges	153	80,478,350
4	Transportation	154	34,363,523

5	Administration	155	7,676,603
6	Other Current Expenses	022	106,858,856
7	Improve Instructional Programs . . .	156	<u>33,000,000</u>
8	Basic Foundation Allowances		1,178,987,236
9	Less Local Share	332	<u>(254,502,547)</u>
10	Total Basic State Aid		924,484,689
11	Public Employees'		
12	Insurance Match	012	137,488,199
13	Teachers' Retirement System	019	199,019,000
14	School Building Authority	453	<u>22,667,120</u>
15	Total		\$1,283,659,008

*37—State Board of Education—
Division of Educational Performance Audits*

(WV Code Chapter 18)

Fund 0573 FY 1999 Org 0402

1	Personal Services	001	\$ 445,000
2	Annual Increment	004	2,500
3	Employee Benefits	010	145,000
4	Unclassified	099	<u>235,500</u>
5	Total		\$ 828,000

*38—State Board of Education—
Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 0390 FY 1999 Org 0402

1	Personal Services	001	\$ 717,448
2	Annual Increment	004	14,902
3	Employee Benefits	010	268,287
4	Unclassified	099	549,707

5	Wood Products—Forestry		
6	Vocational Program (R)	146	63,024
7	Albert Yanni Vocational Program	147	139,300
8	Vocational Aid	148	12,111,246
9	Adult Basic Education	149	2,600,500
10	Equipment Replacement	150	1,019,750
11	Program Modernization (R)	305	600,000
12	Aquaculture Support	769	<u>201,865</u>
13	Total		\$18,286,029

14 Any unexpended balances remaining in the
 15 appropriations for Wood Products—Forestry Vocational
 16 Program (fund 0390, activity 146) and Program
 17 Modernization (fund 0390, activity 305) at the close of
 18 the fiscal year 1997-98 are hereby reappropriated for
 19 expenditure during the fiscal year 1998-99.

*39—West Virginia Schools for the
 Deaf and the Blind*

(WV Code Chapters 18 and 18A)

Fund 0320 FY 1999 Org 0403

1	Personal Services	001	\$ 5,611,253
2	Annual Increment	004	4,000
3	Employee Benefits	010	2,134,009
4	Unclassified	099	1,473,843
5	Capital Outlay, Repairs and		
6	Equipment	589	<u>-0-</u>
7	Total		\$ 9,223,105

8 Any unexpended balances remaining in the
 9 appropriations for Fire and Smoke Alarm System -
 10 Surplus (fund 0320, activity 726) at the close of the fiscal
 11 year 1997-98 is hereby reappropriated for expenditure
 12 during the fiscal year 1998-99.

DEPARTMENT OF EDUCATION AND THE ARTS*40—Department of Education and the Arts—
Office of the Secretary*

(WV Code Chapter 5F)

Fund 0294 FY 1999 Org 0431

1	Unclassified (R)	099	\$ 1,772,734
2	Center for Professional		
3	Development (R)	115	1,200,000
4	WVU - University Affiliated Center		
5	for Developmental Disabilities	157	60,000
6	WV Humanities Council	168	300,000
7	Center for Professional Develop-		
8	ment-Principals' Academy	415	500,000
9	Technical Preparation Program (R) . . .	440	932,397
10	Arts Programs	500	40,000
11	Community Schools/Mini Grants (R) .	530	800,631
12	Joint Commission on Vocational-		
13	Technical-Occupational		
14	Education	109	30,000
15	Hospitality Training	600	<u>550,000</u>
16	Total		\$ 6,185,762

17 Any unexpended balances remaining in the
 18 appropriations for Unclassified (fund 0294, activity 099),
 19 Center for Professional Development (fund 0294, activity
 20 115), Technical Preparation Program (fund 0294, activity
 21 440) and Community Schools/Mini Grants (fund 0294,
 22 activity 530) at the close of the fiscal year 1997-98 are
 23 hereby reappropriated for expenditure during the fiscal
 24 year 1998-99.

41—Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 1999 Org 0432

1	Personal Services	001	\$ 1,613,552
2	Annual Increment	004	42,719
3	Employee Benefits	010	583,632
4	Unclassified	099	650,969
5	Fairs and Festivals	122	1,153,000
6	Historical Preservation Grants	311	101,889
7	West Virginia Public Theater	312	150,000
8	Theater Arts of West Virginia	464	330,000
9	Grants for Competitive Arts Programs .	624	1,000,000
10	Culture and History Programming ...	732	300,014
11	Contemporary American		
12	Theater Festival	811	50,000
13	Independence Hall	812	<u>50,000</u>
14	Total		\$ 6,025,775

15 Any unexpended balances remaining in the
 16 appropriations for Capital Outlay, Repairs and Equipment
 17 (fund 0293, activity 589) and Capital Outlay, Repairs and
 18 Equipment - Surplus (fund 0293, activity 677) at the close
 19 of the fiscal year 1997-98 are hereby reappropriated for
 20 expenditure during the fiscal year 1998-99.

21 The Unclassified appropriation includes funding for
 22 the arts funds, department programming funds, grants,
 23 fairs and festivals and Camp Washington Carver and shall
 24 be expended only upon authorization of the division of
 25 culture and history and in accordance with the provisions
 26 of chapter five-a, article three, and chapter twelve of the
 27 code.

28 All federal moneys received as reimbursement to the
 29 division of culture and history for moneys expended from
 30 the general revenue fund for the arts fund and historical
 31 preservation are hereby reappropriated for the purposes as

32 originally made, including personal services, current
33 expenses and equipment.

42—Library Commission

(WV Code Chapter 10)

Fund 0296 FY 1999 Org 0433

1	Personal Services	001	\$ 1,056,833
2	Annual Increment	004	35,350
3	Employee Benefits	010	390,737
4	Unclassified	099	280,771
5	Books and Films	179	150,000
6	Services to State Institutions	180	156,310
7	Services to Blind and Handicapped . . .	181	42,729
8	Grants to Public Libraries	182	6,838,884
9	Libraries—Special Projects	625	<u>1,000,000</u>
10	Total		\$ 9,951,614

43—Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 1999 Org 0439

1	Personal Services	001	\$ 3,112,491
2	Annual Increment	004	65,200
3	Employee Benefits	010	990,558
4	Unclassified	099	<u>1,230,402</u>
5	Total		\$ 5,398,651

6 Any unexpended balances remaining in the
7 appropriations for Capital Improvements-Total-Surplus
8 (fund 0300, activity 672) and Capital Improvements-600
9 Capitol Street (fund 0300, activity 313) are hereby
10 reappropriated for expenditure during the fiscal year
11 1998-99.

12 These funds may be transferred to special revenue
 13 accounts for matching college, university, city, county,
 14 federal and/or other generated revenues.

*44—State Board of Rehabilitation—
 Division of Rehabilitation Services*

(WV Code Chapter 18)

Fund 0310 FY 1999 Org 0932

1	Personal Services	001	\$ 4,200,531
2	Annual Increment	004	124,961
3	Employee Benefits	010	1,520,220
4	Case Services	162	2,826,365
5	Workshop Development	163	1,749,000
6	Traumatic Brain and Spinal		
7	Cord Injury	813	<u>250,000</u>
8	Total		\$10,671,077
9	Any unexpended balances remaining in the		
10	appropriation for Technology - Related Assistance		
11	Revolving Loan Fund for Individuals with Disabilities		
12	(fund 0310, activity 766) at the close of the fiscal year		
13	1997-98 is hereby reappropriated for expenditure during		
14	the fiscal year 1998-99 and may be transferred to a		
15	special account for the purpose of disbursement or loan.		

*45—Board of Trustees of the University System
 of West Virginia and
 Board of Directors of the State College System
 Central Office
 Control Account*

(WV Code Chapters 18B and 18C)

Fund 0333 FY 1999 Org 0452

1	Unclassified	099	\$ 1,347,031
2	Higher Education Grant Program (R) .	164	4,700,000

3	Tuition Contract Program (R)	165	703,552
4	Minority Doctoral Fellowship	166	100,000
5	Underwood-Smith		
6	Scholarship Program		
7	—Student Awards (R)	167	150,000
8	WVNET	169	2,401,656
9	36/50 Classified Staff		
10	Increment Increase	821	706,300
11	Public Employees' Insurance		
12	Matching (R)	012	<u>2,424,352</u>
13	Total		\$12,532,891

14 Any unexpended balances remaining in the
15 appropriation for Higher Education Grant Program (fund
16 0333, activity 164), Tuition Contract Program (fund 0333,
17 activity 165), Underwood - Smith Scholarship Program -
18 Student Awards (fund 0333, activity 167), Higher
19 Education Technology Initiative - Surplus (fund 0333,
20 activity 508) and Higher Education Grant Program (fund
21 4055, activity 164) at the close of the fiscal year 1997-98
22 are hereby reappropriated for expenditure during the
23 fiscal year 1998-99.

24 The appropriation for Minority Doctoral Fellowship
25 (fund 0333, activity 166) may be transferred to special
26 revenue accounts for matching college, university, city,
27 county, federal, and/or other generated revenues.

*46—Board of Trustees of the
University System of West Virginia
and Board of Directors of the State College System—
Higher Education Efficiency Fund
Control Account*

(WV Code Chapter 18B)

Fund 0556 FY 1999 Org 0452

1	Strategic Planning and		
2	Compliance - Institutions—Total . .	772	\$10,528,605

*47—Board of Trustees of the
University System of West Virginia
Control Account*

(WV Code Chapter 18B)

Fund 0327 FY 1999 Org 0461

1	Unclassified . . . . .	.099	\$171,892,933
2	Marshall University—Southern WV		
3	Community and Technical		
4	College 2+2 Program (R) . . . . .	.170	350,000
5	Marshall University—		
6	Autism Training Center . . . . .	.548	575,000
7	Marshall University—		
8	Forensic Lab (R) . . . . .	.572	450,000
9	Marshall and West Virginia		
10	University Faculty and		
11	Course Development		
12	International Study Project . . . . .	.549	35,000
13	WVU Law School—Skills Program . .	.745	150,000
14	WVU College of Engineering		
15	and Mineral Resources-		
16	Diesel Training-Transfer . . . . .	.699	<u>50,000</u>
17	Total		\$173,502,933

18 Any unexpended balances remaining in the
19 appropriations for Marshall University-Southern WV
20 Community and Technical College 2+2 Program (fund
21 0327, activity 170), Marshall University—Forensic Lab
22 (fund 0327, activity 572), WVU College of Engineering
23 and Mineral Resources - Diesel Study (fund 0327, activity
24 699) and Chestnut Blight Project - Total - Surplus (fund
25 0327, activity 780) at the close of the fiscal year 1997-98
26 are hereby reappropriated for expenditure during the
27 fiscal year 1998-99.

*48—Board of Trustees of the
University System of West Virginia—
University of West Virginia
Health Sciences Account
(WV Code Chapter 18B)*

Fund 0323 FY 1999 Org 0478

1	School of Osteopathic Medicine	172	\$ 6,187,694
2	Marshall School of Medicine	173	11,057,522
3	WVU-Health Sciences	174	39,075,945
4	WVU—School of Health Sciences—		
5	Charleston Division	175	3,787,416
6	Health Sciences Scholarship Fund (R) .	176	148,500
7	Primary Health Education		
8	Program Support (R)	177	4,460,000
9	Medical Education	178	-0-
10	Rural Health Initiative		
11	Site Support (R)	295	2,980,000
12	Vice Chancellor for Health Sciences . .	473	263,594
13	WVU—Health Career		
14	Opportunities Program (R)	474	175,000
15	WVU Charleston Division—		
16	Poison Control Hot Line	510	415,985
17	Marshall University Medical		
18	School-Capital Improvements	814	1,000,000
19	MA Public Health Program and		
20	Health Science Technology	623	<u>75,000</u>
21	Total		\$69,626,656
22	Any unexpended balances remaining in the		
23	appropriations for Primary Health Education Program		
24	Support (fund 0323, activity 177), Rural Health Initiative		

25 Site Support (fund 0323, activity 295), Health Sciences
 26 Scholarship Fund (fund 0323, activity 176) and WVU -
 27 Health Career Opportunities Program (fund 0323, activity
 28 474) at the close of the fiscal year 1997-98 are hereby
 29 reappropriated for expenditure during the fiscal year
 30 1998-99.

*49—Board of Directors of the
 State College System
 Control Account*

(WV Code Chapter 18B)

Fund 0330 FY 1999 Org 0481

1	Unclassified	099	\$80,310,152
2	West Virginia University		
3	Institute of Technology		
4	Transfer to Board of Trustees -		
5	West Virginia University Institute		
6	of Technology Resource		
7	Allocation Policy Adjustment	454	284,526
8	Workforce Development	832	<u>500,000</u>
9	Total		\$81,094,678

10 The above appropriation for West Virginia University
 11 Institute of Technology Transfer to Board of Trustees -
 12 West Virginia University Institute of Technology Resource
 13 Allocation Policy Adjustment (fund 0330, activity 454) is
 14 pursuant to enrolled senate bill no. 591, regular session,
 15 1996, and shall be used solely for the purpose of
 16 implementing the provisions of section nine, article two,
 17 chapter eighteen-b of the code of West Virginia.

**DEPARTMENT OF HEALTH
 AND HUMAN RESOURCES**

*50—Department of Health
 and Human Resources—
 Office of the Secretary*

(WV Code Chapter 5F)

Fund 0400 FY 1999 Org 0501

1	Unclassified—Total	096	\$	117,264
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*51—Division of Health—
Central Office*

(WV Code Chapter 16)

Fund 0407 FY 1999 Org 0506

1	Personal Services	001	\$	6,145,144
2	Annual Increment	004		131,907
3	Employee Benefits	010		2,604,363
4	Unclassified	099		4,324,965
5	Corporate Nonprofit			
6	Community Health Centers -			
7	F.M.H.A. Mortgage Finance	184		135,455
8	Appalachian State Low			
9	Level Radioactive			
10	Waste Commission	185		48,000
11	Safe Drinking Water Program	187		463,224
12	Women, Infants and Children	210		45,000
13	Early Intervention	223		2,018,357
14	Cancer Registry	225		197,358
15	Transitional Funding for			
16	Local Health Departments	723		4,302,660
17	Home Health - Local			
18	Health Departments	326		-0-
19	Black Lung Clinics	467		200,000
20	Pediatric Dental Services	550		150,000
21	Vaccine for Children	551		431,480
22	Adult Influenza Vaccine	552		65,000
23	Tuberculosis Control	553		249,420

24	Regional EMS Entities	557	630,000
25	Maternal and Child Health Clinics,		
26	Clinicians and Medical		
27	Contracts and Fees (R)	575	4,673,043
28	Epidemiology Support	626	365,625
29	Rural EMS Equipment and Training . .	627	560,664
30	Primary Care Support	628	6,706,303
31	Health Right Free Clinics	727	1,200,000
32	State Aid to Local		
33	Health Departments	702	7,880,684
34	State EMS Coordinator	738	756,320
35	EMS Training for Children	739	50,000
36	Osteoporosis Prevention Fund	729	200,000
37	Emergency Response Entities-		
38	Special Projects	822	<u>1,000,000</u>
39	Total		\$45,534,972

40 Any unexpended balance remaining in the
 41 appropriation for Maternal and Child Health Clinics,
 42 Clinicians and Medical Contracts and Fees (fund 0407,
 43 activity 575) Computer Equipment (fund 0407, activity
 44 680) and Radon and Carbon Dioxide Testing (fund 0407,
 45 activity 746) at the close of the fiscal year 1997-98 is
 46 hereby reappropriated for expenditure during the fiscal
 47 year 1998-99.

48 From the Maternal and Child Health Clinics, Clinicians,
 49 and Medical Contracts and Fees line item, \$200,000 shall
 50 be transferred to the Breast and Cervical Cancer
 51 Diagnostic Treatment Fund.

52—Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 1999 Org 0506

1 Personal Services 001 \$ 504,540

2	Annual Increment	004	10,300
3	Employee Benefits	010	200,000
4	Special Olympics	208	26,074
5	Behavioral Health Program -		
6	Unclassified	219	19,449,313
7	Family Support Act	221	1,088,605
8	Institutional Facilities Operations	335	39,274,470
9	Colin Anderson Community		
10	Placement	803	3,433,963
11	Renaissance Program	804	<u>200,000</u>
12	Total		\$64,187,265

13 The secretary of the department of health and human
14 resources, prior to the beginning of the fiscal year, shall
15 file with the legislative auditor and the department of
16 administration an expenditure schedule for each formerly
17 separate spending unit which has been consolidated into
18 the above account and which receives a portion of the
19 above appropriation for Institutional Facilities Operations.
20 The secretary shall also, within fifteen days after the close
21 of the six-month period of said fiscal year, file with the
22 legislative auditor and the department of administration an
23 itemized report of expenditures made during the
24 preceding six-month period.

25 Additional funds have been appropriated in fund
26 5156, fiscal year 1999, organization 0506, for the
27 operation of the institutional facilities. The secretary of
28 the department of health and human resources is
29 authorized to utilize up to ten percent of the funds from
30 the Institutional Facilities Operations line item to facilitate
31 cost effective and cost saving services at the community
32 level.

33 From the above appropriation to Institutional Facilities
34 Operations, together with available funds from the division
35 of health—hospital services revenue account (fund 5156,
36 activity 335), on July 1, 1998, the sum of one hundred

37 fifty thousand dollars shall be transferred to the
 38 department of agriculture—land division as advance
 39 payment for the purchase of food products; actual
 40 payments for such purchases shall not be required until
 41 such credits have been completely expended.

42 From the Colin Anderson Community Placement
 43 (fund 0525, activity 803) funds may be both expended
 44 for the community placement costs of the Colin Anderson
 45 clients and transferred to the Medical Services Program
 46 Fund to pay the Medicaid state share of the Medicaid cost
 47 of Colin Anderson clients in the community.

*53—Division of Health—
 West Virginia Drinking Water Treatment*

(WV Code Chapter 16)

Fund 0561 FY 1999 Org 0506

1 West Virginia Drinking
 2 Water Treatment
 3 Revolving Fund—Transfer 689 \$ 700,000

4 The above appropriation for Drinking Water
 5 Treatment Revolving Fund - Transfer shall be transferred
 6 to the West Virginia Drinking Water Treatment Revolving
 7 Fund or appropriate bank depository and the Drinking
 8 Water Treatment Revolving - Administrative Expense
 9 Fund as provided by Chapter 16 of the code.

54—Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 1999 Org 0510

1	Personal Services	001	\$	531,095
2	Annual Increment	004		11,581
3	Employee Benefits	010		176,873
4	Unclassified	099		184,652
5	Anti-Hate Program and			
6	Human Rights Summit	815		<u>18,000</u>
7	Total		\$	922,201

8 Any unexpended balance remaining in the
 9 appropriation for Automated Management Information
 10 System (fund 0416, activity 528) at the close of the fiscal
 11 year 1997-98 is hereby reappropriated for expenditure
 12 during the fiscal year 1998-99.

55—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 1999 Org 0511

1	Personal Services	001	\$ 17,824,735
2	Annual Increment	004	456,261
3	Employee Benefits	010	6,861,592
4	Unclassified	099	19,956,784
5	Child Care Development	144	1,390,400
6	Medical Services Contracts and		
7	Office of Managed Care	183	2,313,176
8	Medicaid Management		
9	Information Technology	186	-0-
10	Medical Services	189	165,955,333
11	Women's Commission	191	80,869
12	Social Services	195	52,010,138
13	Family Preservation Program	196	1,565,000
14	Grants for Licensed Domestic		
15	Violence Programs and		
16	Statewide Prevention	750	500,000
17	Grants for Licensed Domestic		
18	Violence Shelters	332	-0-
19	Child Protective Services		
20	Case Workers	468	6,852,721
21	OSCAR and RAPIDS	515	3,222,808
22	Child Welfare System	603	2,441,995

23	Commission for the Deaf		
24	and Hard of Hearing	704	154,914
25	Indigent Burials	730	680,000
26	Child Support Enforcement	705	1,649,816
27	Medicaid Auditing	706	529,611
28	Temporary Assistance for		
29	Needy Families/Maintenance		
30	of Effort	707	29,689,373
31	West Virginia Childrens'		
32	Health Fund/Transfer	714	5,000,000
33	Child Care—Maintenance of		
34	Effort and Match	708	<u>4,409,643</u>
35	Total		\$323,545,169

36 Any unexpended balance remaining in the
37 appropriation for Unclassified (fund 0403, activity 099)
38 fiscal year 1996-97 at the close of fiscal year 1997-98 is
39 hereby reappropriated for expenditure during fiscal year
40 1998-99. Of the balance reappropriated, \$500,000 is
41 hereby redesignated as Medicaid Management
42 Information Technology (fund 0403, activity 186),
43 \$823,195 is redesignated as Unclassified (fund 0403,
44 activity 099), \$136,000 is redesignated as Child Support
45 Enforcement (fund 0403, activity 705), and any
46 remaining balance is redesignated as Unclassified (fund
47 0403, activity 099).

48 Notwithstanding the provisions of Title I, section three
49 of this bill, the secretary of the department of health and
50 human resources shall have the authority to transfer funds
51 within the above account: *Provided*, That no more than
52 ten percent of the funds appropriated to one line item may
53 be transferred to other line items: *Provided, however*,
54 That no funds from other line items shall be transferred to
55 the personal services line item.

56 The secretary shall have authority to expend funds for
57 the educational costs of those children residing in out-of-

58 state placements, excluding the costs of special education
 59 programs.

**DEPARTMENT OF MILITARY AFFAIRS
 AND PUBLIC SAFETY**

*56—Department of Military Affairs and
 Public Safety—
 Office of the Secretary*

(WV Code Chapter 5F)

Fund 0430 FY 1999 Org 0601

1 Unclassified—Total 096 \$ 250,000

*57—Adjutant General—
 State Militia*

(WV Code Chapter 15)

Fund 0433 FY 1999 Org 0603

1	Personal Services	001	\$ 332,739
2	Annual Increment	004	9,150
3	Employee Benefits	010	117,276
4	Unclassified	099	3,441,336
5	College Education Fund	232	1,698,000
6	Mountaineer Challenge Academy	709	980,000
7	Armory Capital Improvements	325	<u>400,000</u>
8	Total		\$ 6,978,501

9 The College Education Fund line item above shall be
 10 the total annual appropriation for awarding scholarships.
 11 The secretary of the department of military affairs and
 12 public safety shall devise a method to equitably reimburse
 13 all eligible participants on a pro rata basis should the
 14 appropriation be insufficient to cover total annual eligible
 15 expenses.

58—*West Virginia Parole Board*

(WV Code Chapter 62)

Fund 0440 FY 1999 Org 0605

1	Personal Services	001	\$	36,384
2	Annual Increment	004		1,100
3	Employee Benefits	010		77,160
4	Unclassified	099		69,575
5	Salaries of Members of West			
6	Virginia Parole Board	227		<u>200,000</u>
7	Total		\$	384,219

59—*Office of Emergency Services*

(WV Code Chapter 15)

Fund 0443 FY 1999 Org 0606

1	Personal Services	001	\$	153,016
2	Annual Increment	004		5,300
3	Employee Benefits	010		73,822
4	Unclassified	099		31,751
5	Federal Emergency Management			
6	Agency Match	188		<u>237,610</u>
7	Total		\$	501,499

60—*Division of Corrections—
Central Office*

(WV Code Chapters 25, 28, 49 and 62)

Fund 0446 FY 1999 Org 0608

1	Personal Services	001	\$	334,984
2	Annual Increment	004		8,260
3	Employee Benefits	010		115,111
4	Unclassified	099		<u>111,004</u>
5	Total		\$	569,359

*61—Division of Corrections—
Correctional Units*

(WV Code Chapters 25, 28, 49 and 62)

Fund 0450 FY 1999 Org 0608

1	Personal Services	001	\$13,297,271
2	Annual Increment	004	191,988
3	Employee Benefits	010	5,168,839
4	Unclassified	099	6,785,391
5	Payment to Counties and/or		
6	Regional Jails	229	3,916,250
7	St. Mary's Correctional Center	230	8,021,199
8	Lakin Facility	231	-0-
9	Denmar Facility	448	2,498,732
10	Mt. Olive Correctional Complex	533	15,712,403
11	Northern Correctional Facility	534	5,342,505
12	Inmate Medical Expense	535	5,118,439
13	Ohio County Jail	784	<u>1,200,000</u>
14	Total		\$67,253,017

15 Any unexpended balance remaining in the
16 appropriation for Capital Improvements - Surplus (fund
17 0450, activity 661), Ohio County Jail (fund 0450, activity
18 784) and St. Mary's Correctional Center (fund 0450,
19 activity 230) at the close of the fiscal year 1997-98 is
20 hereby reappropriated for expenditure during the fiscal
21 year 1998-99.

22 The commissioner of corrections, prior to the
23 beginning of the fiscal year, shall file with the legislative
24 auditor and the department of administration an
25 expenditure schedule for each formerly separate spending
26 unit which has been consolidated into the above account
27 and which receives a portion of the above appropriation.
28 The commissioner shall also, within fifteen days after the

29 close of each six-month period of said fiscal year, file with
 30 the legislative auditor and the department of
 31 administration an itemized report of expenditures made
 32 during the preceding six-month period. Such report shall
 33 include the total of expenditures made for personal
 34 services, annual increment, current expenses (inmate
 35 medical expenses and other), repairs and alterations and
 36 equipment.

37 From the above appropriation to Unclassified, on July
 38 1, 1998, the sum of two hundred thousand dollars shall be
 39 transferred to the department of agriculture — land
 40 division as advance payment for the purchase of food
 41 products; actual payments for such purchases shall not be
 42 required until such credits have been completely
 43 expended.

62—West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 1999 Org 0612

1	Personal Services	001	\$23,404,814
2	Annual Increment	004	151,900
3	Employee Benefits	010	4,679,140
4	Unclassified	099	5,139,166
5	COPS Program-Federal Match	327	350,727
6	Vehicle Purchase	451	1,000,000
7	Barracks Maintenance and		
8	Construction (R)	494	113,947
9	Communications and Other		
10	Equipment (R)	558	2,415,000
11	Debt Payment/Capital		
12	Outlay, Renovations,		
13	Repair to Barracks	751	2,000,000
14	Overtime and Wage Court Awards	568	-0-
15	Trooper Retirement Fund	605	15,021,220

16	Handgun Administration Expense . . .	747	63,504
17	Trooper Class/Grant Match	733	1,814,807
18	COPS-Telecommunicators Match	816	<u>58,968</u>
19	Total		\$56,213,193

20 Any unexpended balance remaining in the
 21 appropriation for Unclassified (fund 0453, activity 099),
 22 Barracks Maintenance and Construction (fund 0453,
 23 activity 494), Communications and Other Equipment
 24 (fund 0453, activity 558), and Handgun Administration
 25 Expense (fund 0453, activity 747) at the close of the fiscal
 26 year 1997-1998 is hereby reappropriated for expenditure
 27 during the fiscal year 1998-99.

28 Any unexpended balance remaining in the
 29 appropriation for Unclassified line item (fund 0453,
 30 activity 099) * at the close of the fiscal year 1997-98 is
 31 hereby reappropriated for expenditure during the fiscal
 32 year 1998-99.

33 The above appropriation for Trooper Class/Grant
 34 Match (fund 0453, activity 733) may qualify for federal
 35 grant funds. Should a federal grant be approved, any
 36 excess funds intended for personal services or employee
 37 benefits—which are not required for grant match—are to
 38 revert to the general revenue fund.

63—Division of Veterans' Affairs

(WV Code Chapter 9A)

Fund 0456 FY 1999 Org 0613

1	Personal Services	001	\$ 696,559
2	Annual Increment	004	20,650
3	Employee Benefits	010	321,972
4	Unclassified	099	15,920
5	Veterans' Field Offices	228	129,692

*Clerk's Note: The following language was deleted by the Governor:
 "designated for the construction of the Moorefield/Petersburg Detachment".

6	Veterans' Toll Free Assistance		
7	Line (R)	328	25,000
8	Veterans' Field Office Improvements .	331	53,976
9	Veterans' Reeducation Assistance (R) .	329	270,000
10	Veterans' Monuments	817	100,000
11	Veterans' Grant Program (R)	342	<u>150,000</u>
12	Total		\$ 1,783,769
13	Any unexpended balances remaining in the		
14	appropriations for Veterans' Toll Free Assistance Line		
15	(fund 0456, activity 328), and Veterans' Reeducation		
16	Assistance (fund 0456, activity 329) and Barboursville		
17	Veterans' Home Improvements (fund 0456, activity 466)		
18	at the close of the fiscal year 1997-98 are hereby		
19	reappropriated for expenditure during the fiscal year		
20	1998-99.		

*64—Division of Veterans' Affairs—
Veterans' Home*

(WV Code Chapter 9A)

Fund 0460 FY 1999 Org 0618

1	Personal Services	001	\$ 587,375
2	Annual Increment	004	16,150
3	Employee Benefits	010	331,233
4	Unclassified	099	<u>160,234</u>
5	Total		\$ 1,094,992
6	Any unexpended balance remaining in the		
7	appropriation for Barboursville Veterans' Home		
8	Improvements (fund 0460, activity 466) at the close of the		
9	fiscal year 1997-98 is hereby reappropriated for		
10	expenditure during the fiscal year 1998-99.		

65—Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 1999 Org 0619

1	Personal Services	001	\$ 547,364
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2	Annual Increment	004		11,800
3	Employee Benefits	010		173,556
4	Unclassified	099		<u>205,601</u>
5	Total		\$	938,321

*66—Division of Criminal Justice
and Highway Safety*

(Executive Order)

Fund 0546 FY 1999 Org 0620

1	Personal Services	001	\$	-0-
2	Annual Increment	004		-0-
3	Employee Benefits	010		-0-
4	Unclassified	099		-0-
5	Statistical Analysis Program	597		<u>-0-</u>
6	Total		\$	-0-

67—Division of Criminal Justice Services

(Executive Order)

Fund 0546 FY 1999 Org 0620

1	Personal Services	001	\$	160,148
2	Annual Increment	004		2,900
3	Employee Benefits	010		58,619
4	Unclassified	099		152,758
5	Statistical Analysis Program	597		<u>50,000</u>
6	Total		\$	424,425

68—Division of Juvenile Services

(WV Code Chapter 49)

Fund 0570 FY 1999 Org 0621

1	Personal Services	001	\$	-0-
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APPROPRIATIONS

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2	Annual Increment	004	-0-
3	Employee Benefits	010	-0-
4	Unclassified	099	<u>-0-</u>
5	Unclassified—Total	096	\$ 9,160,244

DEPARTMENT OF TAX AND REVENUE

*69—Department of Tax and Revenue—
Office of the Secretary*

(WV Code Chapter 5F)

Fund 0465 FY 1999 Org 0701

1	Unclassified—Total	096	\$ 166,626
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70—Tax Division

(WV Code Chapter 11)

Fund 0470 FY 1999 Org 0702

1	Personal Services	001	\$ 9,578,009
2	Annual Increment	004	232,650
3	Employee Benefits	010	3,451,431
4	Unclassified	099	6,214,296
5	Property Tax Valuation and		
6	Assessment System	477	2,000,000
7	Remittance Processor	570	<u>325,000</u>
8	Total		\$21,801,386

9 Any unexpended balances remaining in the
10 appropriations for Automation Project (fund 0470,
11 activity 442), Automation Project-Total-Surplus (fund
12 0470, activity 673) and Property Tax Electronic Data
13 Processing System Network Project (fund 0470, activity
14 684) at the close of the fiscal year 1997-98 are hereby
15 reappropriated for expenditure during the fiscal year
16 1998-99.

*71—Division of Professional and
Occupational Licenses—
State Athletic Commission*

(WV Code Chapter 29)

Fund 0523 FY 1999 Org 0933

1 Unclassified—Total 096 \$ 4,719

DEPARTMENT OF TRANSPORTATION

*72—Department of Transportation—
Office of the Secretary*

(WV Code Chapter 5F)

Fund 0500 FY 1999 Org 0801

1 Unclassified 099 \$ 166,272

2 Civil Air Patrol 234 186,952

3 Port Authority (R) 443 493,471

4 Potomac Highlands

5 Airport Authority 444 60,000

6 Aeronautics Commission 818 400,000

7 Total \$ 1,306,695

8 Any unexpended balances remaining in the
9 appropriations for Port Authority (fund 0500, activity
10 443) and Aeronautics Commission - Surplus (fund 0500,
11 activity 450) at the close of the fiscal year 1997-98 are
12 hereby reappropriated for expenditure during the fiscal
13 year 1998-99.

14 Any unexpended balance remaining in the
15 appropriation for Unclassified (fund 0500, activity 099) *
16 at the close of fiscal year 1997-98 is hereby
17 reappropriated for expenditure during the fiscal year
18 1998-99.

*Clerk's Note: The following language was deleted by the Governor:
"designated for the Benedum Airport Aerospace Park Access Road".

73—State Rail Authority

(WV Code Chapter 29)

Fund 0506 FY 1999 Org 0804

1 Unclassified—Total 096 \$ 727,439

74—Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 1999 Org 0805

1 Unclassified—Total (R) 096 \$ 872,680

2 Any unexpended balance remaining in the
 3 appropriation for Unclassified - Total (fund 0510, activity
 4 096) at the close of the fiscal year 1997-98 is hereby
 5 reappropriated for expenditure during the fiscal year
 6 1998-99.

BUREAU OF COMMERCE*75—Division of Forestry*

(WV Code Chapter 19)

Fund 0250 FY 1999 Org 0305

1 Personal Services 001 \$ 1,341,464

2 Annual Increment 004 33,600

3 Employee Benefits 010 507,883

4 Unclassified 099 396,161

5 Aerial Tanker Air Planes 752 200,000

6 Total \$ 2,479,108

7 Out of the above appropriation a sum may be used to
 8 match federal funds for cooperative studies or other funds
 9 for similar purposes.

76—Geological and Economic Survey

(WV Code Chapter 29)

Fund 0253 FY 1999 Org 0306

1	Personal Services	001	\$ 1,183,929
2	Annual Increment	004	- 27,617
3	Employee Benefits	010	378,975
4	Unclassified	099	152,500
5	Mineral Mapping System (R)	207	1,190,896
6	Geographic Information System (R) ..	214	312,500
7	Computer Upgrade	349	<u>6,125</u>
8	Total		\$ 3,252,542

9 Any unexpended balances remaining in the
 10 appropriations for Mineral Mapping System - Surplus
 11 (fund 0253, activity 610), Mineral Mapping System (fund
 12 0253, activity 207) and Geographic Information System
 13 (fund 0253, activity 214) at the close of the fiscal year
 14 1997-98 are hereby reappropriated for expenditure
 15 during the fiscal year 1998-99.

16 The above Unclassified appropriation includes
 17 funding to secure federal and other contracts and may be
 18 transferred to a special revolving fund (fund 3105, activity
 19 099) for the purpose of providing advance funding for
 20 such contracts.

77—West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 1999 Org 0307

1	Personal Services	001	\$ 2,044,881
2	Annual Increment	004	32,605
3	Employee Benefits	010	624,729
4	Unclassified	099	2,452,436
5	Partnership Grants (R)	131	5,300,000
6	National Youth Science Camp	132	200,000
7	Local Economic Development		
8	Partnerships (R)	133	1,650,000

9	ARC Assessment	136	167,308
10	Wood Products Initiative	233	94,400
11	High Tech Initiative	236	94,400
12	Welfare-to-Work	237	-0-
13	Polymer Alliance	754	100,000
14	Guaranteed Work Force Grant (R) . . .	242	3,005,602
15	Small Business Financial		
16	Assistance (R)	360	317,352
17	Robert C. Byrd Institute for		
18	Advanced\Flexible		
19	Manufacturing—Technology		
20	Outreach and Programs		
21	for Environmental and		
22	Advanced Technologies	367	700,000
23	Industrial Park Assistance (R)	480	1,000,000
24	WV Film Development Office	498	101,656
25	National Institute of Chemical Studies .	805	100,000
26	Leverage Technology		
27	and Small Business		
28	Development Program (R)	525	800,000
29	WV Partnership for Industrial		
30	Modernization (R)	592	200,000
31	International Offices (R)	593	606,000
32	European Trade and Tourism Office .	763	400,000
33	Small Business Work Force (R)	735	372,283
34	Local Economic Development		
35	Assistance	819	<u>2,000,000</u>
36	Total		\$22,363,652
37	Any unexpended balances remaining in the		
38	appropriations for Partnership Grants (fund 0256, activity		
39	131), Guaranteed Work Force Grant (fund 0256, activity		

40 242), Local Economic Development Partnerships (fund
 41 0256, activity 133), Empowerment Zone/Enterprise
 42 Community (fund 0256, activity 218), Guaranteed Work
 43 Force Grant - Surplus (fund 0256, activity 496),
 44 Guaranteed Work Force Grant/Small Business Programs
 45 (fund 0256, activity 354), Small Business Financial
 46 Assistance (fund 0256, activity 360), Industrial Park
 47 Assistance (fund 0256, activity 480), Leverage
 48 Technology and Small Business Development Program
 49 (fund 0256, activity 525), Small Business Work Force
 50 (fund 0256, activity 735), International Offices (fund
 51 0256, activity 593) and West Virginia Partnership for
 52 Industrial Modernization (fund 0256, activity 592) at the
 53 close of the fiscal year 1997-98 are hereby reappropriated
 54 for expenditure during the fiscal year 1998-99.

55 The above appropriation to Local Economic
 56 Development Partnerships shall be used by the West
 57 Virginia development office for the award of funding
 58 assistance to county and regional economic development
 59 corporations or authorities participating in the certified
 60 development community program developed under the
 61 provisions of section three, article two, chapter five-b of
 62 the code. The West Virginia development office shall
 63 award the funding assistance through a matching grant
 64 program, based upon a formula whereby funding
 65 assistance may not exceed thirty thousand dollars per
 66 county served by an economic development corporation
 67 or authority.

78—Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 1999 Org 0308

1	Personal Services	001	\$ 1,528,260
2	Annual Increment	004	21,410
3	Employee Benefits	010	580,793
4	Unclassified	099	1,053,484
5	Computer/Technology Upgrades	322	<u>-0-</u>
6	Total		\$ 3,183,947

7 Any unexpended balance remaining in the
 8 appropriation for Computer/Technology Upgrades (fund
 9 0260, activity 322) at the close of the fiscal year 1997-98
 10 is hereby reappropriated for expenditure during the fiscal
 11 year 1998-99.

79—Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 1999 Org 0310

1	Personal Services	001	\$ 8,112,773
2	Annual Increment	004	250,844
3	Employee Benefits	010	3,614,971
4	Unclassified	099	107,883
5	Nongame Wildlife	527	550,000
6	West Virginia Stream		
7	Partners Program	637	100,000
8	Upper Mud River Flood Control	654	201,768
9	Law Enforcement	806	<u>300,000</u>
10	Total		\$13,238,239

11 Any unexpended balance remaining in the
 12 appropriation for Law Enforcement - Surplus (fund 0265,
 13 activity 722) at the close of the fiscal year 1997-98 is
 14 hereby reappropriated for expenditure during the fiscal
 15 year 1998-99.

16 Any revenue derived from mineral extraction at any
 17 state park shall be deposited in a special revenue account
 18 of the division of natural resources, first for bond debt
 19 payment purposes and with any remainder to be for park
 20 operation and improvement purposes.

*80—Division of Miners' Health,
 Safety and Training*

(WV Code Chapter 22)

Fund 0277 FY 1999 Org 0314

1	Personal Services	001	\$ 3,527,623
2	Annual Increment	004	60,750
3	Employee Benefits	010	1,199,437
4	Unclassified	099	1,032,350
5	West Virginia Diesel Equipment		
6	Commission	712	<u>30,000</u>
7	Total		\$ 5,850,160

*81—Board of Coal Mine
Health and Safety*

(WV Code Chapter 22)

Fund 0280 FY 1999 Org 0319

1	Personal Services	001	\$ 95,650
2	Annual Increment	004	300
3	Employee Benefits	010	23,200
4	Unclassified	099	<u>39,532</u>
5	Total		\$ 158,682

*82—Coal Mine Safety and
Technical Review Committee*

(WV Code Chapter 22)

Fund 0285 FY 1999 Org 0320

1	Unclassified—Total	096	\$ 73,410
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BUREAU OF ENVIRONMENT

83—Environmental Quality Board

(WV Code Chapter 20)

Fund 0270 FY 1999 Org 0311

1	Personal Services	001	\$ 63,609
2	Annual Increment	004	443
3	Employee Benefits	010	23,026

4	Unclassified	099	<u>30,186</u>
5	Total		\$ 117,264

*84—Interstate Commission on
Potomac River Basin*

(WV Code Chapter 29)

Fund 0263 FY 1999 Org 0313

1	West Virginia's Contribution		
2	to the Interstate Commission		
3	on Potomac River Basin—Total ...	134	\$ 41,064

*85—Ohio River Valley Water
Sanitation Commission*

(WV Code Chapter 29)

Fund 0264 FY 1999 Org 0313

1	West Virginia's Contribution to		
2	the Ohio River Valley Water		
3	Sanitation Commission—Total ...	135	\$ 120,600

86—Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 1999 Org 0313

1	Personal Services	001	\$ 3,986,713
2	Annual Increment	004	77,813
3	Employee Benefits	010	1,366,648
4	Unclassified	099	676,317
5	Black Fly Control	137	240,548
6	Dam Safety	607	<u>125,671</u>
7	Total		\$ 6,473,710

87—Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 1999 Org 0325

1	Unclassified—Total	096	\$ 77,858
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BUREAU OF SENIOR SERVICES*88—Bureau of Senior Services*

(WV Code Chapter 29)

Fund 0420 FY 1999 Org 0508

1	Personal Services	001	\$	116,238
2	Annual Increment	004		2,333
3	Employee Benefits	010		57,601
4	Unclassified	099		438,101
5	Local Programs Service			
6	Delivery Costs	200		2,475,250
7	Silver Haired Legislature	202		14,400
8	Area Agencies Administration	203		87,428
9	Foster Grandparents Stipends			
10	and Travel	205		57,734
11	In-Home Services for Senior Citizens .	224		<u>700,000</u>
12	Total		\$	3,949,085
13	Any unexpended balance remaining in the			
14	appropriation for Senior Citizens Centers—Land			
15	Acquisition, Construction and Repairs and Alterations			
16	(fund 0420, activity 201) at the close of the fiscal year			
17	1997-98 is hereby reappropriated for expenditure during			
18	the fiscal year 1998-99.			

BUREAU OF EMPLOYMENT PROGRAMS*89—Bureau of Employment Programs*

(WV Code Chapter 23)

Fund 0572 FY 1999 Org 0323

1	Welfare-to-Work—Total	416	\$	2,500,000
2	Total TITLE II, Section 1—			
3	General Revenue			<u>\$2,586,963,474</u>

1 **Sec. 2. Appropriations from state road fund.**—From
 2 the state road fund there are hereby appropriated
 3 conditionally upon the fulfillment of the provisions set
 4 forth in article two, chapter five-a of the code the
 5 following amounts, as itemized, for expenditure during the
 6 fiscal year one thousand nine hundred ninety-nine.

DEPARTMENT OF TRANSPORTATION

90—Division of Motor Vehicles

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)

Fund 9007 FY 1999 Org 0802

	Activity	State Road Fund
1	Personal Services 001	\$ 6,235,008
2	Annual Increment 004	92,200
3	Employee Benefits 010	2,287,487
4	Unclassified 099	16,426,366
5	Capital Outlay-Building 222	980,000
6	International Fuel Tax Agreement . 536	<u>623,968</u>
7	Total	\$ 26,645,029

91—Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 1999 Org 0803

1	Debt Service 040	\$ 48,700,000
2	ARC Assessment 136	794,000
3	Maintenance, Expressway,	
4	Trunkline and Feeder 270	85,000,000
5	Maintenance, State Local Services . . 271	129,000,000

6	Maintenance, Contract		
7	Paving and Secondary		
8	Road Maintenance	272	50,000,000
9	Bridge Repair and Replacement . . .	273	35,000,000
10	Inventory Revolving	275	1,250,000
11	Equipment Revolving	276	15,000,000
12	General Operations	277	37,535,000
13	Interstate Construction	278	20,000,000
14	Other Federal Aid Programs	279	60,000,000
15	Appalachian Programs	280	30,000,000
16	Nonfederal Aid Construction	281	40,000,000
17	Highway Litter Control	282	<u>1,360,000</u>
18	Total		\$ 553,639,000

19 The above appropriations are to be expended in
20 accordance with the provisions of chapters seventeen and
21 seventeen-c of the code.

22 The commissioner of highways shall have the
23 authority to operate revolving funds within the state road
24 fund for the operation and purchase of various types of
25 equipment used directly and indirectly in the construction
26 and maintenance of roads and for the purchase of
27 inventories and materials and supplies.

28 There is hereby appropriated within the above items
29 sufficient money for the payment of claims, accrued or
30 arising during this budgetary period, to be paid in
31 accordance with sections seventeen and eighteen, article
32 two, chapter fourteen of the code.

33 It is the intent of the Legislature to capture and match
34 all federal funds available for expenditure on the
35 Appalachian highway system at the earliest possible time.
36 Therefore, should amounts in excess of those appropriated
37 be required for the purposes of Appalachian programs,
38 funds in excess of the amount appropriated may be made
39 available upon recommendation of the commissioner and

40 approval of the governor. Further, for the purpose of
 41 Appalachian programs, funds appropriated to line items
 42 may be transferred to other line items upon
 43 recommendation of the commissioner and approval of the
 44 governor.

*92—Division of Highways—
 Federal Aid Highway Matching Fund*

(WV Code Chapters 17 and 17C)

Fund 9018 FY 1999 Org 0803

1	Interstate Construction	278	\$ 35,000,000
2	Other Federal Aid Programs	279	180,000,000
3	Appalachian Programs	280	<u>60,000,000</u>
4	Total		\$275,000,000

93—Claims Against the State Road Fund

1	Claims Against the State	319	\$ -0-
2	Total TITLE II, Section 2—		
3	State Road Fund		<u>\$855,284,029</u>

1 **Sec. 3. Appropriations from other funds.**—From the
 2 funds designated there are hereby appropriated
 3 conditionally upon the fulfillment of the provisions set
 4 forth in article two, chapter five-a of the code the
 5 following amounts, as itemized, for expenditure during the
 6 fiscal year one thousand nine hundred ninety-nine.

LEGISLATIVE

94—Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 1731 FY 1999 Org 2300

			Other Funds
1	Personal Services	001	\$ 145,096
2	Annual Increment	004	2,500

Ch. 6]	APPROPRIATIONS	115
3	Employee Benefits 010	48,400
4	Unclassified 099	32,000
5	Economic Loss Claim	
6	Payment Fund (R) 334	<u>2,000,000</u>
7	Total	\$ 2,227,996

EXECUTIVE

*95—Chief Technology Officer
Administration Fund*

(WV Code Chapter 5)

Fund 1028 FY 1999 Org 0100

1	Unclassified—Total 096	\$ 2,003,772
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*96—Auditor's Office—
Land Operating Fund*

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 1999 Org 1200

1	Personal Services 001	\$ 130,278
2	Annual Increment 004	4,400
3	Employee Benefits 010	29,976
4	Unclassified 099	<u>198,994</u>
5	Total	\$ 363,648

6 There is hereby appropriated from this fund, in
7 addition to the above appropriation, the necessary amount
8 for the expenditure of funds other than personal services
9 or employee benefits to enable the division to pay the
10 direct expenses relating to land sales as provided in
11 chapter eleven-a of the West Virginia Code.

12 The total amount of this appropriation shall be paid
13 from the special revenue fund out of fees and collections
14 as provided by law.

*97—Auditor's Office—
Securities Regulation Fund*

(WV Code Chapter 32)

Fund 1225 FY 1999 Org 1200

1	Personal Services	001	\$	406,260
2	Annual Increment	004		4,722
3	Employee Benefits	010		91,116
4	Unclassified	099		404,862
5	Total		\$	906,960

*98—Auditor's Office—
Technology Support and Acquisition Fund*

(WV Code Chapter 12)

Fund 1232 FY 1999 Org 1200

1	Unclassified—Total	096	\$	400,000
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*99—Treasurer's Office—
Technology Support and Acquisition Fund*

(WV Code Chapter 12)

Fund 1329 FY 1999 Org 1300

1	Unclassified—Total	096	\$	100,000
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100—Department of Agriculture

(WV Code Chapter 19)

Fund 1401 FY 1999 Org 1400

1	Personal Services	001	\$	517,807
2	Annual Increment	004		6,150
3	Employee Benefits	010		129,381
4	Unclassified	099		854,141
5	Total		\$	1,507,479

*101—Department of Agriculture—
West Virginia Rural Rehabilitation Program*

(WV Code Chapter 19)

Fund 1408 FY 1999 Org 1400

1	Student and Farm Loans—Total . . .	235	\$	536,076
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*102—Department of Agriculture—
General John McCausland Memorial Farm*

(WV Code Chapter 19)

Fund 1409 FY 1999 Org 1400

1	Personal Services	001	\$	20,684
2	Employee Benefits	010		14,877
3	Unclassified	099		51,493
4	Total		\$	87,054

5 The above appropriation shall be expended in
6 accordance with article twenty-six, chapter nineteen of the
7 code.

*103—Department of Agriculture—
Farm Operating Fund*

(WV Code Chapter 19)

Fund 1412 FY 1999 Org 1400

1	Unclassified—Total	096	\$	964,094
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*104—Attorney General—
Antitrust Enforcement*

(WV Code Chapter 47)

Fund 1507 FY 1999 Org 1500

1	Personal Services	001	\$	213,424
2	Annual Increment	004		935
3	Employee Benefits	010		65,252
4	Unclassified	099		177,882
5	Total		\$	457,493

*105—Attorney General—
Preneed Funeral Regulation Fund*

(WV Code Chapter 47)

Fund 1513 FY 1999 Org 1500

1 Unclassified—Total 096 \$ 220,944

*106—Attorney General—
Preneed Funeral Guarantee Fund*

(WV Code Chapter 47)

Fund 1514 FY 1999 Org 1500

1 Unclassified—Total 096 \$ 775,000

*107—Secretary of State—
Trademark Registration*

(WV Code Chapters 3, 5, and 59)

Fund 1610 FY 1999 Org 1600

1 Unclassified—Total 096 \$ 7,000

DEPARTMENT OF ADMINISTRATION

*108—Office of the Secretary—
Natural Gas Contract Refund Fund*

(WV Code Chapter 5A)

Fund 2040 FY 1999 Org 0201

1 Unclassified—Total 096 \$ 77,059

*109—Division of Information Services
and Communications*

(WV Code Chapter 5A)

Fund 2220 FY 1999 Org 0210

1 Personal Services 001 \$ 5,295,813

2 Annual Increment 004 92,815

3 Employee Benefits 010 1,561,868

4	Unclassified	099	<u>2,131,360</u>
5	Total		\$ 9,081,856

6 The total amount of this appropriation shall be paid
7 from a special revenue fund out of collections made by
8 the division of information services and communications
9 as provided by law.

10 There is hereby appropriated from this fund, in
11 addition to the above appropriation, the necessary amount
12 for the expenditure of funds other than personal services
13 or employee benefits to enable the division to provide
14 information processing services to user agencies. These
15 services include, but are not limited to, data processing
16 equipment, office automation and telecommunications.

17 Each spending unit operating from the general
18 revenue fund, from special revenue funds or receiving
19 reimbursement for postage from the federal government
20 shall be charged monthly for all postage meter service and
21 shall reimburse the revolving fund monthly for all such
22 amounts.

*110—Division of Purchasing—
Revolving Fund*

(WV Code Chapter 5A)

Fund 2320 FY 1999 Org 0216

1	Personal Services	001	\$ 862,535
2	Annual Increment	004	36,440
3	Employee Benefits	010	330,591
4	Unclassified	099	<u>610,678</u>
5	Total		\$ 1,840,244

6 The total amount of this appropriation shall be paid
7 from a special revenue fund out of collections made by
8 the division of purchasing as provided by law.

9 There is hereby appropriated from this fund, in
10 addition to the above appropriation, the necessary amount
11 for the expenditure of funds other than personal services

12 or employee benefits to enable the division to provide
 13 printing, publishing and document services and for the
 14 purchase of supplies for resale to user agencies. These
 15 services include, but are not limited to, offset printing,
 16 electronic duplication/copying, microfilming, records
 17 storage and the sale of general office supplies.

111—Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 1999 Org 0222

1	Personal Services	001	\$	2,213,677
2	Annual Increment	004		60,100
3	Employee Benefits	010		636,634
4	Unclassified	099		762,121
5	Human Resource			
6	Information System	641		<u>650,000</u>
7	Total		\$	4,322,532

8 The total amount of this appropriation shall be paid
 9 from a special revenue fund out of fees collected by the
 10 division of personnel.

112—WV Prosecuting Attorneys' Institute

(WV Code Chapter 7)

Fund 2521 FY 1999 Org 0228

1	Unclassified—Total	096	\$	163,307
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DEPARTMENT OF EDUCATION

*113—State Department of Education—
 School Building Authority*

(WV Code Chapter 18)

Fund 3959 FY 1999 Org 0402

1	Personal Services	001	\$	427,617
2	Annual Increment	004		5,450

3	Employee Benefits	010		156,205
4	Unclassified	099	<u> </u>	272,819
5	Total		\$	862,091

6 The above appropriation for the administrative
 7 expenses of the school building authority shall be paid
 8 from the interest earnings on debt service reserve accounts
 9 maintained on behalf of said authority.

*114—State Department of Education—
 FFA-FHA Camp and Conference Center*

(WV Code Chapter 18)

Fund 3960 FY 1999 Org 0402

1	Personal Services	001	\$	719,940
2	Annual Increment	004		11,150
3	Employee Benefits	010		323,611
4	Unclassified	099	<u> </u>	932,502
5	Total		\$	1,987,203

*115—State Board of Education—
 Strategic Staff Development*

(WV Code Chapter 18)

Fund 3937 FY 1999 Org 0402

1	Unclassified—Total	096	\$	500,000
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DEPARTMENT OF EDUCATION AND THE ARTS

*116—State College and University Systems—
 State Systems Registration Fee—
 Revenue Bond Construction Fund*

(WV Code Chapters 18 and 18B)

Fund 4033 FY 1999 Org 0453

1 Any unexpended balances remaining in the
 2 appropriations are hereby reappropriated for expenditure
 3 during the fiscal year 1998-99.

4 The total amount of this appropriation shall be paid
 5 from the proceeds of revenue bonds issued pursuant to
 6 section eight, article ten, chapter eighteen-b of the code.

*117—State College and University Systems—
 State Systems Tuition Fee—
 Revenue Bond Construction Fund*

(WV Code Chapters 18 and 18B)

Fund 4041 FY 1999 Org 0453

1 1997 Revenue Bond Costs . . 734 \$ 734,000

2 Any unexpended balances remaining in the
 3 appropriations are hereby reappropriated for expenditure
 4 during the fiscal year 1998-99.

5 The total amount of this appropriation shall be paid
 6 from the proceeds of revenue bonds issued pursuant to
 7 section eight, article twelve-b, chapter eighteen of the
 8 code.

*118—Board of Trustees of the
 University System of West Virginia
 and Board of Directors of the State College System
 Lottery Education Fund Interest Earnings
 Control Account*

(WV Code Chapter 18B)

Fund 4056 FY 1999 Org 0453

1 Higher Education Grant
 2 Program—Total 469 \$ 200,000

*119—State University System—
 State System Registration Fee—
 Special Capital Improvement Fund
 (Capital Improvement and Bond Retirement Fund)
 Control Account*

(WV Code Chapters 18 and 18B)

Fund 4007 FY 1999 Org 0461

1 Debt Service (R) 040 \$ 4,231,012

2	Capital Repairs and Alterations (R) . 251	2,690,400
3	Miscellaneous Projects (R) 252	400,000
4	Computer and Telecom-	
5	munications Technology (R) . . . 438	<u>691,200</u>
6	Total	\$ 8,012,612

7 Any unexpended balances remaining in the
8 appropriations are hereby reappropriated for expenditure
9 during the fiscal year 1998-99.

10 The total amount of this appropriation shall be paid
11 from the special capital improvement fund created in
12 section eight, article ten, chapter eighteen-b of the code.

13 The above appropriations, except for debt service, may
14 be transferred to special revenue funds for capital
15 improvement projects at university system institutions.

*120—State University System—
State System Tuition Fee—
Special Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)
Control Account*

(WV Code Chapters 18 and 18B)

Fund 4008 FY 1999 Org 0461

1	Debt Service (R) 040	\$ 10,625,968
2	Building and Campus Renewal (R) . 258	9,551,300
3	Facilities Planning and	
4	Administration (R) 386	190,000
5	Computer and Telecom-	
6	munications Technology (R) . . . 438	<u>691,200</u>
7	Total	\$ 21,058,468

8 Any unexpended balances remaining in the
9 appropriations are hereby reappropriated for expenditure
10 during the fiscal year 1998-99.

11 The total amount of this appropriation shall be paid
 12 from the special capital improvement fund created in
 13 article twelve-b, chapter eighteen of the code.

14 The above appropriations, except for debt service, may
 15 be transferred to special revenue funds for capital
 16 improvement projects at university system institutions.

*121—State University System—
 West Virginia University Health Sciences Center
 Spending Authority*

(WV Code Chapters 18 and 18B)

Fund 4179 FY 1999 Org 0463

1 Unclassified—Total (R) 096 \$ 14,974,000

2 Any unexpended balance remaining in the
 3 appropriation for the West Virginia University Health
 4 Sciences Center is hereby reappropriated for expenditure
 5 during the fiscal year 1998-99.

*122—State College System—
 State System Registration Fee—
 Special Capital Improvement Fund
 (Capital Improvement and Bond Retirement Fund)
 Control Account*

(WV Code Chapters 18 and 18B)

Fund 4289 FY 1999 Org 0481

1 Debt Service (R) 040 \$ 2,092,035

2 Capital Repairs and Alterations (R) . 251 1,406,400

3 Total \$ 3,498,435

4 Any unexpended balances remaining in the
 5 appropriations are hereby reappropriated for expenditure
 6 during the fiscal year 1998-99.

7 The total amount of this appropriation shall be paid
 8 from the special capital improvement fund created in
 9 section eight, article ten, chapter eighteen-b of the code.

10 The above appropriations, except for debt service, may
 11 be transferred to special revenue funds for capital
 12 improvement projects at college system institutions.

*123—State College System—
 State System Tuition Fee—
 Special Capital Improvement Fund
 (Capital Improvement and Bond Retirement Fund)
 Control Account*

(WV Code Chapters 18 and 18B)

Fund 4290 FY 1999 Org 0481

1	Debt Service (R)	040	\$	3,055,965
2	Capital Improvements (New) (R) . . .	259		1,179,000
3	Capital Contingencies and			
4	Emergencies (R)	537		250,000
5	Building and Campus			
6	Renewal and Facilities			
7	Planning and			
8	Administration (R)	538	_____	2,404,700
9	Total		\$	6,889,665

10 Any unexpended balances remaining in the
 11 appropriations are hereby reappropriated for expenditure
 12 during the fiscal year 1998-99.

13 The total amount of this appropriation shall be paid
 14 from the special capital improvement fund created in
 15 article twelve-b, chapter eighteen of the code.

16 The above appropriations, except for debt service, may
 17 be transferred to special revenue funds for capital
 18 improvement projects at college system institutions.

*124—State Board of Rehabilitation—
 Division of Rehabilitation Services—
 West Virginia Rehabilitation Center
 Special Account*

(WV Code Chapter 18)

Fund 8664 FY 1999 Org 0932

1	Unclassified	099	\$	700,000
2	Workshop Development	163		450,000
3	Workshop-Supported Employment .	484		50,000
4	Medical Services Trust			
5	Fund-Transfer	512		<u>2,000,000</u>
6	Total		\$	3,200,000

**DEPARTMENT OF HEALTH
AND HUMAN RESOURCES**

125—Board of Barbers and Cosmetologists

(WV Code Chapters 16 and 30)

Fund 5425 FY 1999 Org 0505

1	Personal Services	001	\$	187,568
2	Annual Increment	004		4,661
3	Employee Benefits	010		62,559
4	Unclassified	099		<u>113,550</u>
5	Total		\$	368,338

6 The total amount of this appropriation shall be paid
7 from a special revenue fund out of collections made by
8 the board of barbers and cosmetologists as provided by
9 law.

*126—Division of Health—
Vital Statistics*

(WV Code Chapter 16)

Fund 5144 FY 1999 Org 0506

1	Personal Services	001	\$	212,104
2	Annual Increment	004		8,203
3	Employee Benefits	010		111,168
4	Unclassified.	099		<u>103,950</u>
5	Total		\$	435,425

*127—Division of Health—
Hospital Services Revenue Account
(Special Fund)
(Capital Improvement, Renovation and Operations)*

(WV Code Chapter 16)

Fund 5156 FY 1999 Org 0506

1	Debt Service (R)	040	\$	2,420,000
2	Institutional Facilities			
3	Operations (R)	335		32,140,000
4	Medical Services Trust Fund—			
5	Transfer (R)	512		23,300,000
6	Broad Based Provider Tax (R)	566		-0-
7	Total		\$	57,860,000

8 Any unexpended balances remaining in the
9 appropriations for hospital services revenue account at the
10 close of the fiscal year 1997-98 are hereby reappropriated
11 for expenditure during the fiscal year 1998-99, except for
12 fund 5156, activity 335 (fiscal year 1995-96), fund 5156,
13 activity 040, and activity 566 (fiscal year 1996-97), and
14 fund 5156, activity 512 (fiscal year 1997-98), which shall
15 expire on June 30, 1998.

16 The total amount of this appropriation shall be paid
17 from the hospital services revenue account special fund
18 created by section fifteen-a, article one, chapter sixteen of
19 the code, and shall be used for operating expenses and for
20 improvements in connection with existing facilities and
21 bond payments.

22 The secretary of the department of health and human
23 resources is authorized to utilize up to ten percent of the
24 funds from the Institutional Facilities Operations line item
25 to facilitate cost effective and cost saving services at the
26 community level.

27 Necessary funds from the above appropriation may be
28 used for medical facilities operations, either in connection
29 with this account or in connection with the line item

30 designated Institutional Facilities Operations in the
 31 consolidated medical service fund (fund 0525, fiscal year
 32 1999, organization 0506).

33 From the above appropriation to Institutional Facilities
 34 Operations, together with available funds from the
 35 consolidated medical services fund (fund 0525, activity
 36 335), on July 1, 1998, the sum of one hundred fifty
 37 thousand dollars shall be transferred to the department of
 38 agriculture—land division as advance payment for the
 39 purchase of food products; actual payments for such
 40 purchases shall not be required until such credits have
 41 been completely expended.

*128—Division of Health—
 Laboratory Services*

(WV Code Chapter 16)

Fund 5163 FY 1999 Org 0506

1	Personal Services	001	\$	435,152
2	Annual Increment	004		9,450
3	Employee Benefits	010		149,628
4	Unclassified	099		<u>450,000</u>
5	Total		\$	1,044,230

*129—Division of Health—
 Health Facility Licensing*

(WV Code Chapter 16)

Fund 5172 FY 1999 Org 0506

1	Personal Services	001	\$	166,732
2	Annual Increment	004		2,800
3	Employee Benefits	010		62,062
4	Unclassified	099		<u>102,904</u>
5	Total		\$	334,498

*130—Division of Health—
Hepatitis B Vaccine*

(WV Code Chapter 16)

Fund 5183 FY 1999 Org 0506

1	Personal Services	001	\$	50,056
2	Annual Increment	004		1,100
3	Employee Benefits	010		17,729
4	Unclassified.	099		<u>2,350,000</u>
5	Total		\$	2,418,885

*131—Division of Health—
Lead Abatement Fund*

(WV Code Chapter 16)

Fund 5204 FY 1999 Org 0506

1	Unclassified—Total	096	\$	64,800
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132—West Virginia Health Care Authority

(WV Code Chapter 16)

Fund 5375 FY 1999 Org 0507

1	Personal Services	001	\$	1,461,109
2	Annual Increment	004		13,578
3	Employee Benefits	010		513,202
4	Unclassified	099		<u>2,191,231</u>
5	Total		\$	4,179,120

6 The above appropriation is to be expended in
7 accordance with and pursuant to the provisions of article
8 twenty-nine-b, chapter sixteen of the code and from the
9 special revolving fund designated health care cost review
10 fund.

*133—Division of Human Services—
Health Care Provider Tax*

(WV Code Chapter 11)

Fund 5090 FY 1999 Org 0511

1 Unclassified—Total 096 \$ 139,000,000

2 From the above appropriation, an amount not to
3 exceed two hundred thousand dollars shall be transferred
4 to a special revenue account in the treasury for use by the
5 department of health and human resources for
6 administrative purposes. The remainder of all moneys
7 deposited in the fund shall be transferred to the West
8 Virginia medical services fund.

*134—Division of Human Services—
Child Support Enforcement*

(WV Code Chapter 48A)

Fund 5094 FY 1999 Org 0511

1 Unclassified—Total 096 \$ 26,334,382

*135—Division of Human Services—
Medical Services Trust Fund*

(WV Code Chapter 9)

Fund 5185 FY 1999 Org 0511

1 Eligibility Expansion 582 \$ 5,435,648

2 State Institutions DPSH Payments . . 583 6,566,355

3 Hospice Services 584 340,115

4 Match Drop 585 10,472,000

5 Total \$ 22,814,118

6 Any unexpended balances remaining in the
7 appropriations for Medical Services Payment Backlog
8 (fund 5185, activity 260) at the close of the fiscal year
9 1997-98 are hereby reappropriated for expenditure
10 during the fiscal year 1998-99.

11 The Match Drop line item above shall be used in
 12 conjunction with funds appropriated to the division of
 13 human services in the Medical Services line item (fund
 14 0403, activity 189). The remainder of all moneys
 15 deposited in the fund shall be transferred to the division of
 16 human services accounts.

**DEPARTMENT OF MILITARY AFFAIRS
 AND PUBLIC SAFETY**

*136—State Armory Board—
 General Armory Fund*

(WV Code Chapter 15)

Fund 6102 FY 1999 Org 0604

1 Unclassified—Total 096 \$ 390,193

*137—West Virginia Division of Corrections—
 Parolee Supervision Fees*

(WV Code Chapter 62)

Fund 6362 FY 1999 Org 0608

1	Personal Services	001	\$	85,952
2	Employee Benefits	010		38,271
3	Unclassified	099		<u>115,408</u>
4	Total		\$	239,631

*138—West Virginia State Police—
 Motor Vehicle Inspection Fund*

(WV Code Chapter 17C)

Fund 6501 FY 1999 Org 0612

1	Personal Services	001	\$	658,751
2	Annual Increment	004		3,150
3	Employee Benefits	010		192,625
4	Unclassified (R)	099		<u>889,861</u>
5	Total		\$	1,744,387

6 The total amount of this appropriation shall be paid
 7 from the special revenue fund out of fees collected for
 8 inspection stickers as provided by law.

9 Any unexpended balance remaining in the
 10 appropriation for Unclassified (fund 6501, activity 099) at
 11 the close of the fiscal year 1997-98 is hereby
 12 reappropriated for expenditure during the fiscal year
 13 1998-99.

*139—West Virginia State Police—
 Drunk Driving Prevention Fund*

(WV Code Chapter 15)

Fund 6513 FY 1999 Org 0612

1 Unclassified—Total 096 \$ 1,020,000

2 The total amount of this appropriation shall be paid
 3 from the special revenue fund out of receipts collected
 4 pursuant to sections nine-a and sixteen, article fifteen,
 5 chapter eleven of the code and paid into a revolving fund
 6 account in the state treasury.

*140—West Virginia State Police—
 Surplus Real Property Proceeds Fund*

(WV Code Chapter 15)

Fund 6516 FY 1999 Org 0612

1 Unclassified—Total 096 \$ 500,000

*141—West Virginia State Police—
 Surplus Transfer Account*

(WV Code Chapter 15)

Fund 6519 FY 1999 Org 0612

1 Unclassified—Total 096 \$ 350,000

*142—WV State Police—
 Central Abuse Registry Fund*

(WV Code Chapter 15)

Fund 6527 FY 1999 Org 0612

1 Unclassified—Total 096 \$ 67,156

*143—Regional Jail and Correctional
Facility Authority*

(WV Code Chapter 31)

Fund 6675 FY 1999 Org 0615

1	Personal Services	001	\$	600,263
2	Annual Increment	004		7,050
3	Employee Benefits	010		196,614
4	Debt Service	040		10,000,000
5	Unclassified	099		<u>253,289</u>
6	Total		\$	11,057,216

*144—Division of Veterans' Affairs—
Veterans' Home*

(WV Code Chapter 19A)

Fund 6754 FY 1999 Org 0618

1 Unclassified—Total 096 \$ 216,000

*145—Fire Commission—
Fire Marshal Fees*

(WV Code Chapter 29)

Fund 6152 FY 1999 Org 0619

1	Personal Services	001	\$	403,125
2	Annual Increment	004		5,200
3	Employee Benefits	010		123,969
4	Unclassified	099		<u>296,080</u>
5	Total		\$	828,374

6 Any unexpended cash balance remaining in fund
7 6152 at the close of the fiscal year 1997-98 is hereby
8 available for expenditure as part of the fiscal year 1998-
9 99 appropriation.

*146—Criminal Justice—
Court Security Fund*

(Executive Order)

Fund 6804 FY 1999 Org 0620

1 Unclassified—Total 096 \$ 2,000,000

DEPARTMENT OF TAX AND REVENUE

*147—Division of Banking—
Lending and Credit Rate Board*

(WV Code Chapter 47A)

Fund 3040 FY 1999 Org 0303

1	Personal Services	001	\$	5,000
2	Employee Benefits	010		988
3	Unclassified	099		<u>5,000</u>
4	Total		\$	10,988

148—Division of Banking

(WV Code Chapter 31A)

Fund 3041 FY 1999 Org 0303

1	Personal Services	001	\$	1,132,933
2	Annual Increment	004		14,200
3	Employee Benefits	010		366,241
4	Unclassified	099		<u>525,540</u>
5	Total		\$	2,038,914

*149—Tax Division—
Office of Chief Inspector*

(WV Code Chapter 6)

Fund 7067 FY 1999 Org 0702

1	Personal Services	001	\$	1,362,010
2	Annual Increment	004		23,000

3	Employee Benefits	010		432,777
4	Unclassified	099	<u> </u>	469,510
5	Total		\$	2,287,297

*150—Tax Division—
Cemetery Company Account*

(WV Code Chapter 35)

Fund 7071 FY 1999 Org 0702

1	Personal Services	001	\$	16,116
2	Employee Benefits	010		5,283
3	Unclassified	099	<u> </u>	10,916
4	Total		\$	32,315

*151—Tax Division—
Special Audit and Investigative Unit*

(WV Code Chapter 11)

Fund 7073 FY 1999 Org 0702

1	Personal Services	001	\$	712,969
2	Annual Increment	004		7,050
3	Employee Benefits	010		225,545
4	Unclassified	099	<u> </u>	361,098
5	Total		\$	1,306,662

*152—Insurance Commissioner—
Examination Revolving Fund*

(WV Code Chapter 33)

Fund 7150 FY 1999 Org 0704

1	Personal Services	001	\$	412,414
2	Annual Increment	004		300
3	Employee Benefits	010		103,276
4	Unclassified	099	<u> </u>	313,388
5	Total		\$	829,378

*153—Insurance Commissioner—
Consumer Advocate*

(WV Code Chapter 33)

Fund 7151 FY 1999 Org 0704

1	Personal Services	001	\$	198,692
2	Annual Increment	004		200
3	Employee Benefits	010		71,175
4	Unclassified	099		190,637
5	Total		\$	460,704

154—Insurance Commissioner

(WV Code Chapter 33)

Fund 7152 FY 1999 Org 0704

1	Personal Services	001	\$	1,620,544
2	Annual Increment	004		29,950
3	Employee Benefits	010		528,947
4	Unclassified	099		1,091,300
5	Total		\$	3,270,741

6 The total amount of this appropriation shall be paid
7 from a special revenue fund out of collections of fees and
8 charges as provided by law.

*155—Racing Commission—
Relief Fund*

(WV Code Chapter 19)

Fund 7300 FY 1999 Org 0707

1	Medical Expenses—Total	245	\$	57,000
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2 The total amount of this appropriation shall be paid
3 from the special revenue fund out of collections of license
4 fees and fines as provided by law.

- 5 No expenditures shall be made from this account
 6 except for hospitalization, medical care and/or funeral
 7 expenses for persons contributing to this fund.

*156—Racing Commission—
 Administration and Promotion*

(WV Code Chapter 19)

Fund 7304 FY 1999 Org 0707

1	Personal Services	001	\$	53,700
2	Annual Increment	004		900
3	Employee Benefits	010		23,459
4	Unclassified	099		<u>47,408</u>
5	Total		\$	125,467

*157—Racing Commission—
 General Administration*

(WV Code Chapter 19)

Fund 7305 FY 1999 Org 0707

1	Personal Services	001	\$	1,138,980
2	Annual Increment	004		17,250
3	Employee Benefits	010		331,553
4	Unclassified	099		<u>290,817</u>
5	Total		\$	1,778,600

*158—Racing Commission—
 Administration, Promotion and Education Fund*

(WV Code Chapter 19)

Fund 7307 FY 1999 Org 0707

1	Unclassified—Total	096	\$	35,000
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*159—Alcohol Beverage
 Control Administration—
 Wine License Special Fund*

(WV Code Chapter 60)

Fund 7351 FY 1999 Org 0708

1	Personal Services	001	\$	205,700
2	Annual Increment	004		4,100
3	Employee Benefits	010		77,744
4	Unclassified	099		<u>157,072</u>
5	Total		\$	444,616

160—Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 1999 Org 0708

1	Personal Services	001	\$	2,641,028
2	Annual Increment	004		73,251
3	Employee Benefits	010		1,456,730
4	Unclassified	099		<u>2,023,296</u>
5	Total		\$	6,194,305

6 The total amount of this appropriation shall be paid
7 from a special revenue fund out of liquor revenues.

8 The above appropriation includes the salary of the
9 commissioner and the salaries, expenses and equipment of
10 administrative offices, warehouses and inspectors.

11 There is hereby appropriated from liquor revenues, in
12 addition to the above appropriation, the necessary amount
13 for the purchase of liquor as provided by law.

DEPARTMENT OF TRANSPORTATION*161—Division of Motor Vehicles
Driver's License Reinstatement Fund*

(WV Code Chapter 17B)

Fund 8213 FY 1999 Org 0802

1	Unclassified—Total	096	\$	500,650
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*162—Division of Motor Vehicles
Driver Rehabilitation*

(WV Code Chapter 17C)

Fund 8214 FY 1999 Org 0802

1	Unclassified—Total	096	\$	899,858
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*163—Division of Motor Vehicles
Insurance Certificate Fees*

(WV Code Chapter 20)

Fund 8215 FY 1999 Org 0802

1	Personal Services	001	\$	563,436
2	Annual Increment	004		15,450
3	Employee Benefits	010		223,349
4	Unclassified	099		<u>69,425</u>
5	Total		\$	871,660

*164—Division of Motor Vehicles
Motorboat Licenses*

(WV Code Chapter 20)

Fund 8216 FY 1999 Org 0802

1	Unclassified—Total	096	\$	151,638
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*165—Division of Motor Vehicles
Returned Check Fees*

(WV Code Chapter 17)

Fund 8217 FY 1999 Org 0802

1	Unclassified—Total	096	\$	22,466
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BUREAU OF COMMERCE

166—Division of Forestry

(WV Code Chapter 19)

Fund 3081 FY 1999 Org 0305

1	Personal Services	001	\$	303,165
2	Annual Increment	004		3,300
3	Employee Benefits	010		81,956
4	Unclassified	099		<u>363,044</u>
5	Total		\$	751,465

*167—Division of Forestry
Timberland Enforcement Operations*

(WV Code Chapter 19)

Fund 3082 FY 1999 Org 0305

1	Unclassified—Total	096	\$	287,047
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*168—Division of Forestry
Severance Tax Operations*

(WV Code Chapter 11)

Fund 3084 FY 1999 Org 0305

1	Unclassified—Total	096	\$	2,929,560
2	Computer Upgrades	349		<u>127,500</u>
3	Total		\$	3,057,060

169—Geological and Economic Survey

(WV Code Chapter 29)

Fund 3100 FY 1999 Org 0306

1	Personal Services	001	\$	40,893
2	Annual Increment	004		508
3	Employee Benefits	010		7,327
4	Unclassified	099		<u>177,847</u>
5	Total		\$	226,575

6 The above appropriation shall be used in accordance
 7 with section four, article two, chapter twenty-nine of the
 8 code.

*170—West Virginia Development Office—
 Energy Assistance*

(WV Code Chapter 5B)

Fund 3144 FY 1999 Org 0307

1 Any unexpended balances remaining in the
 2 appropriations for Unclassified (fund 3144, activity 099)
 3 and Energy Assistance-Total (fund 3144, activity 647) at
 4 the close of the fiscal year 1997-98 are hereby
 5 reappropriated for expenditure during the fiscal year
 6 1998-99.

*171—Division of Labor
 Contractor Licensing Board Fund*

(WV Code Chapter 21)

Fund 3187 FY 1999 Org 0308

1	Personal Services	001	\$	745,311
2	Annual Increment	004		11,012
3	Employee Benefits	010		270,169
4	Unclassified	099		<u>811,892</u>
5	Total		\$	1,838,384

*172—Division of Labor
 Elevator Safety Act*

(WV Code Chapter 21)

Fund 3188 FY 1999 Org 0308

1	Personal Services	001	\$	166,596
2	Annual Increment	004		1,164
3	Employee Benefits	010		56,944
4	Unclassified	099		<u>82,068</u>
5	Total		\$	306,772

173—Division of Natural Resources

(WV Code Chapter 20)

Fund 3200 FY 1999 Org 0310

1	Personal Services	001	\$	6,541,543
2	Annual Increment	004		151,360
3	Employee Benefits	010		2,493,950
4	Unclassified	099		2,090,124
5	Capital Improvements and			
6	Land Purchase (R)	248		<u>1,247,953</u>
7	Total		\$	12,524,930

8 The total amount of this appropriation shall be paid
9 from a special revenue fund out of fees collected by the
10 division of natural resources.

11 Any unexpended balance remaining in the
12 appropriation for Capital Improvements and Land
13 Purchase (fund 3200, activity 248) at the close of the
14 fiscal year 1997-98 is hereby reappropriated for
15 expenditure during the fiscal year 1998-99.

*174—Division of Natural Resources
Game, Fish and Aquatic Life Fund*

(WV Code Chapter 20)

Fund 3202 FY 1999 Org 0310

1	Unclassified—Total	096	\$	26,000
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*175—Division of Natural Resources
Nongame Fund*

(WV Code Chapter 20)

Fund 3203 FY 1999 Org 0310

1	Personal Services	001	\$	83,908
2	Annual Increment	004		1,200
3	Employee Benefits	010		28,249

4	Unclassified	099	<u>19,950</u>
5	Total	\$	133,307

*176—Division of Natural Resources
Planning and Development Division*

(WV Code Chapter 20)

Fund 3205 FY 1999 Org 0310

1	Personal Services	001	\$ 213,440
2	Annual Increment	004	5,250
3	Employee Benefits	010	82,787
4	Unclassified	099	<u>310,208</u>
5	Total	\$	611,685

*177—Division of Natural Resources—
Whitewater Study and Improvement Fund*

(WV Code Chapter 20)

Fund 3253 FY 1999 Org 0310

1	Unclassified—Total	096	\$ 130,000
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*178—Division of Natural Resources
Recycling Assistance Fund*

(WV Code Chapter 20)

Fund 3254 FY 1999 Org 0310

1	Personal Services	001	\$ 131,016
2	Annual Increment	004	2,500
3	Employee Benefits	010	54,336
4	Unclassified (R)	099	<u>2,619,306</u>
5	Total	\$	2,807,158

6 Any unexpended balance remaining in the
7 appropriation for Unclassified (fund 3254, activity 099) at
8 the close of the fiscal year 1997-98 is hereby
9 reappropriated for expenditure during the fiscal year

- 10 1998-99, except for fund 3254, activity 099 (fiscal year
 11 1993-94, 1994-95 and 1995-96) which shall expire on
 12 June 30, 1998.

*179—Division of Natural Resources
 Whitewater Advertising and Promotion Fund*

(WV Code Chapter 20)

Fund 3256 FY 1999 Org 0310

1 Unclassified—Total 096 \$ 20,000

BUREAU OF EMPLOYMENT PROGRAMS

*180—Bureau of Employment Programs
 Workers' Compensation Fund*

(WV Code Chapter 23)

Fund 3440 FY 1999 Org 0322

1	Personal Services	001	\$	20,144,138
2	Annual Increment	004		357,553
3	Employee Benefits	010		6,893,070
4	Unclassified (R)	099		12,317,522
5	Employer Excess Liability Fund . . .	226		114,307
6	Contractual and			
7	Professional Services	830		<u>7,712,711</u>
8	Total		\$	47,539,301

- 9 Any unexpended balances remaining in the
 10 appropriations for Unclassified (fund 3440, activity 099)
 11 and Contractual Services -TQI (fund 3440, activity 748) at
 12 the close of the fiscal year 1997-98 are hereby
 13 reappropriated for expenditure during the fiscal year
 14 1998-99.

BUREAU OF ENVIRONMENT

181—Solid Waste Management Board

(WV Code Chapter 20)

Fund 3288 FY 1999 Org 0312

1	Personal Services	001	\$	424,047
2	Annual Increment	004		3,200
3	Employee Benefits	010		150,727
4	Unclassified	099		1,122,668
5	Business/Technical Assistance	828		<u>80,886</u>
6	Total		\$	1,781,528

*182—Division of Environmental Protection
Special Reclamation Fund*

(WV Code Chapter 22A)

Fund 3321 FY 1999 Org 0313

1	Personal Services	001	\$	188,089
2	Annual Increment	004		6,900
3	Employee Benefits	010		72,957
4	Unclassified	099		<u>7,561,155</u>
5	Total		\$	7,829,101

*183—Division of Environmental Protection
Oil and Gas Reclamation Trust*

(WV Code Chapter 22B)

Fund 3322 FY 1999 Org 0313

1	Unclassified—Total	096	\$	465,000
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*184—Division of Environmental Protection
Oil and Gas Operating Permits*

(WV Code Chapter 22B)

Fund 3323 FY 1999 Org 0313

1	Personal Services	001	\$	207,106
2	Annual Increment	004		3,825

3	Employee Benefits	010		74,911
4	Unclassified	099	<u> </u>	<u>483,398</u>
5	Total		\$	769,240

*185—Division of Environmental Protection
Mines and Minerals Operations Fund*

(WV Code Chapter 22)

Fund 3324 FY 1999 Org 0313

1	Personal Services	001	\$	2,287,336
2	Annual Increment	004		33,450
3	Employee Benefits	010		710,993
4	Unclassified	099	<u> </u>	<u>768,031</u>
5	Total		\$	3,799,810

*186—Division of Environmental Protection
Underground Storage Tanks
Administrative Fund*

(WV Code Chapter 20)

Fund 3325 FY 1999 Org 0313

1	Personal Services	001	\$	290,856
2	Annual Increment	004		4,450
3	Employee Benefits	010		104,521
4	Unclassified	099	<u> </u>	<u>146,356</u>
5	Total		\$	546,183

*187—Division of Environmental Protection
Hazardous Waste Emergency and Response Fund*

(WV Code Chapter 20)

Fund 3331 FY 1999 Org 0313

1	Personal Services	001	\$	365,846
2	Annual Increment	004		7,925

3	Employee Benefits	010		121,971
4	Unclassified	099		<u>874,760</u>
5	Total		\$	1,370,502

*188—Division of Environmental Protection
Solid Waste Reclamation and
Environmental Response Fund*

(WV Code Chapter 20)

Fund 3332 FY 1999 Org 0313

1	Personal Services	001	\$	165,600
2	Annual Increment	004		2,400
3	Employee Benefits	010		53,032
4	Unclassified	099		<u>786,353</u>
5	Total		\$	1,007,385

*189—Division of Environmental Protection
Solid Waste Enforcement Fund*

(WV Code Chapter 20)

Fund 3333 FY 1999 Org 0313

1	Personal Services	001	\$	1,455,142
2	Annual Increment	004		24,600
3	Employee Benefits	010		477,940
4	Unclassified	099		779,550
5	Litter Control-Conservation			
6	Officers	564		<u>200,000</u>
7	Total		\$	2,937,232

*190—Division of Environmental Protection
Fees and Operating Expenses*

(WV Code Chapter 16)

Fund 3336 FY 1999 Org 0313

1	Personal Services	001	\$	2,567,590
2	Annual Increment	004		10,950
3	Employee Benefits	010		814,315
4	Unclassified	099		<u>1,230,319</u>
5	Total		\$	4,623,174

*191—Division of Environmental Protection—
Environmental Laboratory
Certification Fund*

(WV Code Chapter 22)

Fund 3340 FY 1999 Org 0313

1	Personal Services	001	\$	110,345
2	Annual Increment	004		1,500
3	Employee Benefits	010		34,971
4	Unclassified	099		<u>72,051</u>
5	Total		\$	218,867

*192—Division of Environmental Protection
Stream Restoration Fund*

Fund 3349 FY 1999 Org 0313

1	Unclassified—Total	096	\$	2,000,000
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193—Oil and Gas Conservation Commission

(WV Code Chapter 22)

Fund 3371 FY 1999 Org 0315

1	Personal Services	001	\$	151,503
2	Annual Increment	004		1,300
3	Employee Benefits	010		29,118
4	Unclassified	099		<u>49,074</u>
5	Total		\$	230,995

MISCELLANEOUS BOARDS AND COMMISSIONS

194—Hospital Finance Authority

(WV Code Chapter 16)

Fund 5475 FY 1999 Org 0509

1	Personal Services	001	\$	28,568
2	Annual Increment	004		450
3	Employee Benefits	010		11,599
4	Unclassified.	099		<u>25,895</u>
5	Total		\$	66,512

6 The total amount of this appropriation shall be paid
 7 from the special revenue fund out of fees and collections
 8 as provided by article twenty-nine-a, chapter sixteen of the
 9 code.

195—Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 1999 Org 0706

1	Personal Services	001	\$	151,994
2	Annual Increment	004		3,000
3	Employee Benefits	010		55,063
4	Unclassified	099		<u>69,931</u>
5	Total		\$	279,988

*196—WV State Board of Examiners
for Licensed Practical Nurses*

(WV Code Chapter 30)

Fund 8517 FY 1999 Org 0906

1	Unclassified—Total	096	\$	339,109
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*197—WV Board of Examiners for
Registered Professional Nurses*

(WV Code Chapter 30)

Fund 8520 FY 1999 Org 0907

1	Unclassified—Total	096	\$	789,648
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*198—West Virginia Cable Television
Advisory Board*

(WV Code Chapter 5)

Fund 8609 FY 1999 Org 0924

1	Personal Services	001	\$	154,664
2	Annual Increment	004		4,000
3	Employee Benefits	010		45,347
4	Unclassified	099		<u>68,000</u>
5	Total		\$	272,011

199—Public Service Commission

(WV Code Chapter 24)

Fund 8623 FY 1999 Org 0926

1	Personal Services	001	\$	6,296,252
2	Annual Increment	004		120,000
3	Employee Benefits	010		2,047,563
4	Unclassified	099		2,452,000
5	765 KV Transmission Line Study	485		<u>250,000</u>
6	Total		\$	11,165,815

7 The total amount of this appropriation shall be paid
8 from a special revenue fund out of collections for special
9 license fees from public service corporations as provided
10 by law.

11 The Public Service Commission is authorized to spend
12 up to \$250,000, from surplus funds in this account, to
13 meet the expected deficiencies in the Motor Carrier

- 14 Division account due to passage of enrolled house bill no.
15 2715, regular session, 1997.

*200—Public Service Commission—
Gas Pipeline Division*

(WV Code Chapter 24B)

Fund 8624 FY 1999 Org 0926

1	Personal Services	001	\$	136,547
2	Annual Increment	004		5,556
3	Employee Benefits	010		42,839
4	Unclassified	099		98,500
5	Total		\$	283,442

- 6 The total amount of this appropriation shall be paid
7 from a special revenue fund out of receipts collected for
8 or by the public service commission pursuant to and in the
9 exercise of regulatory authority over pipeline companies
10 as provided by law.

*201—Public Service Commission—
Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8625 FY 1999 Org 0926

1	Personal Services	001	\$	1,367,053
2	Annual Increment	004		34,723
3	Employee Benefits	010		436,720
4	Unclassified	099		670,500
5	Total		\$	2,508,996

- 6 The total amount of this appropriation shall be paid
7 from a special revenue fund out of receipts collected for
8 or by the public service commission pursuant to and in the
9 exercise of regulatory authority over motor carriers as
10 provided by law.

*202—Public Service Commission—
Consumer Advocate*

(WV Code Chapter 24)

Fund 8627 FY 1999 Org 0926

1	Personal Services	001	\$	403,887
2	Annual Increment	004		4,350
3	Employee Benefits	010		122,375
4	Unclassified	099		297,985
5	Total		\$	828,597

6 The total amount of this appropriation shall be paid
7 from a special revenue fund out of collections made by
8 the public service commission.

203—Real Estate Commission

(WV Code Chapter 47)

Fund 8635 FY 1999 Org 0927

1	Personal Services	001	\$	293,668
2	Annual Increment	004		4,200
3	Employee Benefits	010		99,108
4	Unclassified	099		269,400
5	Total		\$	666,376

6 The total amount of this appropriation shall be paid
7 out of collections of license fees as provided by law.

*204—WV Board of Examiners
for Speech-Language
Pathology and Audiology*

(WV Code Chapter 30)

Fund 8646 FY 1999 Org 0930

1	Unclassified—Total	096	\$	70,000
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205—WV Board of Respiratory Care

(WV Code Chapter 30)

Fund 8676 FY 1999 Org 0935

1 Unclassified—Total 096 \$ 107,961

206—WV Board of Licensed Dietitians

Fund 8680 FY 1999 Org 0936

1 Unclassified—Total 096 \$ 15,000

207—Massage Therapy Licensure Board

(WV Code Chapter 37)

Fund 8671 FY 1999 Org 0938

1 Unclassified—Total 096 \$ 8,000

208—Claims Against Other Funds

1 Claims Against the State 319 \$ -0-

2 Total TITLE II, Section 3—

3 Other Funds \$ 497,784,156

1 **Sec. 4. Appropriations from lottery net profits.—**

2 Net profits of the lottery, not to exceed eighty million one
3 hundred sixteen thousand one hundred thirteen dollars,
4 are to be deposited by the lottery director to the following
5 accounts in the amounts indicated. The auditor shall
6 prorate each deposit of net profits by the lottery director
7 among fund numbers 2252, 3067, 3267, 3507, 3951,
8 3963, and 5405 in the proportion the appropriation for
9 each account bears to the total of the appropriations for
10 the seven accounts.

209—West Virginia Development Office—

Division of Tourism

(WV Code Chapter 5B)

Fund 3067 FY 1999 Org 0304

	Activity	Lottery Funds
1	Tourism—Telemarketing Center . . . 463 \$	100,000
2	Tourism—Advertising (R) 618	2,240,000
3	State Parks and Recreation	
4	Advertising (R) 619	560,000
5	Tourism—Unclassified (R) 662	<u>2,973,920</u>
6	Total	\$ 5,873,920

7 Any unexpended balances remaining in the
 8 appropriations for Tourism-Advertising (fund 3067,
 9 activity 618), State Parks and Recreation Advertising (fund
 10 3067, activity 619), Tourism-Unclassified (fund 3067,
 11 activity 662) and Raleigh County Meeting and Convention
 12 Center - Total - Surplus (fund 3067, activity 763) are
 13 hereby reappropriated for expenditure during the fiscal
 14 year 1998-99.

210—Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 1999 Org 0310

1	Pricketts Fort State Park 324 \$	120,000
2	Parks Operations—	
3	Unclassified (R) 645	1,440,143
4	Canaan Valley—Land	
5	Acquisition (R) 710	<u>200,000</u>
6	Total	\$ 1,760,143

7 Any unexpended balances remaining in the
 8 appropriations for Parks Operations — Unclassified (fund
 9 3267, activity 645), Capital Outlay — Parks (fund 3267,
 10 activity 288) and Canaan Valley - Land Acquisition (fund
 11 3267, activity 710) at the close of the fiscal year 1997-98
 12 is hereby reappropriated for expenditure during the fiscal
 13 year 1998-99, except fund 3267, activity 288 (fiscal year
 14 1991-92 and 1992-93) which shall expire on June 30,
 15 1998.

211—State Department of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 1999 Org 0402

1	Educational Development	823	\$	1,500,000	
2	Computer Basic Skills—Total (R) ..	567		<u>16,300,000</u>	
3	Total		\$	17,800,000	
4	Any unexpended balances remaining in the				
5	appropriation for Elementary Computer Education—Total				
6	(fund 3951, activity 285), Computer Basic Skills — Total				
7	(fund 3951, activity 567) and Pendleton County Schools -				
8	Capital Improvements - Total - Surplus (fund 3951,				
9	activity 761) at the close of the fiscal year 1997-98 are				
10	hereby reappropriated for expenditure during the fiscal				
11	year 1998-99.				

*212—State Department of Education—
School Building Authority — Debt Service Fund*

(WV Code Chapter 18)

Fund 3963 FY 1999 Org 0402

1	Debt Service—Total	310	\$	18,000,000
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*213—Department of Education and the Arts—
Office of the Secretary**Control Account*

(WV Code Chapter 5F)

Fund 3507 FY 1999 Org 0431

1	Center for Professional			
2	Development—Total	504	\$	-0-
3	Unclassified	099		3,520,000
4	Higher Education Grant Program ..	164		6,662,050
5	Infomine Network-Library			
6	Commission	158		1,000,000
7	WV 2001 Project	836		<u>1,500,000</u>
8	Total		\$	12,682,050

214—Library Commission

(WV Code Chapter 10)

Fund 3559 FY 1999 Org 0433

1	Infomine Network—Total	158	\$	-0-
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*215—Department of Education and the Arts—
Central Office—State College and University Systems
Control Account*

(WV Code Chapter 5F)

Fund 4800 FY 1999 Org 0453

1	Unclassified	099	\$	-0-
2	Higher Education Grant Program . .	164		-0-
3	Total		\$	-0-

4 Any unexpended balances remaining in the
5 appropriations for Shepherd College - Capital
6 Improvements - Lottery Surplus (fund 4800, activity 759),
7 West Virginia Northern Community College - Capital
8 Improvements - Lottery Surplus (fund 4800, activity 760),
9 Capital Outlay and Improvements - Lottery Surplus (fund
10 4800, activity 762), Educational Broadcasting Authority -
11 600 Capital Street - Lottery Surplus (fund 4800, activity
12 781), Shepherd College - Capital Improvements - Total -
13 Lottery Surplus (fund 4800, activity 764) and
14 Unclassified—Total (fund 4800, activity 096) at the close
15 of fiscal year 1997-98 is hereby reappropriated for
16 expenditure during the fiscal year 1998-99.

216—Bureau of Senior Services

(WV Code Chapter 29)

Fund 5405 FY 1999 Org 0508

1	Senior Citizen Centers and			
2	Programs	462	\$	1,200,000
3	Direct Services	481		2,800,000

4	Transfer to Division of Human		
5	Services for Health Care		
6	and Title XIX Waiver		
7	for Senior Citizens	539	<u>10,000,000</u>
8	Total		\$ 14,000,000

9 Any unexpended balances remaining in the
 10 appropriations for Senior Citizens Centers and Programs -
 11 Surplus (fund 5405, activity 782) and Holly Grove
 12 Mansion Restoration - Surplus (fund 5405, activity 765) at
 13 the close of the fiscal year 1997-98 are hereby
 14 reappropriated for expenditure during the fiscal year
 15 1998-99.

16 The above appropriation for Health Care and Title
 17 XIX Waiver for Senior Citizens along with the federal
 18 moneys generated thereby shall be used for
 19 reimbursement for services provided under the program.
 20 Further, the program shall be preserved within the
 21 aggregate of these funds.

*217—Education, Arts, Sciences and Tourism
 Debt Service Fund*

(WV Code Chapter 5)

Fund 2252 FY 1999 Org 0211

1	Debt Service—Total	310	\$ 10,000,000
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2 Any unexpended balance remaining in the
 3 appropriation for Debt Service - Total (fund 2252, activity
 4 310) at the close of the fiscal year 1997-98 is hereby
 5 reappropriated for expenditure during the fiscal year
 6 1998-99, except fund 2252, activity 310 (fiscal year
 7 1996-97) which shall expire on June 30, 1998.

8	Total TITLE II, Section 4—		
9	Lottery Funds		\$ 80,116,113

1 **Sec. 5. Appropriations of federal funds.—**In
 2 accordance with article eleven, chapter four of the code,
 3 from federal funds there are hereby appropriated
 4 conditionally upon the fulfillment of the provisions set
 5 forth in article two, chapter five-a of the code the

6 following amounts, as itemized, for expenditure during the
 7 fiscal year one thousand nine hundred ninety-nine.

LEGISLATIVE

218—Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 1999 Org 2300

	Activity	Federal Funds
1	Unclassified—Total 096 \$	920,000

JUDICIAL

*219—Supreme Court—
General Judicial*

Fund 8805 FY 1999 Org 2400

1	Unclassified—Total 096 \$	125,019
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EXECUTIVE

*220—Governor's Office—
Governor's Cabinet on Children and Families*

(WV Code Chapter 5)

Fund 8792 FY 1999 Org 0100

1	Unclassified—Total 096 \$	691,433
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*221—Governor's Office—
Governor's Cabinet on Children and Families—
Office of Economic Opportunity*

(WV Code Chapter 5)

Fund 8797 FY 1999 Org 0100

1	Unclassified—Total 096 \$	11,461,310
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*222—Governor's Office—
Commission for National and Community Service*

(WV Code Chapter 5)

Fund 8800 FY 1999 Org 0100

1 Unclassified—Total 096 \$ 3,500,000

223—Auditor's Office

(WV Code Chapter 12)

Fund 8807 FY 1999 Org 1200

1 Unclassified—Total 096 \$ 10,000,000

224—Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 1999 Org 1400

1 Unclassified—Total 096 \$ 2,202,627

*225—Department of Agriculture—
Meat Inspection*

(WV Code Chapter 19)

Fund 8737 FY 1999 Org 1400

1 Unclassified—Total 096 \$ 706,511

DEPARTMENT OF EDUCATION*226—State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 8712 FY 1999 Org 0402

1 Unclassified—Total 096 \$ 14,422,616

*227—State Department of Education—
School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 8713 FY 1999 Org 0402

1 Unclassified—Total 096 \$ 63,631,441

228—*State Board of Education—
Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 8714 FY 1999 Org 0402

1 Unclassified—Total 096 \$ 22,834,773

229—*State Department of Education—
Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Fund 8715 FY 1999 Org 0402

1 Unclassified—Total 096 \$ 35,025,249

DEPARTMENT OF EDUCATION AND THE ARTS

230—*Division of Culture and History*

(WV Code Chapter 29)

Fund 8718 FY 1999 Org 0432

1 Unclassified—Total 096 \$ 1,481,989

231—*Library Commission*

(WV Code Chapter 10)

Fund 8720 FY 1999 Org 0433

1 Unclassified—Total 096 \$ 1,903,007

232—*Educational Broadcasting Authority*

(WV Code Chapter 10)

Fund 8721 FY 1999 Org 0439

1 Unclassified—Total 096 \$ 150,000

233—*State Board of Rehabilitation—
Division of Rehabilitation Services*

(WV Code Chapter 18)

Fund 8734 FY 1999 Org 0932

1 Unclassified—Total 096 \$ 45,050,070

**DEPARTMENT OF HEALTH
AND HUMAN RESOURCES**

234—Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 8723 FY 1999 Org 0506

1 Unclassified—Total 096 \$ 6,119,996

*235—Division of Health—
Central Office*

(WV Code Chapter 16)

Fund 8802 FY 1999 Org 0506

1 Unclassified—Total 096 \$ 51,645,392

*236—Division of Health—
West Virginia Safe Drinking Water Treatment*

(WV Code Chapter 16)

Fund 8824 FY 1999 Org 0506

1 Unclassified—Total 096 \$ 12,000,000

237—Human Rights Commission

(WV Code Chapter 5)

Fund 8725 FY 1999 Org 0510

1 Unclassified—Total 096 \$ 165,428

238—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 1999 Org 0511

1 Unclassified—Total 096 \$1,082,145,706

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

239—Adjutant General—State Militia

(WV Code Chapter 15)

Fund 8726 FY 1999 Org 0603

1 Unclassified—Total 096 \$ 26,224,681

240—Office of Emergency Services

(WV Code Chapter 15)

Fund 8727 FY 1999 Org 0606

1 Unclassified—Total 096 \$ 1,457,578

241—West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 1999 Org 0612

1 Unclassified—Total 096 \$ 3,952,782

*242—Division of Veterans' Affairs—
Veterans' Home*

(WV Code Chapter 9A)

Fund 8728 FY 1999 Org 0618

1 Unclassified—Total 096 \$ 436,874

243—Fire Commission

(WV Code Chapter 29)

Fund 8804 FY 1999 Org 0619

1 Unclassified—Total 096 \$ 30,000

244—Division of Criminal Justice

(Executive Order)

Fund 8803 FY 1999 Org 0620

1 Unclassified—Total 096 \$ 22,288,216

DEPARTMENT OF TAX AND REVENUE

245—Tax Division

(WV Code Chapter 11)

Fund 7069 FY 1999 Org 0702

1 Unclassified—Total 096 \$ 75,000

DEPARTMENT OF TRANSPORTATION

*246—Department of Transportation—
Office of the Secretary*

(WV Code Chapter 5F)

Fund 8782 FY 1999 Org 0801

1 Unclassified—Total 096 \$ 1,700,000

247—State Rail Authority

(WV Code Chapter 29)

Fund 8733 FY 1999 Org 0804

1 Unclassified—Total 096 \$ 550,000

248—Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 1999 Org 0805

1 Unclassified—Total 096 \$ 9,378,749

249—Division of Motor Vehicles

(WV Code Chapter 17B)

Fund 8787 FY 1999 Org 0802

1 Unclassified—Total 096 \$ 1,756,860

BUREAU OF COMMERCE

250—Division of Forestry

(WV Code Chapter 19)

Fund 8703 FY 1999 Org 0305

1 Unclassified—Total 096 \$ 1,030,145

251—Geological and Economic Survey

(WV Code Chapter 29)

Fund 8704 FY 1999 Org 0306

1 Unclassified—Total 096 \$ 794,290

252—West Virginia Development Office

(WV Code Chapter 5B)

Fund 8705 FY 1999 Org 0307

1 Unclassified—Total 096 \$ 3,918,199

253—Division of Labor

(WV Code Chapters 21 and 47)

Fund 8706 FY 1999 Org 0308

1 Unclassified—Total 096 \$ 390,512

254—Division of Natural Resources

(WV Code Chapter 20)

Fund 8707 FY 1999 Org 0310

1 Unclassified—Total 096 \$ 7,819,592

*255—Division of Miners' Health,
Safety and Training*

(WV Code Chapter 22)

Fund 8709 FY 1999 Org 0314

1 Unclassified—Total 096 \$ 522,933

BUREAU OF ENVIRONMENT

256—Solid Waste Management Board

(WV Code Chapter 22)

Fund 8820 FY 1999 Org 0312

1 Unclassified—Total 096 \$ 37,663

257—Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708 FY 1999 Org 0313

1 Unclassified—Total 096 \$ 101,605,707

BUREAU OF SENIOR SERVICES

258—Bureau of Senior Services

(WV Code Chapter 29)

Fund 8724 FY 1999 Org 0508

1 Unclassified—Total 096 \$ 11,519,651

MISCELLANEOUS BOARDS AND COMMISSIONS

*259—Public Service Commission—
Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8743 FY 1999 Org 0926

1 Unclassified—Total 096 \$ 911,198

*260—Public Service Commission—
Gas Pipeline Division*

(WV Code Chapter 24B)

Fund 8744 FY 1999 Org 0926

1 Unclassified—Total 096 \$ 261,601

2 Total TITLE II, Section 5—

3 Federal Funds \$1,562,844,798

1 Sec. 6. Appropriations from federal block grants.—

2 The following items are hereby appropriated from federal
3 block grants to be available for expenditure during the
4 fiscal year 1998-99.

*261—Governor's Office—
Governor's Cabinet on Children and Families*

Fund 8799 FY 1999 Org 0100

1 Unclassified—Total 096 \$ 7,145,797

*262—West Virginia Development Office—
Community Development*

Fund 8746 FY 1999 Org 0307

1	Unclassified—Total	096	\$	21,312,272
	<i>263—Bureau of Employment Programs— Job Training Partnership Act</i>			
	Fund <u>8749</u> FY <u>1999</u> Org <u>0323</u>			
1	Unclassified—Total	096	\$	57,584,411
	<i>264—State Department of Education— Education Grant</i>			
	Fund <u>8748</u> FY <u>1999</u> Org <u>0402</u>			
1	Unclassified—Total	096	\$	112,014,911
	<i>265—Division of Health— Maternal and Child Health</i>			
	Fund <u>8750</u> FY <u>1999</u> Org <u>0506</u>			
1	Unclassified—Total	096	\$	7,563,937
	<i>266—Division of Health— Preventive Health</i>			
	Fund <u>8753</u> FY <u>1999</u> Org <u>0506</u>			
1	Unclassified—Total	096	\$	2,167,929
	<i>267—Division of Health— Substance Abuse Prevention and Treatment</i>			
	Fund <u>8793</u> FY <u>1999</u> Org <u>0506</u>			
1	Unclassified—Total	096	\$	9,514,161
	<i>268—Division of Health— Community Mental Health Services</i>			
	Fund <u>8794</u> FY <u>1999</u> Org <u>0506</u>			
1	Unclassified—Total	096	\$	2,817,065
	<i>269—Division of Health— Abstinence Education Program</i>			
	Fund <u>8825</u> FY <u>1999</u> Org <u>0506</u>			
1	Unclassified—Total	096	\$	487,536

270—*Division of Human Services—
Energy Assistance*

Fund 8755 FY 1999 Org 0511

1 Unclassified—Total 096 \$ 12,093,923

271—*Division of Human Services—
Child Care and Development*

Fund 8756 FY 1999 Org 0511

1 Unclassified—Total 096 \$ 6,900,000

272—*Division of Human Services—
Social Services*

Fund 8757 FY 1999 Org 0511

1 Unclassified—Total 096 \$ 16,795,528

273—*Division of Human Services—
Temporary Assistance Needy Families*

Fund 8816 FY 1999 Org 0511

1 Unclassified—Total 096 \$ 110,587,556

274—*Division of Human Services—
Child Care and Development*

Fund 8817 FY 1999 Org 0511

1 Unclassified—Total 096 \$ 15,985,965

2 Total TITLE II, Section 6—

3 Federal Block Grants \$ 382,970,991

1 **Sec. 7. Appropriation from surplus accrued.**—The
2 following items are hereby appropriated from the state
3 fund, general revenue, and are to be available for
4 expenditure during the fiscal year 1998-99 out of surplus
5 funds only, accrued from fiscal year ending the thirtieth
6 day of June, one thousand nine hundred ninety-eight,
7 subject to the terms and conditions set forth in this section.

8 It is the intent and mandate of the Legislature that the
9 following appropriations be payable only from surplus
10 accrued as of the thirty-first day of July, one thousand

11 nine hundred ninety-eight from fiscal year ending the
12 thirtieth day of June one thousand nine hundred ninety-
13 eight.

14 In the event that surplus revenues available on the
15 thirty-first day of July, one thousand nine hundred ninety-
16 eight, are not sufficient to meet all the appropriations
17 made pursuant to this section, then the appropriations shall
18 be made to the extent that surplus funds are available as of
19 the date mandated, and shall be allocated first to provide
20 the necessary funds to meet the first appropriation of this
21 section; next, to provide the funds necessary for the
22 second appropriation of this section; and subsequently to
23 provide the funds necessary for each appropriation in
24 succession before any funds are provided for the next
25 subsequent appropriation.

275—Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 1999 Org 0211

1	Capital Improvements—		
2	Total—Surplus	672 \$	-0-
3	Capitol Building Roof-		
4	Total—Surplus	820 \$	800,000

5 The above appropriation is intended to be expended
6 for capital improvements to state owned buildings
7 including but not limited to repairs, renovations and
8 capital expenditure for entrance doors, fire escapes, roof
9 repairs, loading dock access and general construction or
10 reconstruction projects.

276—Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 1999 Org 1400

1	Capital Improvements—		
2	Total—Surplus	672 \$	350,000

3 The above appropriation is intended to be expended to
4 construct an addition to the WV Building on the state fair

5 grounds and to provide for repair and renovations to
6 farmers markets.

*277—Division of Corrections—
Correctional Units*

(WV Code Chapters 25, 28, 49 and 62)

Fund 0450 FY 1999 Org 0608

1 Capital Improvements—
2 Total—Surplus 672 \$ -0-

3 The above appropriation is intended to be expended
4 for capital improvements to the Pruntytown Correctional
5 Center and the Denmark Correctional Facility including but
6 not limited to repairs, renovations and capital expenditures
7 for electrical system upgrade, fire safety improvements,
8 building and ground repairs and renovations to include
9 paving.

278—West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 1999 Org 0612

1 Automated Finger Print System—
2 Total—Surplus 452 \$ -0-

279—Division of Juvenile Services

(WV Code Chapter 49)

Fund 0570 FY 1999 Org 0621

1 Capital Improvements—
2 Total—Surplus 672 \$ -0-

3 The above appropriation is intended to be expended
4 for capital improvements to the Davis Center and the
5 Industrial Home for Youth including but not limited to
6 repairs, renovations and capital expenditures for roof
7 repair and replacement and doorways and restroom ADA
8 compliance.

280—*Division of Miners' Health,
Safety, and Training*

(WV Code Chapter 22)

Fund 0277 FY 1999 Org 0314

1 Overtime and Wage Court
2 Awards—Total—Surplus 667 \$ 331,030

281—*Division of Public Transit*

(WV Code Chapter 17)

Fund 0510 FY 1999 Org 0805

i Federal Funds/Grant Match 614 \$ 700,000

282—*Jobs Investment Trust Board*

Fund 0577 FY 1999 Org 0201

1 Jobs Investment Loans and
2 Assistance 829 \$ 1,000,000

3 Total TITLE II, Section 7—
4 Surplus Accrued \$ 3,181,030

1 **Sec. 8. Awards for claims against the state.**—There
2 are hereby appropriated, for the remainder of the fiscal
3 year 1997-1998 and to remain in effect until June 30,
4 1999, from the fund as designated, in the amounts as
5 specified and for the claimants named in enrolled house
6 bill no. 4238, regular session 1998-crime victims
7 compensation funds of \$15,000.00 for payment of claims
8 against the state.

9 There are hereby appropriated for the remainder of
10 the fiscal year 1997-1998 and to remain in effect until
11 June 30, 1999, from the fund as designated, in the
12 amounts as specified and for the claimants named in
13 enrolled senate bill no. 426, regular session 1998, and
14 enrolled committee substitute for house bill no. 4252,
15 regular session 1998, unappropriated surplus general
16 revenue funds of \$1,331,511.94 for payment of claims
17 against the state.

18 The total general revenue funds above do not include
19 payment for claims in the amount of \$6,095.79 from the
20 supreme court-general judicial, fund 0180, specifically

21 made payable from the appropriation for the current fiscal
 22 year 1997-98.

23 There are hereby appropriated for the remainder of
 24 the fiscal year 1997-98 and to remain in effect until June
 25 30, 1999, from the funds as designated, in the amounts as
 26 specified and for the claimants as named in enrolled
 27 senate bill no. 426 and enrolled committee substitute for
 28 house bill no. 4252, regular session 1998—special
 29 revenue funds of \$807,902.30 state road funds of
 30 \$48,400.25 and federal funds of \$19,347.41 for payment
 31 of claims against the state.

1 **Sec. 9. Appropriations from lottery net profit.**—The
 2 following items are hereby appropriated from lottery net
 3 profits, and are to be made available for expenditure
 4 during the fiscal year ending the thirtieth day of June, one
 5 thousand nine hundred ninety-eight. The auditor shall
 6 prorate each deposit of net profits by the lottery director
 7 among fund numbers 3505 and 5405 in the proportion
 8 the appropriation for each account bears to the total of the
 9 appropriations for the two accounts.

*283—Department of Education and the Arts—
 Office of the Secretary*

(WV Code Chapter 5F)

Fund 3505 FY 1998 Org 0431

1	Capital Outlay and Improvements—		
2	Total	762	\$ 10,000,000

284—Bureau of Senior Services—

(WV Code Chapter 29)

Fund 5405 FY 1998 Org 0508

1	Senior Citizens Centers,*		
2	Maintenance and Repair	686	\$ 4,800,000
3	Holly Grove Mansion Restoration ..	765	<u>200,000</u>
4	Total		\$ 5,000,000
5	Total TITLE II, Section 9—		
6	Lottery Net Profits		\$ 15,000,000

*Clerk's Note: The word "Programs" and a comma were deleted by the Governor.

1 **Sec. 10. Special revenue appropriations.**—There are
2 hereby appropriated for expenditure during the fiscal year
3 one thousand nine hundred ninety-nine appropriations
4 made by general law from special revenue which are not
5 paid into the state fund as general revenue under the
6 provisions of section two, article two, chapter twelve of the
7 code: *Provided*, That none of the money so appropriated
8 by this section shall be available for expenditure except in
9 compliance with and in conformity to the provisions of
10 articles two and three, chapter twelve and article two,
11 chapter five-a of the code, with due consideration to the
12 digest of legislative intent of the budget bill prepared
13 pursuant to article one, chapter four, unless the spending
14 unit has filed with the director of the budget, the auditor
15 and the legislative auditor prior to the beginning of each
16 fiscal year:

17 (a) An estimate of the amount and sources of all
18 revenues accruing to such fund;

19 (b) A detailed expenditure schedule showing for what
20 purposes the fund is to be expended.

1 **Sec. 11. State improvement fund appropriations.**
2 —Requests or donations of nonpublic funds, received by
3 the governor on behalf of the state during the fiscal year
4 one thousand nine hundred ninety-nine, for the purpose
5 of making studies and recommendations relative to
6 improvements of the administration and management of
7 spending units in the executive branch of state
8 government, shall be deposited in the state treasury in a
9 separate account therein designated state improvement
10 fund.

11 There are hereby appropriated all moneys so
12 deposited during the fiscal year one thousand nine
13 hundred ninety-nine to be expended as authorized by the
14 governor, for such studies and recommendations which
15 may encompass any problems of organization,
16 procedures, systems, functions, powers or duties of a state
17 spending unit in the executive branch, or the betterment of
18 the economic, social, educational, health and general
19 welfare of the state or its citizens.

1 **Sec. 12. Specific funds and collection accounts.**—A
2 fund or collection account which by law is dedicated to a
3 specific use is hereby appropriated in sufficient amount to
4 meet all lawful demands upon the fund or collection

5 account and shall be expended according to the provisions
6 of article three, chapter twelve of the code.

1 **Sec. 13. Appropriations for refunding erroneous**
2 **payment.**—Money that has been erroneously paid into the
3 state treasury is hereby appropriated out of the fund into
4 which it was paid, for refund to the proper person.

5 When the officer authorized by law to collect money
6 for the state finds that a sum has been erroneously paid, he
7 or she shall issue his or her requisition upon the auditor
8 for the refunding of the proper amount. The auditor shall
9 issue his or her warrant to the treasurer and the treasurer
10 shall pay the warrant out of the fund into which the
11 amount was originally paid.

1 **Sec. 14. Sinking fund deficiencies.**—There is hereby
2 appropriated to the governor a sufficient amount to meet
3 any deficiencies that may arise in the mortgage finance
4 bond insurance fund of the West Virginia housing
5 development fund which is under the supervision and
6 control of the municipal bond commission as provided by
7 section twenty-b, article eighteen, chapter thirty-one of the
8 code, or in the funds of the municipal bond commission
9 because of the failure of any state agency for either
10 general obligation or revenue bonds or any local taxing
11 district for general obligation bonds to remit funds
12 necessary for the payment of interest and sinking fund
13 requirements. The governor is authorized to transfer from
14 time to time such amounts to the municipal bond
15 commission as may be necessary for these purposes.

16 The municipal bond commission shall reimburse the
17 state of West Virginia through the governor from the first
18 remittance collected from the West Virginia housing
19 development fund or from any state agency or local
20 taxing district for which the governor advanced funds,
21 with interest at the rate carried by the bonds for security or
22 payment of which the advance was made.

1 **Sec. 15. Appropriations for local governments.**—
2 There are hereby appropriated for payment to counties,
3 districts and municipal corporations such amounts as will
4 be necessary to pay taxes due counties, districts and
5 municipal corporations and which have been paid into the
6 treasury:

7 (a) For redemption of lands;

8 (b) By public service corporations;

9 (c) For tax forfeitures.

1 **Sec. 16. Total appropriations.**—Where only a total
2 sum is appropriated to a spending unit, the total sum shall
3 include personal services, annual increment, employee
4 benefits, current expenses, repairs and alterations,
5 equipment and capital outlay, where not otherwise
6 specifically provided and except as otherwise provided in
7 TITLE I—GENERAL PROVISIONS, Sec. 3.

1 **Sec. 17. General school fund.**—The balance of the
2 proceeds of the general school fund remaining after the
3 payment of the appropriations made by this act is
4 appropriated for expenditure in accordance with section
5 sixteen, article nine-a, chapter eighteen of the code.

TITLE III—ADMINISTRATION.

TITLE III—ADMINISTRATION.

§1. Appropriations conditional.

§2. Constitutionality.

1 **Section 1. Appropriations conditional.**—The ex-
2 penditure of the appropriations made by this act, except
3 those appropriations made to the legislative and judicial
4 branches of the state government, are conditioned upon
5 the compliance by the spending unit with the requirements
6 of article two, chapter five-a of the code.

7 Where spending units or parts of spending units have
8 been absorbed by or combined with other spending units,
9 it is the intent of this act that reappropriations shall be to
10 the succeeding or later spending unit created, unless
11 otherwise indicated.

1 **Sec. 2. Constitutionality.**—If any part of this act is
2 declared unconstitutional by a court of competent
3 jurisdiction, its decision shall not affect any portion of this
4 act which remains, but the remaining portion shall be in
5 full force and effect as if the portion declared
6 unconstitutional had never been a part of the act.

CHAPTER 7

(H. B. 4350—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the governor's office, account no. fund 0101, fiscal year 1998, organization 0100, all supplementing, amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0101, fiscal year 1998, organization 0100, be supplemented and amended by increasing the total appropriation by one hundred sixteen thousand six hundred forty dollars as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 1. Appropriations from general revenue.**

EXECUTIVE

5—*Governor's Office*—

(WV Code Chapter 5)

Account No.

Fund 0101 FY 1998 Org 0100

8		Act-	General
9		ivity	Revenue
10			Fund
11	8a Publication of Papers and		
12	8b Transition Expenses (R)	465	\$116,640

13 Any unexpended balance remaining in the
 14 appropriation for publication of papers and transition
 15 expenses (fund 0101, activity 465) at the close of fiscal
 16 year 1997-98, is hereby reappropriated for expenditure
 17 during fiscal year 1998-99.

18 The purpose of this bill is to supplement this account
 19 in the budget act for fiscal year ending the thirtieth day of
 20 June, one thousand nine hundred ninety-eight, by adding
 21 one hundred sixteen thousand six hundred forty dollars to
 22 a new appropriation for publication of official papers and
 23 transition expenses for expenditure during the fiscal year
 24 one thousand nine hundred ninety-eight.

CHAPTER 8

(S. B. 514—By Senators Tomblin, Mr. President, and Buckalew)
 [By Request of the Executive]

[Passed March 9, 1998, in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the governor's office — custodial fund, account no. fund 0102, fiscal year 1998, organization 0100, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0102, fiscal year 1998, organization 0100, be supplemented and amended by increasing the total appropriation by twenty-eight thousand dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	EXECUTIVE		
4	6—Governor's Office—		
5	Custodial Fund		
6	(WV Code Chapter 5)		
7	Account No.		
8	Fund <u>0102</u>	FY <u>1998</u>	Org <u>0100</u>
9			General
10		Act-	Revenue
11		ivity	Fund
12	1 Unclassified—Total	096	\$28,000

13 The purpose of this bill is to supplement this account
 14 in the budget act for the fiscal year ending the thirtieth
 15 day of June, one thousand nine hundred ninety-eight, by
 16 adding twenty-eight thousand dollars to an existing
 17 appropriation for expenditure during fiscal year one
 18 thousand nine hundred ninety-eight.

CHAPTER 9

(H. B. 4703—By Delegates Michael, Doyle, Leach, Kelley,
Campbell, Fantasia and Compton)

[Passed March 14, 1998; 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-eight, in the amount of twenty million dollars from the income tax refund reserve fund, account no. fund 1313, organization 1300, and making supplementary appropriations 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-eight, to the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1998, organization 0100; to the department of education, West Virginia schools for the deaf and the blind, account no. fund 0320, fiscal year 1998, organization 0403; to the department of health and human resources, division of human services, account no. fund 0403, fiscal year 1998, organization 0511; and to the department of military affairs and public safety, division of corrections—correctional units, account no. fund 0450, fiscal year 1998, organization 0608, all for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood and other natural disaster victims and to fund other needed infrastructure, community development 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-eight; and

WHEREAS, The income tax refund reserve fund has a sufficient balance available for appropriation in the fiscal year

ending the thirtieth day of June, one thousand nine hundred ninety-eight; 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the income tax refund reserve fund, account no. fund 1313, organization 1300, be decreased by expiring the amount of twenty 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-eight, to account no. fund 0105, fiscal year 1998, organization 0100, be supplemented and amended by increasing the total appropriation by five million dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	EXECUTIVE		
4	<i>8—Governor's Office—</i>		
5	<i>Civil Contingent Fund</i>		
6	(WV Code Chapter 5A)		
7	Account No.		
8	Fund 0105 FY 1997 Org 0100		
9			General
10		Act-	Revenue
11		ivity	Fund
12	1 Civil Contingent Fund - Surplus (R)	263	\$ 5,000,000
13	Any unexpended balances remaining in the		
14	appropriation for Civil Contingent Fund - Surplus (R)		
15	(fund 0105, activity 263) at the close of the fiscal year		

16 1997-98 are hereby reappropriated for expenditure
 17 during the fiscal year 1998-1999.

18 That the total appropriation for fiscal year ending the
 19 thirtieth day of June, one thousand nine hundred ninety-
 20 eight, to account no. fund 0320, fiscal year 1998,
 21 organization 0403, be supplemented and amended by
 22 increasing the total appropriation by four hundred
 23 thousand dollars in a new line item as follows:

1 TITLE II—APPROPRIATIONS.

2 **Section 1. Appropriations from general revenue.**

3 DEPARTMENT OF EDUCATION

4 *39—West Virginia Schools for the Deaf and the Blind*

5 (WV Code Chapters 18 and 18A)

6 Account No.

7 Fund 0320 FY 1998 Org 0403

	Act- ivity	General Revenue Fund
8		
9		
10		
11 5a Capital Outlay, Repairs and		
12 Equipment (R)	589	\$400,000

13 Any unexpended balances remaining in the
 14 appropriation for Capital Outlay, Repairs and Equipment
 15 (fund 0320, activity 589) at the close of the fiscal year
 16 1997-98 are hereby reappropriated for expenditure
 17 during the fiscal year 1998-1999.

18 That the total appropriation for fiscal year ending the
 19 thirtieth day of June, one thousand nine hundred ninety-
 20 eight, to account no. fund 0403, fiscal year 1998,
 21 organization 0511, be supplemented and amended by
 22 increasing the total appropriation by fourteen million
 23 dollars in a new line item as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF HEALTH
4 AND HUMAN SERVICES

5 56—*Division of Human Services*

6 (WV Code Chapters 9, 48 and 49)

7 Account No.

8 Fund 0403 FY 1998 Org 0511

9		General
10	Act-	Revenue
11	ivity	Fund

12 35a Medical Services

13 35b Payment Backlog-Transfer 783 \$14,000,000

14 The total amount from the above appropriation to
15 medical services payment backlog-transfer (fund 0403,
16 activity 783) shall be transferred to the division of human
17 services—medical services trust fund, account no. fund
18 5185, fiscal year 1998, organization 0511 (activity 260),
19 to make payments of the medical services backlog.

20 And, that the total appropriation for fiscal year ending
21 the thirtieth day of June, one thousand nine hundred
22 ninety-eight, to account no. fund 0450, fiscal year 1998,
23 organization 0608, be supplemented and amended by
24 increasing the total appropriation by six hundred
25 thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF MILITARY AFFAIRS
4 AND PUBLIC SAFETY

5 62—*Division of Corrections—*
6 *Correctional Units*

7 (WV Code Chapters 25, 28, 49 and 62)

8 Account No.

9 Fund 0450 FY 1998 Org 0608

10			General
11		Act-	Revenue
12		ivity	Fund
13	1 Personal Services	001	\$342,500
14	3 Employee Benefits	010	\$130,000
15	4 Unclassified	099	\$111,000
16	10 Inmate Medical Expense	535	\$ 16,500

17 The purpose of this bill is to expire the sum of twenty
 18 million dollars from the income tax refund reserve fund,
 19 account no. fund 1313, organization 1300, and to
 20 supplement the governor's office, civil contingent fund,
 21 account no. fund 0105, fiscal year 1998, organization
 22 0100, in the budget act for the fiscal year ending the
 23 thirtieth day of June, one thousand nine hundred ninety-
 24 eight, by adding five million dollars to the existing
 25 appropriation; to supplement the department of education,
 26 West Virginia schools for the deaf and the blind, account
 27 no. fund 0320, fiscal year 1998, organization 0403, in the
 28 budget act for the fiscal year ending the thirtieth day of
 29 June, one thousand nine hundred ninety-eight, by adding
 30 four hundred thousand dollars to a new line item in the
 31 existing appropriation; to supplement the department of
 32 health and human resources, division of human services,
 33 account no. fund 0403, fiscal year 1998, organization
 34 0511, in the budget act for the fiscal year ending the
 35 thirtieth day of June, one thousand nine hundred ninety-
 36 eight, by adding fourteen million dollars to a new line
 37 item in the existing appropriation; and to supplement the
 38 department of military affairs and public safety, division
 39 of corrections—correctional units, account no. fund 0450,
 40 fiscal year 1998, organization 0608, in the budget act for
 41 the fiscal year ending the thirtieth day of June, one
 42 thousand nine hundred ninety-eight, by adding six
 43 hundred thousand dollars to the existing appropriation.

CHAPTER 10

(H. B. 4353—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the auditor's office — general administration, account no. fund 0116, fiscal year 1998, organization 1200, all supplementing, amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0116, fiscal year 1998, organization 1200, be supplemented and amended by increasing the total appropriation by one million six hundred fifty-three thousand one hundred sixteen dollars as follows:

1

TITLE II—APPROPRIATIONS.

2

Sec. 1. Appropriations from general revenue.

3	EXECUTIVE		
4	10—Auditor's Office—		
5	General Administration		
6	(WV Code Chapter 12)		
7	Account No.		
8	Fund <u>0116</u> FY <u>1998</u> Org <u>1200</u>		
9			General
10		Act-	Revenue
11		ivity	Fund
12	6a Payroll System Acquisition	594	\$1,653,116
13	Any unexpended balance remaining in the		
14	appropriation for Payroll System Acquisition (fund 0116,		
15	activity 594) at the close of the fiscal year 1997-98, is		
16	hereby reappropriated for expenditure during fiscal year		
17	1998-99.		
18	The purpose of this bill is to supplement this account		
19	in the budget act for the fiscal year ending the thirtieth		
20	day of June, one thousand nine hundred ninety-eight, by		
21	adding one million six hundred fifty-three thousand one		
22	hundred sixteen dollars to a new appropriation for		
23	expenditure during the fiscal year one thousand nine		
24	hundred ninety-eight.		

CHAPTER 11

(S. B. 431—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed February 9, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation in the state fund, general revenue, to the treasurer's office, account no. fund 0126, fiscal year 1998, organization 1300, all supplementing and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0126, fiscal year 1998, organization 1300, be supplemented and amended to read as follows:

1	TITLE II—APPROPRIATIONS.		
2	EXECUTIVE		
3	12— <i>Treasurer's Office</i>		
4	(WV Code Chapter 12)		
5	Account No.		
6	Fund <u>0126</u> FY <u>1998</u> Org <u>1300</u>		
7			General
8		Act-	Revenue
9		ivity	Fund
10	1	Personal Services	001 \$ 1,539,316
11	2	Salary of Treasurer	002 65,000
12	3	Annual Increment	004 34,856
13	4	Employee Benefits	010 499,318
14	5	Unclassified	099 1,246,101
15	6	Abandoned Property Program	118 437,167
16	7	Hardware/Software Upgrade .	518 54,000
17	8	Tuition Trust Fund	692 150,000
18	9	School Building Sinking Fund	
19	10	Debt Services	310 9,839,000
20	11	Debt Payment on Morris Street-	
21	12	Workers' Compensation	
22	13	Building	290 2,000,000
23	14	Regional Jails and	
24	15	Correctional Facilities-	
25		Transfer	643 <u>10,000,000</u>
26	16	Total	\$25,864,758

27 Any unexpended balances remaining in the
28 appropriation for unclassified (fund 0126, activity 099)
29 and imaging system (fund 0126, activity 006) at the close
30 of the fiscal year 1996-97 are hereby reappropriated for
31 expenditure during the fiscal year 1997-98.

32 The above appropriation for regional jails and
33 correctional facilities-transfer shall be transferred to the
34 regional jails and correctional facilities authority to be
35 used for construction projects.

36 The purpose of this bill is to supplement this account
37 in the budget act for the fiscal year ending the thirtieth
38 day of June, one thousand nine hundred ninety-eight, by
39 amending language with no new money being
40 appropriated.

CHAPTER 12

(S. B. 755—By Senators Craigo, Anderson, Bailey, Chafin, Helmick,
Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe,
Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 11, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the treasurer's office, account no. fund 0126, fiscal year 1998, organization 1300, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for the fiscal year

1997-98, less net appropriation balances forwarded and regular appropriations for the fiscal year 1997-98; and

WHEREAS, It appears from the governor’s executive budget document 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0126, fiscal year 1998, organization 1300, be supplemented and amended by increasing the total appropriation by one million dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	EXECUTIVE		
4	12—Treasurer’s Office		
5	(WV Code Chapter 12)		
6	Account No.		
7	Fund <u>0126</u> FY <u>1998</u> Org <u>1300</u>		
8			General
9		Act-	Revenue
10		ivity	Fund
11	8 Tuition Trust Fund	692	\$1,000,000

12 The purpose of this bill is to supplement this account
13 in the budget act for the fiscal year ending the thirtieth
14 day of June, one thousand nine hundred ninety-eight, by
15 adding one million dollars to an existing appropriation for
16 the tuition trust fund for expenditure during the fiscal
17 year one thousand nine hundred ninety-eight.

CHAPTER 13

(S. B. 511—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the department of administration — division of finance, account no. fund 0203, fiscal year 1998, organization 0209, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for the fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for the fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0203, fiscal year 1998, organization 0209, be supplemented and amended by increasing the total appropriation by four hundred fifty thousand dollars as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Section 1. Appropriations from general revenue.**
- 3 DEPARTMENT OF ADMINISTRATION

4	22— <i>Division of Finance</i>		
5	(WV Code Chapter 5A)		
6	Account No.		
7	Fund <u>0203</u>	FY <u>1998</u>	Org <u>0209</u>
8			General
9		Act-	Revenue
10		ivity	Fund
11	4 Unclassified	099	\$450,000
12	The purpose of this bill is to supplement this account		
13	in the budget act for the fiscal year ending the thirtieth		
14	day of June, one thousand nine hundred ninety-eight, by		
15	adding four hundred fifty thousand dollars to an existing		
16	appropriation for unclassified for relocation expenses for		
17	expenditure during the fiscal year one thousand nine		
18	hundred ninety-eight.		

CHAPTER 14

(S. B. 509—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the department of administration — division of purchasing, account no. fund 0210, fiscal year 1998, organization 0213, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for the fiscal year

1997-98, less net appropriation balances forwarded and regular appropriations for the fiscal year 1997-98; and

WHEREAS, It appears from the governor’s executive budget document 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0210, fiscal year 1998, organization 0213, be supplemented and amended by increasing the total appropriation by four hundred thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF ADMINISTRATION

4 24—Division of Purchasing

5 (WV Code Chapter 5A)

6 Account No.

7 Fund 0210 FY 1998 Org 0213

8			General
9		Act-	Revenue
10		ivity	Fund
11	4 Unclassified	099	\$400,000

12 The purpose of this bill is to supplement this account
13 in the budget act for the fiscal year ending the thirtieth
14 day of June, one thousand nine hundred ninety-eight, by
15 adding four hundred thousand dollars to an existing
16 appropriation for unclassified for relocation expenses for
17 expenditure during the fiscal year one thousand nine
18 hundred ninety-eight.

CHAPTER 15

(Com. Sub. for H. B. 4357—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of administration — public defender services, account no. fund 0226, fiscal year 1998, organization 0221, all supplementing and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0226, fiscal year 1998, organization 0221, be supplemented and amended by increasing the total appropriation by six million dollars as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 1. Appropriations from general revenue.**
- 3 DEPARTMENT OF ADMINISTRATION

4	29— <i>Public Defender Services</i>		
5	(WV Code Chapter 29)		
6	Account No.		
7	Fund <u>0226</u>	FY <u>1998</u>	Org <u>0221</u>
8			General
9		Act-	Revenue
10		ivity	Fund
11	5	Appointed Counsel Fees and Public	
12	6	Defender Corporations (R)	127 \$6,000,000
13	The purpose of this bill is to supplement this account		
14	in the budget act for fiscal year ending the thirtieth day of		
15	June, one thousand nine hundred ninety-eight, by adding		
16	six million dollars to an existing appropriation for		
17	appointed counsel and public defender corporations for		
18	expenditure during fiscal year one thousand nine hundred		
19	ninety-eight.		

CHAPTER 16

(H. B. 4715—By Delegates Michael, Doyle and Leach)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the bureau of commerce—division of labor, account no. fund 0260, fiscal year 1998, organization 0308, all supplementing and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1,

1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0260, fiscal year 1998, organization 0308, be supplemented and amended by increasing the total appropriation by ninety-eight thousand four hundred dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 1. Appropriations from general revenue.		
3	BUREAU OF COMMERCE		
4	<i>78—Division of Labor—</i>		
5	(WV Code Chapters 21 and 47)		
6	Account No.		
7	Fund <u>0260</u> FY <u>1998</u> Org <u>0308</u>		
8			General
9		Act-	Revenue
10		ivity	Fund
11	4 Computer/Technology Upgrade	322	\$98,400

12 The purpose of this bill is to supplement this account
 13 in the budget act for fiscal year ending the thirtieth day of
 14 June, one thousand nine hundred ninety-eight, by adding
 15 ninety-eight thousand four hundred dollars to an existing
 16 appropriation for computer technology upgrades for
 17 expenditure during fiscal year one thousand nine hundred
 18 ninety-eight.

CHAPTER 17

(Com. Sub. for H. B. 4358—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the bureau of commerce — division of natural resources, account no. fund 0265, fiscal year 1998, organization 0310, all supplementing and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0265, fiscal year 1998, organization 0310, be supplemented and amended by increasing the total appropriation by seven hundred eighteen thousand one hundred ninety-eight dollars as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 1. Appropriations from general revenue.**

3	BUREAU OF COMMERCE		
4	79— <i>Division of Natural Resources</i> —		
5	(WV Code Chapter 20)		
6	Account No.		
7	Fund <u>0265</u> FY <u>1998</u> Org <u>0310</u>		
8			General
9		Act-	Revenue
10		ivity	Fund
11	1 Personal Services	001	\$516,109
12	3 Employee Benefits	010	62,089
13	4 Unclassified	099	100,000
14	5 Pricketts Fort State Park	324	40,000

15 The purpose of this bill is to supplement this account
 16 in the budget act for fiscal year ending the thirtieth day of
 17 June, one thousand nine hundred ninety-eight, by adding
 18 five hundred sixteen thousand one hundred nine dollars to
 19 an existing appropriation for personal services, sixty-two
 20 thousand eighty-nine dollars to employee benefits for
 21 minimum wage increases, one hundred thousand to
 22 unclassified expenditures, and forty thousand dollars to
 23 Pricketts Fort State Park for expenditure during fiscal year
 24 one thousand nine hundred ninety-eight.

CHAPTER 18

(H. B. 4359—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
 [By Request of the Executive]

[Passed March 14, 1998: in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of education and the arts — division of culture and history, account no. fund 0293, fiscal year 1998, organization 0432, all supplementing and amending the appropriation for the fiscal year ending the

thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for the fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0293, fiscal year 1998, organization 0432, be supplemented and amended by increasing the total appropriation by eighty-five thousand nine hundred fifty-nine dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 1. Appropriations from general revenue.**

3 DEPARTMENT OF EDUCATION AND THE ARTS

4 42—*Division of Culture and History*—

5 (WV Code Chapter 29)

6 Account No.

7 Fund 0293 FY 1998 Org 0432

8		General
9	Act-	Revenue
10	ivity	Fund
11	4 Unclassified 099	\$85,959

12 The purpose of this bill is to supplement this account
13 in the budget act for the fiscal year ending the thirtieth
14 day of June, one thousand nine hundred ninety-eight, by
15 adding eighty-five thousand nine hundred fifty-nine
16 dollars to an existing appropriation for unclassified for
17 expenditure during the fiscal year one thousand nine
18 hundred ninety-eight.

CHAPTER 19

(S. B. 527—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 11, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of education — state department of education, account no. fund 0313, fiscal year 1998, organization 0402, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0313, fiscal year 1998, organization 0402, be supplemented and amended by increasing the total appropriation by one million three hundred seventy-three thousand seventy dollars as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF EDUCATION
 4 35—*State Department of Education*
 5 (WV Code Chapters 18 and 18A)
 6 Account No.
 7 Fund 0313 FY 1998 Org 0402

8		Act-	General
9		ivity	Revenue
10			Fund
11	8 Increased Enrollment	140	\$1,373,070

12 The purpose of this bill is to supplement this account
 13 in the budget act for the fiscal year ending the thirtieth
 14 day of June, one thousand nine hundred ninety-eight, by
 15 adding one million three hundred seventy-three thousand
 16 seventy dollars to an existing appropriation for increased
 17 enrollment for expenditure during the fiscal year one
 18 thousand nine hundred ninety-eight.

CHAPTER 20

(S. B. 528—By Senators Tomblin, Mr. President, and Buckalew)
 [By Request of the Executive]

[Passed March 9, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of health and human resources, division of human services, account no. fund 0403, fiscal year 1998, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which

included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0403, fiscal year 1998, organization 0511, be supplemented and amended by increasing the total appropriation by six million nine hundred sixty-one thousand four hundred twenty-seven dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF HEALTH AND HUMAN
4 RESOURCES

5 56—Division of Human Services

6 (WV Code Chapters 9, 48 and 49)

7 Account No.

8 Fund 0403 FY 1998 Org 0511

9		General
10	Act-	Revenue
11	ivity	Fund
12 4	Unclassified 099	\$6,961,427

13 The purpose of this bill is to supplement this account
14 in the budget act for the fiscal year ending the thirtieth
15 day of June, one thousand nine hundred ninety-eight, by
16 adding six million nine hundred sixty-one thousand four
17 hundred twenty-seven dollars to an existing appropriation
18 for unclassified for disallowances for expenditure during
19 fiscal year one thousand nine hundred ninety-eight.

CHAPTER 21

(S. B. 530—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the department of health and human resources — division of human services, account no. fund 0403, fiscal year 1998, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for the fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for the fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0403, fiscal year 1998, organization 0511, be supplemented and amended by increasing the total appropriation by three million four hundred forty thousand dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	DEPARTMENT OF HEALTH AND HUMAN		
4	RESOURCES		
5	<i>56—Division of Human Services</i>		
6	(WV Code Chapters 9, 48 and 49)		
7	Account No.		
8	Fund <u>0403</u> FY <u>1998</u> Org <u>0511</u>		
9			General
10		Act-	Revenue
11		ivity	Fund
12	4 Unclassified	099	\$3,440,000

13 The purpose of this bill is to supplement this account
 14 in the budget act for the fiscal year ending the thirtieth
 15 day of June, one thousand nine hundred ninety-eight, by
 16 adding three million four hundred forty thousand dollars
 17 to an existing appropriation for unclassified for early
 18 intervention and family support services and child welfare
 19 services for family and children's tracking system
 20 (FACTS) for expenditure during the fiscal year, one
 21 thousand nine hundred ninety-eight.

CHAPTER 22

(S. B. 531—By Senators Tomblin, Mr. President, and Buckalew)
 [By Request of the Executive]

[Passed February 26, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of health and human resources — division of human services, account no. fund 0403, fiscal year 1998, organization 0511, all supplementing and amending the appropriation for the fiscal year ending

the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0403, fiscal year 1998, organization 0511, be supplemented and amended by increasing the total appropriation by sixteen million one hundred eighty-nine thousand one hundred fifty dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	DEPARTMENT OF HEALTH AND HUMAN		
4	RESOURCES		
5	56—Division of Human Services		
6	(WV Code Chapters 9, 48 and 49)		
7	Account No.		
8	Fund <u>0403</u> FY <u>1998</u> Org <u>0511</u>		
9			General
10		Act-	Revenue
11		ivity	Fund
12	17 Social Services	195	\$16,189,150

13 The purpose of this bill is to supplement this account
14 in the budget act for the fiscal year ending the thirtieth
15 day of June, one thousand nine hundred ninety-eight, by
16 adding sixteen million one hundred eighty-nine thousand
17 one hundred fifty dollars to an existing appropriation for
18 social services for expenditure during fiscal year one
19 thousand nine hundred ninety-eight.

CHAPTER 23

(S. B. 741—By Senators Craigo, Anderson, Bailey, Chafin, Helmick,
Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe,
Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 9, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the state treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of health and human resources, division of human services, account no. fund 0403, fiscal year 1998, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for the fiscal year 1997-98.

WHEREAS, It thus appears from the governor's executive budget document there now remains an unappropriated 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0403, fiscal year 1998, organization 0511, be supplemented and amended by increasing the total appropriation by three hundred thousand dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	DEPARTMENT OF HEALTH AND HUMAN		
4	RESOURCES		
5	<i>56—Division of Human Services</i>		
6	(WV Code Chapters 9, 48 and 49)		
7	Account No.		
8	Fund <u>0403</u> FY <u>1998</u> Org <u>0511</u>		
9			General
10		Act-	Revenue
11		ivity	Fund
12	4	Unclassified 099	\$300,000

13 The purpose of this bill is to supplement this account
 14 in the budget act for the fiscal year ending the thirtieth
 15 day of June, one thousand nine hundred ninety-eight, by
 16 adding three hundred thousand dollars to an existing
 17 appropriation for unclassified for indigent burials for
 18 expenditure during the fiscal year one thousand nine
 19 hundred ninety-eight.

CHAPTER 24

(S. B. 524—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 12, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of health and human resources — division of health — central office, account no. fund 0407, fiscal year 1998, organization 0506, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0407, fiscal year 1998, organization 0506, be supplemented and amended by increasing the total appropriation by thirty-five thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3	DEPARTMENT OF HEALTH AND HUMAN		
4	RESOURCES		
5	<i>51—Division of Health—</i>		
6	<i>Central Office</i>		
7	(WV Code Chapter 16)		
8	Account No.		
9	Fund <u>0407</u> FY <u>1998</u> Org <u>0506</u>		
10			General
11		Act-	Revenue
12		ivity	Fund
13	4 Unclassified	099	\$35,000
14	The purpose of this bill is to supplement this account		
15	in the budget act for the fiscal year ending the thirtieth		
16	day of June, one thousand nine hundred ninety-eight, by		
17	adding thirty-five thousand dollars to an existing		
18	appropriation for unclassified for a safe drinking water		
19	information system for expenditure during fiscal year one		
20	thousand nine hundred ninety-eight.		

CHAPTER 25

(Com. Sub. for H. B. 4365—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of military affairs and public safety — office of the secretary, account no. fund 0430, fiscal year 1998, organization 0601, all supplementing and amending the appropriation for the fiscal year ending

the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0430, fiscal year 1998, organization 0601, be supplemented and amended by increasing the total appropriation by twenty-four thousand nine hundred dollars as follows:

1	TITLE II—APPROPRIATIONS.	
2	Sec. 1. Appropriations from general revenue.	
3	DEPARTMENT OF MILITARY AFFAIRS	
4	AND PUBLIC SAFETY	
5	57— <i>Department of Military Affairs and Public Safety—</i>	
6	<i>Office of the Secretary</i>	
7	(WV Code Chapter 5F)	
8	Account No.	
9	Fund <u>0430</u> FY <u>1998</u> Org <u>0601</u>	
10		General
11	Activity	Revenue
12		Fund
13	1 Unclassified—Total	096 \$24,900

14 The purpose of this bill is to supplement this account
15 in the budget act for the fiscal year ending the thirtieth
16 day of June, one thousand nine hundred ninety-eight, by
17 adding twenty-four thousand nine hundred dollars to an
18 existing appropriation for unclassified-total for
19 expenditure during fiscal year one thousand nine hundred
20 ninety-eight.

CHAPTER 26

(Com. Sub. for H. B. 4366—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of military affairs and public safety, adjutant general — state militia, account no. fund 0433, fiscal year 1998, organization 0603, all supplementing and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0433, fiscal year 1998, organization 0603, be supplemented and amended by increasing the total appropriation by one hundred thirty-two thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 1. Appropriations from general revenue.

3 DEPARTMENT OF MILITARY AFFAIRS
4 AND PUBLIC SAFETY

5 58—Adjutant General—
6 State Militia

7 (WV Code Chapter 15)

8 Account No.

9 Fund 0433 FY 1998 Org 0603

10		General
11	Act-	Revenue
12	ivity	Fund
13	6 Mountaineer Challenge Academy—	
14	Student Stipends	\$ 132,000

15 The purpose of this bill is to supplement this account
16 in the budget act for fiscal year ending the thirtieth day of
17 June, one thousand nine hundred ninety-eight, by adding
18 one hundred thirty-two thousand dollars to a new line item
19 appropriation for mountaineer challenge academy -
20 student stipends for expenditure during fiscal year one
21 thousand nine hundred ninety-eight.

CHAPTER 27

(H. B. 4367—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of military affairs and public safety — fire commission, account no. fund 0436, fiscal year 1998, organization 0619, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0436, fiscal year 1998, organization 0619, be supplemented and amended by increasing the total appropriation by sixty-five thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 1. Appropriations from general revenue.

3	DEPARTMENT OF MILITARY AFFAIRS		
4	AND PUBLIC SAFETY		
5	67— <i>Fire Commission</i> —		
6	(WV Code Chapter 29)		
7	Account No.		
8	Fund	<u>0436</u>	FY <u>1998</u> Org <u>0619</u>
9			General
10		Act-	Revenue
11		ivity	Fund
12	4 Unclassified	099	\$65,000

13 The purpose of this bill is to supplement this account
 14 in the budget act for the fiscal year ending the thirtieth
 15 day of June, one thousand nine hundred ninety-eight, by
 16 adding sixty-five thousand dollars to an existing
 17 appropriation for unclassified for expenditure during
 18 fiscal year one thousand nine hundred ninety-eight.

CHAPTER 28

(S. B. 519—By Senators Tomblin, Mr. President, and Buckalew)
 [By Request of the Executive]

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of military affairs and public safety, division of corrections — correctional units, account no. fund 0450, fiscal year 1998, organization 0608, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting

forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0450, fiscal year 1998, organization 0608, be supplemented and amended by increasing the total appropriation by one million nine hundred twenty-five thousand dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	DEPARTMENT OF MILITARY AFFAIRS		
4	AND PUBLIC SAFETY		
5	<i>62—Division of Corrections—</i>		
6	<i>Correctional Units</i>		
7	(WV Code Chapters 25, 28, 49 and 62)		
8	Account No.		
9	Fund <u>0450</u> FY <u>1998</u> Org <u>0608</u>		
10			General
11		Act-	Revenue
12		ivity	Fund
13	10a St. Mary's Correctional Center . .	230	\$1,450,000
14	10b Ohio County Jail	784	475,000

15 The purpose of this bill is to supplement this account
 16 in the budget act for the fiscal year ending the thirtieth
 17 day of June, one thousand nine hundred ninety-eight, by
 18 adding one million nine hundred twenty-five thousand
 19 dollars to a new appropriation for the St. Mary's
 20 correctional center and Ohio County jail for expenditure
 21 during the fiscal year one thousand nine hundred ninety-
 22 eight.

CHAPTER 29

(S. B. 520—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 11, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of military affairs and public safety, division of corrections — correctional units, account no. fund 0450, fiscal year 1998, organization 0608, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0450, fiscal year 1998, organization 0608, be supplemented and amended by increasing the total appropriation by two million five hundred thousand dollars as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF MILITARY AFFAIRS
4 AND PUBLIC SAFETY

5 62—Division of Corrections—
6 Correctional Units

7 (WV Code Chapters 25, 28, 49 and 62)

8 Account No.

9 Fund 0450 FY 1998 Org 0608

10		Act-	General
11		ivity	Revenue
12			Fund
13	5 Payments to Counties and/or		
14	6 Regional Jails	229	\$2,500,000

15 The purpose of this bill is to supplement this account
16 in the budget act for the fiscal year ending the thirtieth
17 day of June, one thousand nine hundred ninety-eight, by
18 adding two million five hundred thousand dollars to an
19 existing appropriation for payments to counties and/or
20 regional jails for expenditure during fiscal year one
21 thousand nine hundred ninety-eight.



CHAPTER 30

(S. B. 633—By Senators Craig, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 5, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of military affairs and public safety-West Virginia state police, account no. fund 0453, fiscal year 1998, organization 0612, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98.

WHEREAS, It thus appearing from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0453, fiscal year 1998, organization 0612, be supplemented and amended by increasing the total appropriation by two million three hundred eighty-four thousand six hundred thirty-five dollars to read as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF MILITARY AFFAIRS
4 AND PUBLIC SAFETY

5 63—West Virginia State Police

6 (WV Code Chapter 15)

7 Account No.

8 Fund 0453 FY 1998 Org 0612

9			Act-	Other
10			ivity	Funds
11	1	Personal Services	001	\$21,900,498
12	2	Annual Increment	004	148,550
13	3	Employee Benefits	010	3,697,692
14	4	Unclassified	099	5,582,653
15	5	COPS Program-Federal Match . . .	327	258,924
16	6	Vehicle Purchase	451	1,000,000

17	7	Barracks Maintenance and		
18	8	Construction (R)	494	713,947
19	9	Communications and Other		
20	10	Equipment (R)	558	2,415,000
21	11	Overtime and Wage Court Awards .	568	4,169,685
22	12	Trooper Retirement Fund	605	11,070,353
23	13	Handgun Administration Expense .	747	<u>100,000</u>
24	14	Total		\$51,057,302

25 Any unexpended balance remaining in the
 26 appropriation for barracks maintenance and construction
 27 (fund 0453, activity 494) at the close of the fiscal year
 28 1996-97 is hereby reappropriated for expenditure during
 29 the fiscal year 1997-98.

30 Any unexpended balance remaining in the
 31 appropriation for communications and other equipment
 32 (fund 0453, activity 558) at the close of the fiscal year
 33 1996-97 is hereby reappropriated for expenditure during
 34 the fiscal year 1997-98.

35 Any unexpended balance remaining in the
 36 appropriation for Riverside high detachment (fund 0453,
 37 activity 753) at the close of the fiscal year 1996-97 is
 38 hereby reappropriated for expenditure during the fiscal
 39 year 1997-98 and redesignated as Riverside high
 40 detachment-transfer. Any balance so reappropriated and
 41 redesignated shall be transferred to the school building
 42 authority-school building capital improvement fund (fund
 43 3958, organization 0402) for the Riverside high
 44 detachment.

45 The purpose of this bill is to supplement this account
 46 in the budget act for the fiscal year ending the thirtieth
 47 day of June, one thousand nine hundred ninety-eight, by
 48 adding two hundred fourteen thousand nine hundred fifty
 49 dollars to an existing appropriation for unclassified (fund
 50 0453, activity 099) for expenditure during fiscal year one
 51 thousand nine hundred ninety-eight, adding two million
 52 one hundred sixty-nine thousand six hundred eighty-five
 53 dollars to the overtime and wage court awards (fund 0453,
 54 activity 568) for expenditure during fiscal year one
 55 thousand nine hundred ninety-eight, and by amending
 56 and reenacting language related to Riverside high
 57 detachment.

CHAPTER 31

(S. B. 503—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 13, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of tax and revenue, tax division, account no. fund 0470, fiscal year 1998, organization 0702, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0470, fiscal year 1998, organization 0702, be supplemented and amended by increasing the total appropriation by one million one hundred sixty thousand dollars as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 Section 1. Appropriations from general revenue.
- 3 DEPARTMENT OF TAX AND REVENUE

4

70—Tax Division

5

(WV Code Chapter 11)

6

Account No.

7

Fund 0470 FY 1998 Org 0702

8

9

10

Act-
ivity

General
Revenue
Fund

11

4 Unclassified 099

\$1,160,000

12

13

14

15

16

17

18

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, by adding one million one hundred sixty thousand dollars to an existing appropriation for unclassified for expenditure during fiscal year one thousand nine hundred ninety-eight.



CHAPTER 32

(S. B. 504—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]



[Passed March 9, 1998; in effect from passage. Approved by the Governor.]



AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of tax and revenue, tax division, account no. fund 0470, fiscal year 1998, organization 0702, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year

1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0470, fiscal year 1998, organization 0702, be supplemented and amended by increasing the total appropriation by one hundred sixty-six thousand dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	DEPARTMENT OF TAX AND REVENUE		
4	<i>70—Tax Division</i>		
5	(WV Code Chapter 11)		
6	Account No.		
7	Fund <u>0470</u> FY <u>1998</u> Org <u>0702</u>		
8			General
9		Act	Revenue
10		ivity	Fund
11	5a Administrative Hearing		
12	Examiner Program	713	\$166,000
13	Any unexpended balance remaining in the		
14	appropriation for administrative hearing examiner		
15	program (fund 0470, activity 713) at the close of the fiscal		
16	year 1997-98 is hereby reappropriated for expenditure		
17	during the fiscal year 1998-99.		
18	The purpose of this bill is to supplement this account		
19	in the budget act for the fiscal year ending the thirtieth		
20	day of June, one thousand nine hundred ninety-eight, by		
21	adding one hundred sixty-six thousand dollars to a new		
22	line item for administrative hearing examiner program for		
23	expenditure during fiscal year one thousand nine hundred		
24	ninety-eight.		

CHAPTER 33

(S. B. 522—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 9, 1998; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the state fund, general revenue, to the department of tax and revenue — tax division, account no. fund 0470, fiscal year 1998, organization 0702, as originally appropriated by chapter five, acts of the Legislature, first regular session, one thousand nine hundred ninety-seven, known as the “Budget Bill”.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state fund, general revenue, to the department of tax and revenue, tax division, account no. fund 0470, fiscal year 1998, organization 0702, be amended and reduced in the line items as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	DEPARTMENT OF TAX AND REVENUE		
4	70—Tax Division		
5	(WV Code Chapter 11)		
6	Account No.		
7	Fund <u>0470</u>	FY <u>1998</u>	Org <u>0702</u>
8			General
9		Act-	Revenue
10		ivity	Fund
11	4 Unclassified	099	\$271,256

12 And, that the items of the total appropriations from the
 13 state fund, general revenue, to the department of tax and
 14 revenue, tax division, account no. fund 0470, fiscal year
 15 1998, organization 0702, be amended and increased in the
 16 line item as follows:

17 TITLE II—APPROPRIATIONS.

18 Section 1. Appropriations from general revenue.

19 DEPARTMENT OF TAX AND REVENUE

20 70—Tax Division

21 (WV Code Chapter 11)

22 Account No.

23 Fund 0470 FY 1998 Org 0702

		General Revenue Fund
24		
25	Act	
26	ivity	
27	1 Personal Services 001	\$271,256

28 The purpose of this supplementary appropriation bill
 29 is to supplement, amend, reduce and transfer between
 30 existing items in the aforesaid account for the designated
 31 spending unit. The item for unclassified is reduced by
 32 two hundred seventy-one thousand two hundred fifty-six
 33 dollars. The item for personal services is increased by two
 34 hundred seventy-one thousand two hundred fifty-six
 35 dollars. The amounts as itemized for expenditure in the
 36 fiscal year ending the thirtieth day of June, one thousand
 37 nine hundred ninety-eight, shall be available for
 38 expenditure immediately upon the effective date of this
 39 bill.

CHAPTER 34

(S. B. 523—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of tax and revenue — tax division, account no. fund 0470, fiscal year 1998, organization 0702, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for the fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for the fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0470, fiscal year 1998, organization 0702, be supplemented and amended by increasing the total appropriation by one hundred eighty thousand dollars as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 Section 1. Appropriations from general revenue.

3	DEPARTMENT OF TAX AND REVENUE		
4	70—Tax Division		
5	(WV Code Chapter 11)		
6	Account No.		
7	Fund <u>0470</u> FY <u>1998</u> Org <u>0702</u>		
8			General
9		Act-	Revenue
10		ivity	Fund
11	4 Unclassified	099	\$180,000
12	The purpose of this bill is to supplement this account		
13	in the budget act for the fiscal year ending the thirtieth		
14	day of June, one thousand nine hundred ninety-eight, by		
15	adding one hundred eighty thousand dollars to an existing		
16	appropriation for unclassified for relocation expenses for		
17	expenditure during the fiscal year one thousand nine		
18	hundred ninety-eight.		



CHAPTER 35

(S. B. 501—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]



[Passed March 11, 1998; in effect from passage. Approved by the Governor.]



AN ACT making a supplementary appropriation in the state fund, general revenue, to the department of health and human resources — division of health — West Virginia drinking water treatment, account no. fund 0561, fiscal year 1998, organization 0506, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0561, fiscal year 1998, organization 0506, be supplemented and amended to read as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF HEALTH AND HUMAN
4 RESOURCES

5 53—*Division of Health—*
6 *West Virginia Drinking Water Treatment*

7 (WV Code Chapter 16)

8 Account No.

9 Fund 0561 FY 1998 Org 0506

10			General
11		Act-	Revenue
12		ivity	Fund
13	1 West Virginia Drinking Water Treat-		
14	2 ment Revolving Fund—Transfer . . .	689	\$700,000

15 The above appropriation for drinking water treatment
16 revolving fund — transfer shall be transferred to the West
17 Virginia drinking water treatment revolving fund or
18 appropriate bank depository and the drinking water
19 treatment revolving — administrative expense fund as
20 provided by chapter sixteen of the code.

21 The purpose of this bill is to supplement this account
22 in the budget act for the fiscal year ending the thirtieth
23 day of June, one thousand nine hundred ninety-eight, by
24 amending language with no new money being
25 appropriated.

CHAPTER 36

(Com. Sub. for H. B. 4379—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of military affairs and public safety, division of juvenile services, account no. fund 0570, fiscal year 1998, organization 0621, all supplementing, amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; therefore

Be it enacted by the Legislature of West Virginia:

That chapter five, acts of the Legislature, regular session, one thousand nine hundred ninety-seven, known as the "Budget Bill", be supplemented and amended by adding to Title II, section one thereof, the following:

- 1 TITLE II—APPROPRIATIONS.
- 2 Sec. 1. Appropriations from general revenue.

3 DEPARTMENT OF MILITARY AFFAIRS
4 AND PUBLIC SAFETY

5 68a—*Division of Juvenile Services*—

6 (WV Code Chapter 49)

7 Account No.

8 Fund 0570 FY 1998 Org 0621

9			General
10		Act-	Revenue
11		ivity	Fund
12	1 Unclassified—Total	096	\$800,000

13 The purpose of this bill is to supplement this account
14 in the budget act for fiscal year ending the thirtieth day of
15 June, one thousand nine hundred ninety-eight, by
16 providing for a new item of appropriation to be
17 established therein to appropriate general revenue funds in
18 the amount of eight hundred thousand dollars for
19 unclassified for expenditure during fiscal year one
20 thousand nine hundred ninety-eight.



CHAPTER 37

(S. B. 742—By Senators Craig, Anderson, Bailey, Chafin, Helmick,
Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe,
Walker, Boley, Dugan, McKenzie, Minear and Sprouse)



[Passed March 12, 1998; 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-
eight, in the amount of four million dollars from the
abandoned property claims trust, account no. fund 1324,
fiscal year 1998, organization 1300, activity 099.

WHEREAS, The Legislature finds that the account balance in the abandoned property claims trust, account no. fund 1324, fiscal year 1998, organization 1300, activity 099, exceeds that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of funds available for expenditure in
2 the fiscal year ending the thirtieth day of June, one
3 thousand nine hundred ninety-eight, to the abandoned
4 property claims trust, account no. fund 1324, fiscal year
5 1998, organization 1300, activity 099, be decreased by
6 expiring the amount of four million dollars to the
7 unappropriated surplus balance of the state fund, general
8 revenue, to be available for further and additional
9 appropriation.

10 The purpose of this bill is to expire the sum of four
11 million dollars from the abandoned property claims trust,
12 account no. fund 1324, fiscal year 1998, organization
13 1300, activity 099, to the unappropriated surplus balance
14 in the state fund, general revenue, for the fiscal year
15 ending the thirtieth day of June, one thousand nine
16 hundred ninety-eight, to be available for further and
17 additional appropriation.

CHAPTER 38

(S. B. 498—By Senators Tomblin, Mr. President, and Buckalew)

[By Request of the Executive]

[Passed March 9, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, in the department of administration, division of purchasing — revolving fund, account no. fund 2320, fiscal year 1998, organization 0216, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established that there now remains an unappropriated balance in the division of purchasing — revolving fund, account no. fund 2320, fiscal year 1998, organization 0216, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 2320, fiscal year 1998, organization 0216, be supplemented and amended by increasing the total appropriation by forty thousand one hundred sixteen dollars in the line item as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 3. Appropriations from other funds.		
3	DEPARTMENT OF ADMINISTRATION		
4	<i>109—Division of Purchasing</i>		
5	<i>Revolving Fund</i>		
6	(WV Code Chapter 5A)		
7	Account No.		
8	Fund <u>2320</u>	FY <u>1998</u>	Org <u>0216</u>
9		Act-	Other
10		ivity	Funds
11	1 Personal Services	001	\$30,000
12	3 Employee Benefits	010	10,116

13 The purpose of this supplementary appropriation bill
14 is to supplement this account in the budget act for the
15 fiscal year ending the thirtieth day of June, one thousand
16 nine hundred ninety-eight, by adding thirty thousand
17 dollars to the existing appropriation for personal services
18 and by adding ten thousand one hundred sixteen dollars
19 to the existing appropriation for employee benefits for
20 expenditure during the fiscal year one thousand nine
21 hundred ninety-eight.

CHAPTER 39

(S. B. 780—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 13, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, in the bureau of commerce-division of natural resources, account no. fund 3200, fiscal year 1998, organization 0310, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established that there now remains an unappropriated balance in the bureau of commerce-division of natural resources, account no. fund 3200, fiscal year 1998, organization 0310, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 3200, fiscal year 1998, organization 0310, be supplemented and amended by increasing the total appropriation by one hundred forty-three thousand dollars in the line item as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 3. Appropriations from other funds.**
- 3 BUREAU OF COMMERCE
- 4 *169—Division of Natural Resources*
- 5 (WV Code Chapter 20)

6	Account No.		
7	Fund <u>3200</u>	FY <u>1998</u>	Org <u>0310</u>
8			Act- Other
9			ivity Funds
10	6a	Endowment Fund-Ohio River	
11		Fisheries Management/Research . 714	\$143,000
12	The purpose of this supplementary appropriation bill		
13	is to supplement this account in the budget act for the		
14	fiscal year ending the thirtieth day of June, one thousand		
15	nine hundred ninety-eight, by adding one hundred forty-		
16	three thousand dollars to the existing appropriation for		
17	endowment fund-Ohio River fisheries management/		
18	research for expenditure during the fiscal year one		
19	thousand nine hundred ninety-eight.		

CHAPTER 40

(S. B. 542—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 9, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary transfer of public moneys out of the treasury from the unappropriated surplus balance in other funds, by transferring an amount not to exceed sixty thousand eight hundred sixty-two dollars and fifty cents which has accrued from the bureau of commerce — division of miners' health, safety and training — surface reclamation bonds mine openings fund, account no. fund 3353, organization 0314, to the bureau of commerce — division of miners' health, safety and training, test fees fund, account no. fund 3350, organization 0314.

WHEREAS, The Legislature finds that the account balance in the bureau of commerce — division of miners' health, safety and training — surface reclamation bonds mine openings fund exceeds that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That an amount not to exceed sixty thousand eight
2 hundred sixty-two dollars and fifty cents which has
3 accrued in the unappropriated surplus balance of the
4 bureau of commerce — division of miners' health, safety
5 and training — surface reclamation bonds mine openings
6 fund, account no. fund 3353, organization 0314, be
7 decreased and expired by transferring an amount not to
8 exceed sixty thousand eight hundred sixty-two dollars and
9 fifty cents to the bureau of commerce — division of
10 miners' health, safety and training, test fees fund, account
11 no. fund 3350, organization 0314.

12 The purpose of this bill is to decrease and expire a
13 sum not to exceed sixty thousand eight hundred sixty-two
14 dollars and fifty cents which has accrued in the
15 unappropriated surplus balance in other funds, account
16 no. fund 3353, organization 0314, by transferring an
17 amount not to exceed sixty thousand eight hundred sixty-
18 two dollars and fifty cents to account no. fund 3350,
19 organization 0314, in order to fully and effectively carry
20 out the provisions of West Virginia code chapter twenty-
21 two-a.

CHAPTER 41

(S. B. 358—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson,
Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie,
Minear and Sprouse)

[Passed February 19, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, in the lottery net profits, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established that there now remains an unappropriated balance in the lottery net profits available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; therefore

Be it enacted by the Legislature of West Virginia:

That chapter five, acts of the Legislature, regular session, one thousand nine hundred ninety-seven, known as the "Budget Bill", be supplemented and amended to hereafter read as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 10. Appropriations from lottery net profit surplus.**

3 The following items are hereby appropriated from
4 lottery net profits, and are to be made available for
5 expenditure during the fiscal year ending the thirtieth day
6 of June, one thousand nine hundred ninety-eight, only out
7 of surplus lottery net profits accrued for the fiscal year
8 ending the thirtieth day of June, one thousand nine
9 hundred ninety-seven, and only after all appropriations
10 made pursuant to Title II, section nine of this act are fully
11 funded. In the event that surplus revenue available on the
12 thirty-first day of July, one thousand nine hundred ninety-
13 seven, is not sufficient to meet all the appropriations made
14 pursuant to this section, then the appropriations shall be
15 made to the extent that surplus revenues are available as of
16 the date mandated and shall be allocated first to provide
17 the necessary funds to meet the first appropriation of this
18 section; next, to provide the funds necessary for the
19 second appropriation of this section; and subsequently to
20 provide the funds necessary for each appropriation in
21 succession before any funds are provided for the next
22 subsequent appropriation.

23 *278—Board of Directors of the State College System—*
24 *Control Account*

25 (WV Code Chapter 18B)

26 Account No.

27		Fund <u>4291</u> FY <u>1998</u> Org <u>0481</u>		
28	1	Shepherd College-Capital		
29	2	Improvements—Total	764	\$ 2,600,000
30		<i>279—West Virginia Development Office—</i>		
31		<i>Tourism Commission</i>		
32		(WV Code Chapter 5B)		
33		Account No.		
34		Fund <u>3067</u> FY <u>1998</u> Org <u>0304</u>		
35	1	Raleigh County Meeting and		
36	2	Convention Center—Total	763	\$ -0-
37		<i>280—Department of Education and the Arts—</i>		
38		<i>Office of the Secretary</i>		
39		(WV Code Chapter 5F)		
40		Account No.		
41		Fund <u>3505</u> FY <u>1998</u> Org <u>0431</u>		
42	1	Capital Outlay and Improvements .	762	\$ 1,100,000
43		<i>281—Bureau of Senior Services</i>		
44		(WV Code Chapter 29)		
45		Account No.		
46		Fund <u>5405</u> FY <u>1998</u> Org <u>0508</u>		
47	1	Senior Citizens Centers		
48	2	and Programs	462	\$ 700,000
49		<i>282—WV Development Office—</i>		
50		<i>Tourism Commission</i>		
51		(WV Code Chapter 5B)		
52		Account No.		
53		Fund <u>3067</u> FY <u>1998</u> Org <u>0304</u>		
54	1	Tourism-Unclassified (R)	662	\$ 550,000
55	1	Total, TITLE II, Section 10-		
56	2	Lottery Net Profit Surplus		\$ <u>4,950,000</u>

8		Account No.		
9		Fund <u>5090</u>	FY <u>1998</u>	Org <u>0511</u>
10			Act-	Other
11			ivity	Funds
12	1	Unclassified	099	\$2,998,823
13		The purpose of this supplementary appropriation bill		
14		is to supplement this account in the budget act for the		
15		fiscal year ending the thirtieth day of June, one thousand		
16		nine hundred ninety-eight, by adding two million nine		
17		hundred ninety-eight thousand eight hundred twenty-		
18		three dollars to the existing appropriation for unclassified		
19		to match federal funds to pay medicaid providers for		
20		expenditure during the fiscal year one thousand nine		
21		hundred ninety-eight.		



CHAPTER 43

(S. B. 495—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]



[Passed March 4, 1998; in effect from passage. Approved by the Governor.]



AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, in the department of health and human resources — division of human services — child support enforcement, account no. fund 5094, fiscal year 1998, organization 0511, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources — division of human services — child support enforcement, account no. fund 5094, fiscal year 1998,

organization 0511, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 5094, fiscal year 1998, organization 0511, be supplemented and amended by increasing the total appropriation by two hundred seven thousand one hundred seventy dollars in the line item as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 3. Appropriations from other funds.		
3	DEPARTMENT OF HEALTH		
4	AND HUMAN RESOURCES		
5	<i>130—Division of Human Services—</i>		
6	<i>Child Support Enforcement</i>		
7	(WV Code Chapter 48A)		
8	Account No.		
9	Fund <u>5094</u> FY <u>1998</u> Org <u>0511</u>		
10		Act-	Other
11		ivity	Funds
12	1 Unclassified—Total	096	\$207,170

13 The purpose of this supplementary appropriation bill
14 is to supplement this account in the budget act for the
15 fiscal year ending the thirtieth day of June, one thousand
16 nine hundred ninety-eight, by adding two hundred seven
17 thousand one hundred seventy dollars to the existing
18 appropriation for unclassified for the access and visitation
19 program and for the family law masters program for
20 expenditure during the fiscal year one thousand nine
21 hundred ninety-eight.

CHAPTER 44

(S. B. 430—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 3, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, in the department of health and human resources, division of human services - medical services trust fund, account no. fund 5185, fiscal year 1998, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources, division of human services - medical services trust fund, account no. fund 5185, fiscal year 1998, organization 0511, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, account no. fund 5185, fiscal year 1998, organization 0511, be supplemented and amended by increasing the total appropriation by three million nine hundred eighty-two thousand four hundred twelve dollars in the line items as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 Sec. 3. Appropriations from other funds.
- 3 DEPARTMENT OF HEALTH AND HUMAN
- 4 RESOURCES

5 *131—Human Services—*
6 *Medical Services Trust Fund*

7 (WV Code Chapter 9)

8 Account No.

9 Fund 5185 FY 1998 Org 0511

10	11	Act-	ivity	Other	Funds
12	4a Payment to Nonstate Hospitals-				
13	4b DPSH Match	287		\$ 3,982,412	

14 The purpose of this supplementary appropriation bill
15 is to supplement this fund in the budget act for the fiscal
16 year ending the thirtieth day of June, one thousand nine
17 hundred ninety-eight, by adding three million nine
18 hundred eighty-two thousand four hundred twelve dollars
19 to a new item of appropriation for payments to nonstate
20 hospitals-DPSH match for expenditure during fiscal year
21 one thousand nine hundred ninety-eight.



CHAPTER 45

(S. B. 783—By Senators Craig, Anderson, Bailey, Chafin, Helmick,
Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe,
Walker, Boley, Dugan, McKenzie, Minear and Sprouse)



[Passed March 14, 1998; in effect from passage. Approved by the Governor.]



AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, in the department of health and human resources, division of human services - medical services trust fund, account no. fund 5185, fiscal year 1998, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources, division of human services - medical services trust fund, account no. fund 5185, fiscal year 1998, organization 0511, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 5185, fiscal year 1998, organization 0511, be supplemented and amended by increasing the total appropriation by fourteen million dollars in a new line item as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 DEPARTMENT OF HEALTH AND HUMAN
4 RESOURCES

5 *131—Human Services—*
6 *Medical Services Trust Fund*

7 (WV Code Chapter 9)

8 Account No.

9 Fund 5185 FY 1998 Org 0511

10	Act-	Other
11	ivity	Funds
12 4c Medical Services		
13 4d Payment Backlog	260	\$14,000,000

14 The purpose of this supplementary appropriation bill
15 is to supplement this fund in the budget act for the fiscal
16 year ending the thirtieth day of June, one thousand nine
17 hundred ninety-eight, by adding fourteen million dollars
18 to a new item of appropriation for medical services
19 payment backlog for expenditure during fiscal year one
20 thousand nine hundred ninety-eight.

CHAPTER 46

(S. B. 494—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 9, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, in the department of military affairs and public safety — West Virginia state police — surplus transfer account, account no. fund 6519, fiscal year 1998, organization 0612, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of military affairs and public safety — West Virginia state police — surplus transfer account, account no. fund 6519, fiscal year 1998, organization 0612, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 6519, fiscal year 1998, organization 0612, be supplemented and amended by increasing the total appropriation by two hundred eighty-five thousand five hundred dollars in the line item as follows:

- | | |
|---|---|
| 1 | TITLE II—APPROPRIATIONS. |
| 2 | Sec. 3. Appropriations from other funds. |
| 3 | DEPARTMENT OF MILITARY AFFAIRS |
| 4 | AND PUBLIC SAFETY |
| 5 | <i>137—West Virginia State Police—</i> |
| 6 | <i>Surplus Transfer Account</i> |

7	(WV Code Chapter 15)		
8	Account No.		
9	Fund <u>6519</u> FY <u>1998</u> Org <u>0612</u>		
10		Act-	Other
11		ivity	Funds
12	1 Unclassified—Total (R)	096	\$285,500

13 Any unexpended balance remaining in the
 14 appropriation for unclassified—total (fund 6519, activity
 15 096) at the close of fiscal year 1997-98, is hereby
 16 reappropriated for expenditure during the fiscal year
 17 1998-99.

18 The purpose of this supplementary appropriation bill
 19 is to supplement this account in the budget act for the
 20 fiscal year ending the thirtieth day of June, one thousand
 21 nine hundred ninety-eight, by adding two hundred eighty-
 22 five thousand five hundred dollars to the existing
 23 appropriation for unclassified for expenditure during the
 24 fiscal year one thousand nine hundred ninety-eight.



CHAPTER 47

(S. B. 634—By Senators Craigo, Anderson, Bailey, Chafin, Helmick,
 Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe,
 Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 10, 1998; 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-eight, in the amount of five hundred ten thousand seventy-two dollars from the insurance commissioner-examination revolving fund, fund 7150, and in the amount of eight hundred eighty-seven thousand seventy-seven dollars from the insurance commissioner-cash control fund, fund 7152.

WHEREAS, The Legislature finds that the fund balance in the insurance commissioner-examination revolving fund and the insurance commissioner-cash control fund, exceeds that which is necessary for the purposes for which the accounts were established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of funds available for expenditure in
2 the fiscal year ending the thirtieth day of June, one
3 thousand nine hundred ninety-eight, to the insurance
4 commissioner-examination revolving fund, fund 7150, be
5 decreased by expiring the amount of five hundred ten
6 thousand seventy-two dollars and to the insurance
7 commissioner-cash control fund, fund 7152, be decreased
8 by expiring the amount of eight hundred eighty-seven
9 thousand seventy-seven dollars to the state fund, general
10 revenue, to be available for further and additional
11 appropriation.

12 The purpose of this bill is to expire the sum of the five
13 hundred ten thousand seventy-two dollars from the
14 insurance commissioner-examination revolving fund, fund
15 7150, and to expire the sum of eight hundred eighty-
16 seven thousand seventy-seven dollars from the insurance
17 commissioner-cash control, fund 7152, to the
18 unappropriated surplus balance in the state fund, general
19 revenue, for the fiscal year ending the thirtieth day of
20 June, one thousand nine hundred ninety-eight, to be
21 available for further and additional appropriation.

CHAPTER 48

(S. B. 785—By Senators Craig, Anderson, Bailey, Chafin, Helmick,
Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe,
Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring
between items of the existing appropriations to the public
service commission, account no. fund 8623, fiscal year 1998,

organization 0926, as originally appropriated by chapter five, acts of the Legislature, first regular session, one thousand nine hundred ninety-seven, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation to the public service commission-motor carrier division, account no. fund 8623, fiscal year 1998, organization 0926, be amended and reduced in the line item as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 3. Appropriations from other funds.		
3	MISCELLANEOUS BOARDS AND COMMISSIONS		
4	<i>194—Public Service Commission</i>		
5	(WV Code Chapter 24A)		
6	Account No.		
7	Fund <u>8623</u> FY <u>1998</u> Org <u>0926</u>		
8		Act-	Other
9		ivity	Funds
10	4	Unclassified	099 \$ 357,000

And, that the items of the total appropriations to the public service commission, account no. fund 8623, fiscal year 1998, organization 0926, be amended and increased in the line items as follows:

15	TITLE II—APPROPRIATIONS.		
16	Sec. 3. Appropriations from other funds.		
17	MISCELLANEOUS BOARDS AND COMMISSIONS		
18	<i>194—Public Service Commission</i>		
19	(WV Code Chapter 24A)		
20	Account No.		
21	Fund <u>8623</u> FY <u>1998</u> Org <u>0926</u>		

		Act- ivity	Other Funds
22			
23			
24	1 Personal Services	001	\$ 300,000
25	3 Employee Services	010	57,000

26 The purpose of this supplementary appropriation bill
 27 is to supplement, amend, reduce and transfer between
 28 existing items in the aforesaid account for the designated
 29 spending unit. The item for unclassified is reduced by
 30 three hundred fifty-seven thousand dollars. The item for
 31 personal services is increased by three hundred thousand
 32 dollars. The item for employee benefits is increased by
 33 fifty-seven thousand dollars. The amounts as itemized for
 34 expenditure in the fiscal year ending the thirtieth day of
 35 June, one thousand nine hundred ninety-eight, shall be
 36 available for expenditure immediately upon the effective
 37 date of this bill.

CHAPTER 49

(S. B. 784—By Senators Craigo, Anderson, Bailey, Chafin, Helmick,
 Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe,
 Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations to the public service commission-motor carrier division, account no. fund 8625, fiscal year 1998, organization 0926, as originally appropriated by chapter five, acts of the Legislature, first regular session, one thousand nine hundred ninety-seven, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation to the public service commission-motor carrier division, account no. fund 8625, fiscal

year 1998, organization 0926, be amended and reduced in the line item as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 MISCELLANEOUS BOARDS AND COMMISSIONS

4 196—Public Service Commission—
5 Motor Carrier Division

6 (WV Code Chapter 24A)

7 Account No.

8 Fund 8625 FY 1998 Org 0926

9		Act-	Other
10		ivity	Funds
11 4	Unclassified	099	\$ 114,240

12 And, that the items of the total appropriations to the
13 public service commission, account no. fund 8625, fiscal
14 year 1998, organization 0926, be amended and increased
15 in the line items as follows:

16 TITLE II—APPROPRIATIONS.

17 **Sec. 3. Appropriations from other funds.**

18 MISCELLANEOUS BOARDS AND COMMISSIONS

19 196—Public Service Commission—
20 Motor Carrier Division

21 (WV Code Chapter 24A)

22 Account No.

23 Fund 8625 FY 1998 Org 0926

24		Act-	Other
25		ivity	Funds
26 1	Personal Services	001	\$ 96,000
27 3	Employee Services	010	18,240

28 The purpose of this supplementary appropriation bill
29 is to supplement, amend, reduce and transfer between
30 existing items in the aforesaid account for the designated
31 spending unit. The item for unclassified is reduced by one
32 hundred fourteen thousand two hundred forty dollars.
33 The item for personal services is increased by ninety-six
34 thousand dollars. The item for employee benefits is
35 increased by eighteen thousand two hundred forty dollars.
36 The amounts as itemized for expenditure in the fiscal year
37 ending the thirtieth day of June, one thousand nine
38 hundred ninety-eight, shall be available for expenditure
39 immediately upon the effective date of this bill.

CHAPTER 50

(H. B. 4385—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 12, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to the bureau of commerce - division of labor, account no. fund 8706, fiscal year 1998, organization 0308, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 8706, fiscal year 1998, organization 0308, be supplemented and amended by increasing the total appropriation by ten thousand eight hundred eighty-one dollars in the line item as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 5. Appropriations of federal funds.

3 BUREAU OF COMMERCE

4 247—Division of Labor—

5 (WV Code Chapters 21 and 47)

6 Account No.

7 Fund 8706 FY 1998 Org 0308

8		Act-	
9		ivity	Federal
			Funds

10	1	Unclassified—Total	096	\$10,881
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11 The purpose of this supplementary appropriation bill
12 is to supplement this account in the budget act for fiscal
13 year ending the thirtieth day of June, one thousand nine
14 hundred ninety-eight, by adding ten thousand eight
15 hundred eighty-one dollars to the existing appropriation
16 for unclassified for the collection of occupational injury
17 and illness data for expenditure during fiscal year one
18 thousand nine hundred ninety-eight.

CHAPTER 51

(H. B. 4386—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed February 27, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for fiscal year ending the thirtieth

day of June, one thousand nine hundred ninety-eight, to the department of health and human resources - division of human services, account no. fund 8722, fiscal year 1998, organization 0511, supplementing and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 8722, fiscal year 1998, organization 0511, be supplemented and amended by increasing the total appropriation by six million three hundred seventeen thousand forty-one dollars in the line item as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 5. Appropriations of federal funds.		
3	DEPARTMENT OF HEALTH		
4	AND HUMAN RESOURCES		
5	232— <i>Division of Human Services</i> —		
6	(WV Code Chapters 9, 48 and 49)		
7	Account No.		
8	Fund <u>8722</u> FY <u>1998</u> Org <u>0511</u>		
9		Act-	Federal
10		ivity	Funds
11	1	Unclassified—Total	096 \$ 6,317,041

12 The purpose of this supplementary appropriation bill
 13 is to supplement this account in the budget act for fiscal
 14 year ending the thirtieth day of June, one thousand nine
 15 hundred ninety-eight, by adding six million three hundred
 16 seventeen thousand forty-one dollars to the existing
 17 appropriation for unclassified for social services for
 18 expenditure during fiscal year one thousand nine hundred
 19 ninety-eight.

CHAPTER 52

(H. B. 4395—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
 [By Request of the Executive]

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to the department of health and human resources - division of human services, account no. fund 8722, fiscal year 1998, organization 0511, supplementing and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 8722, fiscal year 1998, organization 0511, be supplemented and amended by increasing the total appropriation by eight hundred seventy thousand dollars in the line item as follows:

- | | |
|---|--|
| 1 | TITLE II—APPROPRIATIONS. |
| 2 | Section 5. Appropriations of federal funds. |
| 3 | DEPARTMENT OF HEALTH |
| 4 | AND HUMAN RESOURCES |
| 5 | 232— <i>Division of Human Services—</i> |

6 (WV Code Chapters 9, 48 and 49)

7 Account No.

8 Fund 8722 FY 1998 Org 0511

9		Act-	Federal
10		ivity	Funds
11	1 Unclassified—Total	096	\$870,000

12 The purpose of this supplementary appropriation bill
 13 is to supplement this account in the budget act for fiscal
 14 year ending the thirtieth day of June, one thousand nine
 15 hundred ninety-eight, by adding eight hundred seventy
 16 thousand dollars to the existing appropriation for
 17 unclassified for child welfare services for the family and
 18 children’s tracking system (FACTS) for expenditure
 19 during fiscal year one thousand nine hundred ninety-
 20 eight.

CHAPTER 53

(H. B. 4387—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
 [By Request of the Executive]

[Passed March 12, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to the department of health and human resources - human rights commission, account no. fund 8725, fiscal year 1998, organization 0510, supplementing and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 8725, fiscal year 1998, organization 0510, be supplemented and amended by increasing the total appropriation by twenty thousand dollars in the line item as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 5. Appropriations of federal funds.

3 DEPARTMENT OF HEALTH AND
4 HUMAN RESOURCES

5 231—Human Rights Commission—

6 (WV Code Chapter 5)

7 Account No.

8 Fund 8725 FY 1998 Org 0510

9 10		Act- ivity	Federal Funds
11	1 Unclassified—Total	096	\$20,000

12 The purpose of this supplementary appropriation bill
13 is to supplement this account in the budget act for fiscal
14 year ending the thirtieth day of June, one thousand nine
15 hundred ninety-eight, by adding twenty thousand dollars
16 to the existing appropriation for unclassified for EEOC
17 and HUD programs for expenditure during fiscal year
18 one thousand nine hundred ninety-eight.

CHAPTER 54

(H. B. 4388—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 12, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to the department of military affairs and public safety - West Virginia state police, account no. fund 8741, fiscal year 1998, organization 0612, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 8741, fiscal year 1998, organization 0612, be supplemented and amended by increasing the total appropriation by one million seventy thousand three hundred ninety-one dollars in the line item as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 Section 5. Appropriations of federal funds.
- 3 DEPARTMENT OF MILITARY AFFAIRS
- 4 AND PUBLIC SAFETY
- 5 235—West Virginia State Police—

6	(WV Code Chapter 15)		
7	Account No.		
8	Fund <u>8741</u> FY <u>1998</u> Org <u>0612</u>		
9		Act-	Federal
10		ivity	Funds
11	1	Unclassified—Total	096 \$1,070,391

12 The purpose of this supplementary appropriation bill
 13 is to supplement this account in the budget act for the
 14 fiscal year ending the thirtieth day of June, one thousand
 15 nine hundred ninety-eight, by adding one million seventy
 16 thousand three hundred ninety-one dollars to the existing
 17 appropriation for unclassified for law enforcement
 18 improvements for expenditure during fiscal year one
 19 thousand nine hundred ninety-eight.



CHAPTER 55

(H. B. 4396—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
 [By Request of the Executive]



[Passed March 14, 1998; in effect from passage. Approved by the Governor.]



AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to the West Virginia development office - community development, account no. fund 8746, fiscal year 1998, organization 0307, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 8746, fiscal year 1998, organization 0307, be supplemented and amended by increasing the total appropriation by four million dollars in the line item as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 6. Appropriations from federal block grants.

3 255—West Virginia Development Office—
4 Community Development

5 Account No.

6 Fund 8746 FY 1998 Org 0307

7		Act-	Federal
8		ivity	Funds
9	1 Unclassified—Total	096	\$4,000,000

10 The purpose of this supplementary appropriation bill
11 is to supplement this account in the budget act for the
12 fiscal year ending the thirtieth day of June, one thousand
13 nine hundred ninety-eight, by adding four million dollars
14 to the existing appropriation for the small cities block
15 grant program to be expended during the fiscal year one
16 thousand nine hundred ninety-eight.

CHAPTER 56

(Com. Sub. for H. B. 4389—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)

[By Request of the Executive]

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to the department of transportation - office of the secretary, account no. fund 8782, fiscal year 1998, organization 0801, supplementing and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 8782, fiscal year 1998, organization 0801, be supplemented and amended by increasing the total appropriation by five hundred fifty-one thousand five hundred seventy dollars in the line item as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 Section 5. Appropriations of federal funds.
- 3 DEPARTMENT OF TRANSPORTATION
- 4 240—Office of the Secretary—
- 5 (WV Code Chapter 5F)
- 6 Account No.
- 7 Fund 8782 FY 1998 Org 0801

		Act-	Federal
		ivity	Funds
10	1 Unclassified—Total	096	\$551,570

11 The purpose of this supplementary appropriation bill
 12 is to supplement this account in the budget act for fiscal
 13 year ending the thirtieth day of June, one thousand nine
 14 hundred ninety-eight, by adding five hundred twenty-six
 15 thousand five hundred seventy dollars to the existing
 16 appropriation for the development of the West Virginia
 17 regional transpark and twenty-five thousand dollars for a
 18 mobile aircraft rescue and fire fighting training simulator
 19 needs survey for expenditure during fiscal year one
 20 thousand nine hundred ninety-eight.

CHAPTER 57

(H. B. 4390—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
 [By Request of the Executive]

[Passed March 13, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to a new item of appropriation designated to the department of agriculture - state soil conservation committee, account no. fund 8783, fiscal year 1998, organization 1400, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for

expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter five, acts of the Legislature, regular session, one thousand nine hundred ninety-seven, known as the budget bill, be supplemented and amended by adding to Title II, section five thereof, the following:

1 TITLE II—APPROPRIATIONS.

2 Section 5. Appropriations of federal funds.

3 EXECUTIVE

4 219a—Department of Agriculture—
5 State Soil Conservation Committee

6 Account No.

7 Fund 8783 FY 1998 Org 1400

8		Act-	
9		ivity	Federal
			Funds
10	1 Unclassified—Total	096	\$28,617

11 The purpose of this supplementary appropriation bill
12 is to supplement this account in the budget act for the
13 fiscal year ending the thirtieth day of June, one thousand
14 nine hundred ninety-eight, by providing for a new item of
15 appropriation to be established therein to appropriate
16 federal funds in the amount of twenty-eight thousand six
17 hundred seventeen dollars to be expended during fiscal
18 year one thousand nine hundred ninety-eight.

CHAPTER 58

(H. B. 4391—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 12, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to the governor's office - governor's cabinet on children and families, account no. fund 8792, fiscal year 1998, organization 0100, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 8792, fiscal year 1998, organization 0100, be supplemented and amended by increasing the total appropriation by four hundred sixty thousand dollars in the line item as follows:

- | | |
|---|--|
| 1 | TITLE II—APPROPRIATIONS. |
| 2 | Section 5. Appropriations of federal funds. |
| 3 | EXECUTIVE |
| 4 | <i>213—Governor's Office—</i> |
| 5 | <i>Governor's Cabinet on Children and Families</i> |

6	(WV Code Chapter 5)		
7	Account No.		
8	Fund <u>8792</u> FY <u>1998</u> Org <u>0100</u>		
9		Act-	Federal
10		ivity	Funds
11	1 Unclassified—Total	096	\$460,000

12 The purpose of this supplementary appropriation bill
 13 is to supplement this account in the budget act for the
 14 fiscal year ending the thirtieth day of June, one thousand
 15 nine hundred ninety-eight, by adding four hundred sixty
 16 thousand dollars to the existing appropriation for the
 17 governor's cabinet on children and families for
 18 expenditure during fiscal year one thousand nine hundred
 19 ninety-eight.

CHAPTER 59

(Com. Sub. for H. B. 4392—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
 [By Request of the Executive]

[Passed March 12, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to the governor's office — commission for national and community service, account no. fund 8800, fiscal year 1998, organization 0100, supplementing and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for

expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 8800, fiscal year 1998, organization 0100, be supplemented and amended by increasing the total appropriation by seven hundred seven thousand five hundred dollars in the line item as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 5. Appropriations of federal funds.

3 EXECUTIVE

4 215—Governor’s Office—
5 Commission for National and Community Service

6 (WV Code Chapter 5)

7 Account No.

8 Fund 8800 FY 1998 Org 0100

9	10		Act- ivity	Federal Funds
11	1	Unclassified—Total	096	\$707,500

12 The purpose of this supplementary appropriation bill
13 is to supplement this account in the budget act for fiscal
14 year ending the thirtieth day of June, one thousand nine
15 hundred ninety-eight, by adding seven hundred seven
16 thousand five hundred dollars to the existing
17 appropriation for unclassified for the commission for
18 national and community service for expenditure during
19 fiscal year one thousand nine hundred ninety-eight.

CHAPTER 60

(H. B. 4393—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 12, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to a new item of appropriation designated to the department of health and human resources — West Virginia drinking water treatment, account no. fund 8824, fiscal year 1998, organization 0506, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter five, acts of the Legislature, regular session, one thousand nine hundred ninety-seven, known as the "Budget Bill", be supplemented and amended by adding to Title II, section five thereof the following:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Section 5. Appropriations of federal funds.**
- 3 DEPARTMENT OF HEALTH AND HUMAN
- 4 RESOURCES
- 5 229a—Division of Health—
- 6 West Virginia Drinking Water Treatment

7 (WV Code Chapter 16)
 8 Account No.
 9 Fund 8824 FY 1998 Org 0506

10	Act-	Federal
11	ivity	Funds
12 1	Unclassified—Total 096	\$12,558,000

13 The above appropriation for Unclassified—Total shall
 14 be transferred to the West Virginia Water Treatment
 15 Revolving Fund or appropriate bank depository and the
 16 Drinking Water Treatment Revolving — Administrative
 17 Expense Fund as provided by chapter 16, of the code.

18 The purpose of this supplementary appropriation bill
 19 is to supplement this account in the budget act for fiscal
 20 year ending the thirtieth day of June, one thousand nine
 21 hundred ninety-eight, by providing for a new item of
 22 appropriation to be established therein to appropriate
 23 federal funds in the amount of twelve million five hundred
 24 fifty-eight thousand dollars to Unclassified for West
 25 Virginia Drinking Water Treatment to be expended
 26 during fiscal year one thousand nine hundred ninety-
 27 eight.



CHAPTER 61

(H. B. 4714—By Delegates Pettit, Compton, Cann, Fantasia,
 Facemyer, Walters and Border)



[Passed March 14, 1998; in effect from passage. Approved by the Governor.]



AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining as an unappropriated balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to a new item of appropriation designated to the department of health and human resources, division of health, abstinence education program, account no. fund

8825, fiscal year 1998, organization 0506, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established the availability of federal funds for establishing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter five, acts of the Legislature, regular session, one thousand nine hundred ninety-seven, known as the "Budget Bill", be supplemented and amended by adding a new item of appropriation to Title II, section six thereof the following:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 6. Appropriations from federal block grants.		
3	DEPARTMENT OF HEALTH		
4	AND HUMAN RESOURCES		
5	<i>261a—Division of Health—</i>		
6	<i>Abstinence Education Program</i>		
7	Account No.		
8	Fund <u>8825</u> FY <u>1998</u> Org <u>0506</u>		
9		Act-	Other
10		ivity	Funds
11	1 Unclassified—Total	096	\$243,000

12 The purpose of this supplementary appropriation bill
 13 is to supplement this account in the budget act for the
 14 fiscal year ending the thirtieth day of June, one thousand
 15 nine hundred ninety-eight, by adding two hundred forty-
 16 three thousand dollars by providing for a new item of
 17 appropriation to be established therein to appropriate
 18 federal funds in the amount of two hundred forty-three
 19 thousand dollars to the Unclassified total for Abstinence
 20 Education Program to be expended during fiscal year one
 21 thousand nine hundred ninety-eight.

CHAPTER 62

(S. B. 781—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 13, 1998; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the state road fund to the department of transportation, division of motor vehicles, account no. fund 9007, fiscal year 1998, organization 0802, as originally appropriated by chapter five, acts of the Legislature, regular session, one thousand nine hundred ninety-seven, known as the "Budget Bill".

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included the statement of the state road fund setting forth therein the cash balances and investments as of July 1, 1997, and further included the estimate of revenues for the fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for the fiscal year 1997-98.

WHEREAS, It thus appears from the governor's executive budget document there now remains an unappropriated 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state road fund to account no. fund 9007, fiscal year 1998, organization 0802, be amended and reduced in the line item as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 2. Appropriations from state road fund.**
- 3 DEPARTMENT OF TRANSPORTATION
- 4 92—*Division of Motor Vehicles*
- 5 (WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)
- 6 Account No.

7		Fund <u>9007</u> FY <u>1998</u> Org <u>0802</u>	
8			State
9			Road
10			Fund
11	5	Capital Outlay-Building 222	\$1,860,000

12 And, that the items of the total appropriations from the
 13 state road fund to account no. fund 9007, fiscal year
 14 1998, organization 0802, be amended and increased in the
 15 line items as follows:

16 TITLE II—APPROPRIATIONS.

17 **Sec. 2. Appropriations from state road fund.**

18 DEPARTMENT OF TRANSPORTATION

19 *92—Division of Motor Vehicles*

20 (WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)

21 Account No.

22 Fund 9007 FY 1998 Org 0802

23			State
24			Road
25			Fund
26	1	Personal Services 001	\$ 206,475
27	3	Employee Benefits 010	23,800
28	4	Unclassified 099	376,173

29 The purpose of this supplementary appropriation bill
 30 is to supplement, amend, reduce and transfer between
 31 existing items in the aforesaid account for the designated
 32 spending unit. The item for capital outlay-building is
 33 reduced by one million eight hundred sixty thousand
 34 dollars. The item for personal services is increased by two
 35 hundred six thousand four hundred seventy-five dollars,
 36 employee benefits is increased by twenty-three thousand
 37 eight hundred dollars and unclassified is increased by
 38 three hundred seventy-six thousand one hundred seventy-
 39 three dollars. The amounts as itemized for expenditure in
 40 the fiscal year ending the thirtieth day of June, one
 41 thousand nine hundred ninety-eight, shall be available for
 42 expenditure immediately upon the effective date of this
 43 bill.

CHAPTER 63

(S. B. 206—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed February 5, 1998; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the state road fund to the department of transportation, division of highways, account no. fund 9017, fiscal year 1998, organization 0803, as originally appropriated by chapter five, acts of the Legislature, regular session, one thousand nine hundred ninety-seven, known as the "Budget Bill".

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included the statement of the state road fund setting forth therein the cash balances and investments as of July 1, 1997, and further included the estimate of revenues for the fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98.

WHEREAS, It thus appears from the governor's executive budget document there now remains an unappropriated 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-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state road fund to account no. fund 9017, fiscal year 1998, organization 0803, be amended and reduced in the line item as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 2. Appropriations from state road fund.**
- 3 DEPARTMENT OF TRANSPORTATION
- 4 93—Division of Highways

5 (WV Code Chapters 17 and 17C)

6 Account No.

7 Fund 9017 FY 1998 Org 0803

8 State

9 Act-

10 ivity Road

11 2 ARC Assessment 136 \$293,000

12 And, that the items of the total appropriations from the
13 state road fund to account no. fund 9017, fiscal year
14 1998, organization 0803, be amended and increased in the
15 line items as follows:

16 TITLE II—APPROPRIATIONS.

17 Sec. 2. Appropriations from state road fund.

18 DEPARTMENT OF TRANSPORTATION

19 93—*Division of Highways*

20 (WV Code Chapters 17 and 17C)

21 Account No.

22 Fund 9017 FY 1998 Org 0803

23 State

24 Act-

25 ivity Road

26 5 Maintenance, State Local Service . 271 \$3,000,000

27 6 Maintenance, Contract Paving and

28 7 Secondary Road Maintenance . . 272 3,000,000

29 8 Bridge Repair and Replacement . . 273 9,000,000

30 12 Interstate Construction 278 5,000,000

31 13 Other Federal Aid Programs 279 64,000,000

32 14 Appalachian Programs 280 17,000,000

33 15 Nonfederal Aid Construction 281 17,000,000

34 The purpose of this supplementary appropriation bill
 35 is to supplement, amend, reduce and transfer between
 36 existing items in the aforesaid account for the designated
 37 spending unit. The item for ARC assessment is reduced
 38 by two hundred ninety-three thousand dollars. The item
 39 for maintenance, state local service is increased by three
 40 million dollars, maintenance, contract paving and
 41 secondary road maintenance is increased by three million
 42 dollars, bridge repair and replacement is increased by nine
 43 million dollars, interstate construction is increased by five
 44 million dollars, other federal aid programs is increased by
 45 sixty-four million dollars, Appalachian programs is
 46 increased by seventeen million dollars, and nonfederal aid
 47 construction is increased by seventeen million dollars.
 48 The amounts as itemized for expenditure in fiscal year
 49 ending the thirtieth day of June, one thousand nine
 50 hundred ninety-eight, shall be available for expenditure
 51 immediately upon the effective date of this bill.

CHAPTER 64

(S. B. 205—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson,
 Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie,
 Minear and Sprouse)

[Passed February 4, 1998; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the state road fund to the department of transportation, division of highways, account no. fund 9018, fiscal year 1998, organization 0803, as originally appropriated by chapter five, acts of the Legislature, regular session, one thousand nine hundred ninety-seven, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state road fund to account no. fund 9018, fiscal year 1998, organization 0803, be amended and reduced in the line item as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 Sec. 2. Appropriations from state road fund.

3	DEPARTMENT OF TRANSPORTATION		
4	<i>94—Division of Highways</i>		
5	<i>Federal Aid Highway Matching Fund</i>		
6	(WV Code Chapters 17 and 17C)		
7	Account No.		
8	Fund <u>9018</u> FY <u>1998</u> Org <u>0803</u>		
9			State
10		Act-	Road
11		ivity	Fund
12	2	Other Federal Aid Programs 279	\$18,000,000

13 And, that the items of the total appropriations from the
 14 state road fund to account no. fund 9018, fiscal year
 15 1998, organization 0803, be amended and increased in the
 16 line items as follows:

17 TITLE II—APPROPRIATIONS.

18 **Sec. 2. Appropriations from state road fund.**

19	DEPARTMENT OF TRANSPORTATION		
20	<i>94—Division of Highways</i>		
21	<i>Federal Aid Highway Matching Fund</i>		
22	(WV Code Chapters 17 and 17C)		
23	Account No.		
24	Fund <u>9018</u> FY <u>1998</u> Org <u>0803</u>		
25			State
26		Act-	Road
27		ivity	Fund
28	3	Appalachian Programs 280	\$15,000,000

29 The purpose of this supplementary appropriation bill
 30 is to supplement, amend, reduce and transfer between
 31 existing items in the aforesaid account for the designated
 32 spending unit. The item for other federal aid programs is
 33 reduced by eighteen million dollars. The item for
 34 Appalachian programs is increased by fifteen million
 35 dollars. The amounts as itemized for expenditure in fiscal
 36 year ending the thirtieth day of June, one thousand nine
 37 hundred ninety-eight, shall be available for expenditure
 38 immediately upon the effective date of this bill.

CHAPTER 65

(Com. Sub. for H. B. 4474—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the amount of money that can be borrowed from the revenue shortfall reserve fund.

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.

1 (a) Notwithstanding any provision of this section, the
2 governor may reduce appropriations according to any of
3 the methods set forth in sections twenty-one and twenty-
4 two of this article. The governor may, in lieu of imposing
5 a reduction in appropriations, request an appropriation by
6 the Legislature from the revenue shortfall reserve fund
7 established in this section.

8 (b) A revenue shortfall reserve fund is hereby
9 continued within the state treasury. The revenue shortfall
10 reserve fund shall be funded as set forth in this subsection
11 from surplus revenues, if any, in the state fund, general
12 revenue, as the surplus revenues may accrue from time to
13 time. Within sixty days of the end of each fiscal year, the
14 secretary shall cause to be deposited into the revenue
15 shortfall reserve fund the first fifty percent of all surplus
16 revenues, if any, determined to have accrued during the
17 fiscal year just ended. The revenue shortfall reserve fund

18 shall be funded continuously and on a revolving basis in
19 accordance with this subsection up to an aggregate
20 amount not to exceed five percent of the total
21 appropriations from the state fund, general revenue, for
22 the fiscal year just ended. If at the end of any fiscal year
23 the revenue shortfall reserve fund is funded at an amount
24 equal to or exceeding five percent of the state's general
25 revenue fund budget for the fiscal year just ended, then
26 there shall be no further obligation of the secretary under
27 the provisions of this section to apply any surplus
28 revenues as set forth in this subsection until such time as
29 the revenue shortfall reserve fund balance is less than five
30 percent of the total appropriations from the state fund,
31 general revenue.

32 (c) Not earlier than the first day of November of each
33 calendar year, if the state's fiscal circumstances are such as
34 to otherwise trigger the authority of the governor to
35 reduce appropriations under this section or section
36 twenty-one or section twenty-two of this article, then in
37 that event the governor may notify the presiding officers
38 of both houses of the Legislature in writing of his or her
39 intention to convene the Legislature pursuant to section
40 19, article VI of the West Virginia constitution for the
41 purpose of requesting the introduction of a supplementary
42 appropriation bill or to request a supplementary
43 appropriation bill at the next preceding regular session of
44 the Legislature to draw money from the surplus revenue
45 shortfall reserve fund to meet any anticipated revenue
46 shortfall. If the Legislature fails to enact a supplementary
47 appropriation from the revenue shortfall reserve fund
48 during any special legislative session called for the
49 purposes set forth in this section or during the next
50 preceding regular session of the Legislature, then the
51 governor may proceed with a reduction of appropriations
52 pursuant to sections twenty-one and twenty-two of this
53 article. Should any amount drawn from the revenue
54 shortfall reserve fund pursuant to an appropriation made
55 by the Legislature prove insufficient to address any
56 anticipated shortfall, then the governor may also proceed
57 with a reduction of appropriations pursuant to sections
58 twenty-one and twenty-two of this article.

59 (d) Upon the creation of the fund, the Legislature is
60 authorized and may make an appropriation from the
61 revenue shortfall reserve fund for revenue shortfalls, for
62 emergency revenue needs caused by acts of God or
63 natural disasters or for other fiscal needs as determined
64 solely by the Legislature.

65 (e) Prior to the thirty-first day of October, in any fiscal
66 year in which revenues are inadequate to make timely
67 payments of the state's obligations, the governor may by
68 executive order, after first notifying the presiding officers
69 of both houses of the Legislature in writing, borrow funds
70 from the revenue shortfall reserve fund. The amount of
71 funds borrowed under this subsection shall not exceed one
72 and one-half percent of the general revenue estimate for
73 the fiscal year in which the funds are to be borrowed, or
74 the amount the governor determines is necessary to make
75 timely payment of the state's obligations, whichever is less.
76 Any funds borrowed pursuant to this subsection shall be
77 repaid, without interest, and redeposited to the credit of the
78 revenue shortfall reserve fund within ninety days of their
79 withdrawal.

CHAPTER 66

(H. B. 4055—By Delegates Seacrist, Michael, Laird and Campbell)

[Passed February 17, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty, relating to payment of funds of county boards of education, county commissions, municipal corporations by electronic or wire transfer, inclusion of appropriate electronic remittance voucher information; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

That article three, chapter twelve 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, to read as follows:

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-20. Electronic or wire transfer.

1 (a) Notwithstanding any other provision of this code to
2 the contrary, whenever the treasurer of a county board of
3 education, a county commission or a municipality is
4 authorized or directed pursuant to law to disburse or
5 transfer on behalf of the county board of education,
6 county commission or municipality, funds in the custody
7 of the treasurer or in the treasury of the county board of
8 education, county commission or municipality, the
9 treasurer is authorized to disburse or transfer the funds by
10 means of electronic or wire transfer and that transfer shall
11 include appropriate electronic remittance voucher
12 information. The county board of education, county
13 commission or governing body of a municipality may
14 enter into a written agreement with the banking institution
15 in which the funds are deposited, prescribing the manner
16 in which electronic or wire transfer of the funds shall be
17 accomplished, identifying by number and name those
18 accounts from which electronic or wire transfers may be
19 made, identifying which person or persons are authorized
20 to order the electronic or wire transfer of funds from those
21 accounts, and implementing a security procedure as
22 defined in section two hundred one, article four-a, chapter
23 forty-six of this code.

24 (b) It is the duty of the county board of education,
25 county commission or governing body of a municipality
26 to adopt a system of internal controls satisfactory to the
27 tax commissioner as ex officio, the chief inspector and
28 supervisor of public offices for the documentation and
29 reporting of all transfers or disbursements of funds
30 accomplished by electronic or wire transfer to ensure the
31 safety and integrity of the payment process.

32 (c) The county board of education, county
33 commission or governing body of a municipality shall
34 also adopt procedures:

35 (1) Governing the method by which the treasurer is
36 authorized to direct payments from the funds of the
37 county board of education, county commission or
38 municipality on deposit with a banking institution;

39 (2) Governing the method of payment of obligations
40 of the county board of education, county commission or
41 municipality, including payment by check, draft,
42 electronic or wire transfer, or other method of payment
43 mutually acceptable to the county board of education,
44 county commission or governing body of a municipality,
45 and the banking institution; and

46 (3) Covering any other matters it believes necessary to
47 ensure the safety and integrity of the payment process.

48 (d) A county board of education, county commission
49 or governing body of a municipality shall file a copy of
50 the procedures it adopts in accordance with the provisions
51 of subsection (c) of this section with each banking
52 institution in which its funds are deposited.

53 (e) The treasurer of the county board of education,
54 county commission or municipality, and the banking
55 institution shall agree to follow rules and procedures for
56 electronic fund transfers promulgated by the federal
57 reserve bank and the national clearing house association
58 (NACHA) to ensure the safety and integrity of the
59 payment process. These safeguards must be approved by
60 the county board of education, county commission or
61 governing body of a municipality. If the county board of
62 education, county commission or governing body of a
63 municipality finds that the safeguards are consistent with
64 and do not contravene the procedures adopted under the
65 provisions of subsection (c) of this section, the safeguards
66 must be approved.

67 (f) This section applies to disbursements or transfers
68 made after the thirty-first day of May, one thousand nine
69 hundred ninety-eight.

CHAPTER 67

(Com. Sub. for H. B. 4096—By Delegates Thompson, Jenkins, Kominar,
H. White, Heck, Hunt and Tomblin)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the duty of banking commissioner to require criminal background investigations of certain applicants regulated by the banking division.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVISION OF BANKING.

§31A-2-4. Jurisdiction of commissioner; powers, etc., of department transferred to commissioner; powers and duties of commissioner.

1 (a) Subject to the powers vested in the board by article
2 three of this chapter, the commissioner shall have
3 supervision and jurisdiction over state banks, regulated
4 consumer lenders, second mortgage lenders and brokers,
5 credit unions, and all other persons now or hereafter made
6 subject to his or her supervision or jurisdiction. All
7 powers, duties, rights and privileges vested in the
8 department are hereby vested in the commissioner. He or
9 she shall be the chief executive officer of the department
10 of banking and shall be responsible for the department's
11 organization, services and personnel, and for the orderly
12 and efficient administration, enforcement and execution
13 of the provisions of this chapter and all laws vesting
14 authority or powers in or prescribing duties or functions
15 for the department or the commissioner.

16 (b) The commissioner shall:

17 (1) Maintain the office for the department at the state
18 capitol, and there keep a complete record of all the
19 department's transactions, of the financial conditions of all
20 financial institutions and such records of the activities of
21 other persons as the commissioner may deem important.
22 Notwithstanding any other provision of the code of West
23 Virginia, heretofore or hereafter enacted, the records
24 relating to the financial condition of any financial
25 institution and any information contained therein shall be
26 confidential for the use of the commissioner and
27 authorized personnel of the department of banking. No
28 person shall divulge any information contained in any
29 such records except as hereafter authorized in response to
30 a valid subpoena or subpoena duces tecum issued
31 pursuant to law in a criminal proceeding or in a civil
32 enforcement action brought by the state or federal
33 regulatory authorities. Subpoenas shall first be directed to
34 the commissioner, who shall authorize disclosure of
35 relevant records and information therefrom for good
36 cause, upon imposing terms and conditions as are deemed
37 necessary to protect the confidential nature of the records,
38 the financial integrity of the financial institution or the
39 person to which the records relate, and the legitimate
40 privacy interests of any individual named in such records.
41 Conformity with federal procedures shall be sought where
42 the institution maintains federal deposit insurance. The
43 commissioner shall have and may exercise reasonable
44 discretion as to the time, manner and extent the other
45 records in his or her office and the information contained
46 therein shall be available for public examination;

47 (2) Require all financial institutions to comply with all
48 the provisions of this chapter and other applicable laws, or
49 any rule promulgated or order issued thereunder;

50 (3) Investigate all alleged violations of this chapter and
51 all other laws which he or she is required to enforce and of
52 any rule promulgated or order issued thereunder; and

53 (4)(1) Require a criminal background investigation,
54 including fingerprint checks, of each: (A) Applicant
55 seeking approval to charter and/or control a state bank,

56 state credit union, or a foreign bank state agency or
57 representative office; (B) applicant seeking a license to
58 engage in the business of money transmission, currency
59 exchange, or other activity regulated under article two,
60 chapter thirty-two-a of this code; (C) applicant subject to
61 the commissioner's supervision seeking a license to
62 engage in the business of regulated consumer lending,
63 mortgage lending or brokering; and (D) department of
64 banking financial institutions regulatory employee
65 applicant, to be made through the West Virginia state
66 police and the federal bureau of investigation: *Provided,*
67 That where the applicant is a company or entity already
68 subject to supervision and regulation by the federal
69 reserve board or other federal bank, thrift or credit union
70 regulator, or is a direct or indirect subsidiary of a
71 company or entity subject to such supervision and
72 regulation, or where the applicant is a company subject to
73 the supervision and regulation of the federal securities and
74 exchange commission whose stock is publicly traded on a
75 registered exchange or through the national association of
76 securities dealers automated quotation system, or the
77 applicant is a direct or indirect subsidiary of such a
78 company, the investigation into criminal background shall
79 not be so required. The provisions of this subdivision are
80 not applicable to applicants seeking interim bank charters
81 organized solely for the purpose of facilitating the
82 acquisition of another bank pursuant to section five, article
83 four of this chapter.

84 (2) Where a nonexempt applicant hereunder is not a
85 natural person, the principals of the applicant shall be
86 subject to the requirements of subdivision (1) of this
87 subsection. As used in this subdivision, the term
88 "principals" means the chief executive officer, regardless
89 of title, managing partner if a partnership, members of the
90 organizing group if no chief executive officer has yet
91 been appointed, trustee, or other person controlling the
92 conduct of the affairs of a licensee. A person controlling
93 ten percent or more of the stock of any corporate
94 applicant shall be deemed to be a principal under this
95 provision.

96 (c) In addition to all other authority and powers vested
97 in the commissioner by provisions of this chapter and
98 other applicable laws, the commissioner is authorized and
99 empowered:

100 (1) To provide for the organization of the department
101 and the procedures and practices thereof and implement
102 the same by the promulgation of rules and forms as
103 appropriate, which rules shall be promulgated in
104 accordance with article three, chapter twenty-nine-a of this
105 code;

106 (2) To employ, direct, discipline, discharge and
107 establish qualifications and duties for all personnel for the
108 department, including, but not limited to, examiners,
109 assistant examiners, conservators and receivers, to establish
110 the amount and condition of bonds for such thereof as he
111 or she deems appropriate and to pay the premiums
112 thereon, and if he or she so elects, to have all such
113 personnel subject to and under the classified service of the
114 state personnel department;

115 (3) To cooperate with organizations, agencies,
116 committees and other representatives of financial
117 institutions of the state in connection with schools,
118 seminars, conferences and other meetings to improve the
119 responsibilities, services and stability of the financial
120 institutions;

121 (4) In addition to the examinations required by
122 section six of this article, to inspect, examine and audit the
123 books, records, accounts and papers of all financial
124 institutions at such times as circumstances in his or her
125 opinion may warrant;

126 (5) To call for and require all such data, reports and
127 information from financial institutions under his or her
128 jurisdiction, at such times and in such form, content and
129 detail, deemed necessary by him or her in the faithful
130 discharge of his or her duties and responsibilities in the
131 supervision of the financial institutions;

132 (6) Subject to the powers vested in the board by article
133 three of this chapter, to supervise the location,

134 organization, practices and procedures of financial
135 institutions and, without limitation on the general powers
136 of supervision thereof, to require financial institutions to:

137 (A) Maintain their accounts consistent with such
138 regulations as he or she may prescribe and in accordance
139 with generally accepted accounting practices;

140 (B) Observe methods and standards which he or she
141 may prescribe for determining the value of various types
142 of assets;

143 (C) Charge off the whole or any part of an asset which
144 at the time of his or her action could not lawfully be
145 acquired;

146 (D) Write down an asset to its market value;

147 (E) Record or file writings creating or evidencing liens
148 or other interests in property;

149 (F) Obtain financial statements from prospective and
150 existing borrowers;

151 (G) Obtain insurance against damage and loss to real
152 estate and personal property taken as security;

153 (H) Maintain adequate insurance against such other
154 risks as he or she may deem and determine to be
155 necessary and appropriate for the protection of depositors
156 and the public;

157 (I) Maintain an adequate fidelity bond or bonds on its
158 officers and employees;

159 (J) Take such other action as may in his or her
160 judgment be required of the institution in order to
161 maintain its stability, integrity and security as required by
162 law and all rules promulgated by him or her; and

163 (K) Verify any or all asset or liability accounts;

164 (7) Subject to the powers vested in the board by article
165 three of this chapter, to receive from any person or
166 persons and to consider any request, petition or
167 application relating to the organization, location, conduct,
168 services, policies and procedures of any financial

169 institution and to act thereupon in accordance with any
170 provisions of law applicable thereto;

171 (8) In connection with the investigations required by
172 subdivision (3), subsection (b) of this section, to issue
173 subpoenas and subpoenas duces tecum, administer oaths,
174 examine persons under oath, and hold and conduct
175 hearings, any such subpoenas or subpoenas duces tecum
176 to be issued, served and enforced in the manner provided
177 in section one, article five, chapter twenty-nine-a of this
178 code. Any person appearing and testifying at such a
179 hearing may be accompanied by an attorney employed by
180 him or her;

181 (9) To issue declaratory rulings in accordance with the
182 provisions of section one, article four, chapter twenty-
183 nine-a of this code;

184 (10) To study and survey the location, size and
185 services of financial institutions, the geographic, industrial,
186 economic and population factors affecting the
187 agricultural, commercial and social life of the state, and
188 the needs for reducing, expanding or otherwise modifying
189 the services and facilities of financial institutions in the
190 various parts of the state, and to compile and keep current
191 data thereon to aid and guide him or her in the
192 administration of the duties of his or her office;

193 (11) To implement all of the provisions of this chapter
194 (except the provisions of article three) and all other laws
195 which he or she is empowered to administer and enforce
196 by the promulgation of rules in accordance with the
197 provisions of article three, chapter twenty-nine-a of this
198 code;

199 (12) To implement the provisions of chapter forty-six-
200 a of this code applicable to consumer loans and consumer
201 credit sales by the promulgation of rules in accordance
202 with the provisions of article three, chapter twenty-nine-a
203 of this code so long as said rules do not conflict with any
204 rules promulgated by the state's attorney general;

205 (13) To foster and encourage a working relationship
206 between the department of banking and financial

207 institutions, credit, consumer, mercantile and other
208 commercial and finance groups and interests in the state in
209 order to make current appraisals of the quality, stability
210 and availability of the services and facilities of financial
211 institutions;

212 (14) To provide to financial institutions and the public
213 copies of the West Virginia statutes relating to financial
214 institutions, suggested drafts of bylaws commonly used by
215 financial institutions, and such other forms and printed
216 materials as may be found by him or her to be helpful to
217 financial institutions, their shareholders, depositors and
218 patrons, and to make reasonable charges therefor;

219 (15) To delegate the powers and duties of his or her
220 office, other than the powers and duties in this subsection
221 hereinafter excepted, to qualified department personnel,
222 who shall act under the direction and supervision of the
223 commissioner and for whose acts he or she shall be
224 responsible, but the commissioner may delegate to the
225 deputy commissioner of banking and to no other
226 department personnel the following powers, duties and
227 responsibilities, all of which are hereby granted to and
228 vested in the commissioner and for all of which the
229 commissioner shall likewise be responsible:

230 (A) To order any person to cease violating any
231 provision or provisions of this chapter or other applicable
232 law or any rule promulgated or order issued thereunder;

233 (B) To order any person to cease engaging in any
234 unsound practice or procedure which may detrimentally
235 affect any financial institution or depositor thereof;

236 (C) To revoke the certificate of authority, permit or
237 license of any financial institution except a banking
238 institution in accordance with the provisions of section
239 thirteen of this article; and

240 (D) To accept an assurance in writing that the person
241 will not in the future engage in the conduct alleged by the
242 commissioner to be unlawful, which conduct could be
243 subject to an order under the provisions of this chapter.
244 Such assurance of voluntary compliance shall not be

245 considered an admission of violation for any purpose,
246 except that if a person giving such assurance fails to
247 comply with its terms, the assurance is prima facie
248 evidence that prior to such assurance the person engaged
249 in conduct described in such assurance;

250 (16) To seek and obtain from courts, civil penalties
251 against any person who violates this chapter, the rules
252 issued pursuant thereto, or any orders lawfully entered by
253 the commissioner or board of banking and financial
254 institutions in an amount not less than fifty dollars nor
255 more than five thousand dollars for each violation;

256 (17) To receive from state banking institutions
257 applications to change the locations of their principal
258 offices and to approve or disapprove such applications;
259 and

260 (18) To take such other action as he or she may deem
261 necessary to enforce and administer the provisions of this
262 chapter (except the provisions of article three) and all
263 other laws which he or she is empowered to administer and
264 enforce, and to apply to any court of competent
265 jurisdiction for appropriate orders, writs, processes and
266 remedies.

CHAPTER 68

(Com. Sub. for S. B. 442—By Senators Ross, Bowman, Dittmar, Kessler, Snyder,
White, Deem, Kimble, Wooton, Helmick, Sharpe,
Hunter, Jackson, Oliverio, McKenzie, Sprouse, Ball,
Anderson, Schoonover, Dugan and Plymale)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-a; to amend article four of said chapter by adding thereto a new section, designated section ten-a; and to amend article five,

chapter thirty-one-c of said code by adding thereto a new section, designated section eleven, all relating generally to limiting access to certain records of financial institutions; providing for the access of certain governmental entities to financial records; defining terms; establishing requirements for government access to records; permitting access upon written authorization of a customer; requiring state entity to certify compliance; enumerating exceptions; establishing subpoena and notice requirements; setting forth procedures when subpoena issued by grand jury; providing for civil and criminal liability and penalties; establishing the statute of limitations and the tolling thereof; authorizing injunctive relief; providing for the exclusiveness of remedies; limiting stockholder inspection of books and records of state banking institutions; and limiting the inspection of books and records by credit union members.

Be it enacted by the Legislature of West Virginia:

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

Chapter

31A. Banks and Banking.

31C. Credit Unions.

CHAPTER 31A. BANKS AND BANKING.

Article

2A. Maxwell Governmental Access to Financial Records Act.

4. Banking Institutions and Services Generally.

ARTICLE 2A. MAXWELL GOVERNMENTAL ACCESS TO FINANCIAL RECORDS ACT.

§31A-2A-1. Definitions.

§31A-2A-2. Requirements for government access to records.

§31A-2A-3. Written authorization of customer; contents; certification of compliance.

§31A-2A-4. Exceptions.

§31A-2A-5. Subpoena and notice requirements.

§31A-2A-6. Subpoena issued by grand jury.

§31A-2A-7. Penalties.

§31A-2A-8. Statute of limitations; tolling of statute.

§31A-2A-9. Injunctive relief; recovery of attorney fees.

§31A-2A-10. Exclusive remedies.

§31A-2A-1. Definitions.

1 As used in this article:

2 (a) "Customer" means any person or his or her duly
3 authorized representative who has transacted business with
4 or has used the services of a financial institution or for
5 whom a financial institution has acted as a fiduciary in
6 relation to an account maintained in such person's name;

7 (b) "Financial institution" means a bank, a savings
8 and loan association, a trust company or a credit union
9 chartered pursuant to any state or federal law;

10 (c) "Financial record" means the original or a copy
11 of any record or document held by a financial institution,
12 pertaining to a customer of the financial institution,
13 including any record of a transaction conducted by means
14 of a customer bank communication terminal or other
15 electronic device. "Financial record" also means any
16 information derived from such records or documents;

17 (d) "Investigation" includes, but is not limited to, any
18 inquiry by a state or local law-enforcement officer, sheriff
19 or prosecuting attorney, or any inquiry made by a state or
20 local governmental entity for the purpose of determining
21 whether there has been a violation of any law which is
22 punishable by imprisonment or by a fine or other
23 monetary liability;

24 (e) "Person" means an individual, partnership,
25 corporation, limited liability company, association, trust or
26 any other legal entity;

27 (f) "State entity" means any state or local
28 governmental office, officer, department, division, bureau,
29 board or commission, including the Legislature, and any

30 other state or local government agency of West Virginia,
31 its political subdivisions and any agent thereof; and

32 (g) "Subpoena" includes a subpoena duces tecum or
33 any other lawful subpoena to compel testimony or the
34 disclosure or production of documents.

§31A-2A-2. Requirements for government access to records.

1 (a) No state entity may have access to or obtain from a
2 financial institution financial records of any customer
3 except as set forth in section four of this article or under
4 the following circumstances:

5 (1) The customer has executed a written authorization
6 pursuant to section three of this article;

7 (2) The financial records are disclosed in response to a
8 judicial order, warrant, summons or subpoena issued by a
9 court of competent jurisdiction or a valid administrative
10 order or subpoena of a state entity expressly ordering or
11 requiring the disclosure of financial records: *Provided,*
12 That any subpoena issued pursuant to the provisions of
13 this subsection shall comply with the provisions of section
14 five of this article;

15 (3) The financial records are disclosed in response to a
16 judicial order authorizing the appointment of the state
17 entity or its agent: (A) As guardian of the customer or
18 conservator of his or her property; or (B) as administrator
19 or executor of the customer's estate;

20 (4) The financial records are disclosed: (A) Pursuant
21 to a state or federal rule of civil or criminal procedure or
22 any comparable rule of another court of competent
23 jurisdiction; (B) in response to a subpoena issued in
24 connection with any pending civil or criminal proceeding
25 in which a state entity is a party; or (C) in response to
26 interrogatories in aid of execution propounded by a state
27 entity where it is a judgment creditor of the customer;

28 (5) The financial records are disclosed to law-
29 enforcement officers pursuant to a grand jury or trial
30 subpoena resulting from a criminal investigation which

31 complies with the provisions of section six of this article;
32 or

33 (6) As may be required or permitted by any other
34 state or federal law.

35 (b) No state entity obtaining financial records
36 pursuant to the provisions of this article and no person
37 who obtains financial records from a state entity which
38 obtained such financial records pursuant to the provisions
39 of this article shall disclose such financial records: (i) To
40 any other state entity unless such other state entity has
41 authority or authorization to receive the financial record
42 in accordance with the provisions of this article; or (ii) to
43 any person unless such person has authority or
44 authorization to receive the financial record: *Provided,*
45 That nothing herein shall limit or prevent the disclosure of
46 financial records which are otherwise public documents or
47 matters of public record or the disclosure of financial
48 records made to facilitate a lawful proceeding,
49 investigation, examination or inspection by a state entity.
50 Financial records obtained under this article by a state
51 entity shall not be subject to disclosure under the
52 provisions of article one, chapter twenty-nine-b of this
53 code.

**§31A-2A-3. Written authorization of customer; contents;
certification of compliance.**

1 (a) A customer may authorize disclosure under section
2 two of this article by signing and dating a statement in
3 which he or she:

4 (1) Authorizes the disclosure for such period as may
5 be agreed upon;

6 (2) Indicates an understanding of his or her right to
7 revoke such authorization at any time before the financial
8 records are disclosed;

9 (3) Identifies the financial records which are
10 authorized to be disclosed;

11 (4) Specifies the purposes for which, and the state
12 entity to which, such records may be disclosed; and

13 (5) Acknowledges that he or she has been advised of
14 his or her rights under this article by the state entity
15 seeking the disclosure of the financial records.

16 (b) No authorization as provided in subsection (a) of
17 this section shall be required as a condition of doing
18 business with any financial institution.

19 (c) No financial institution shall release the financial
20 records of a customer pursuant to his or her authorization
21 under this section until the state entity seeking the records
22 also provides certification in writing to the financial
23 institution that it has complied with the applicable
24 provisions of this article. The financial institution and the
25 state entity seeking to obtain the disclosure of the financial
26 records shall retain copies of this written authorization.

§31A-2A-4. Exceptions.

1 (a) Nothing in this article is intended to, or shall
2 prohibit, apply to or interfere with:

3 (1) The lawful authority or ability of the
4 commissioner of banking or any other state or federal
5 regulatory agency of a bank, savings and loan association,
6 trust company or credit union to obtain or to share
7 between such regulatory agencies any records which the
8 commissioner of banking or such state or federal
9 regulatory agency may deem appropriate for the
10 examination and regulation of the financial institution;

11 (2) The lawful authority or ability of the
12 commissioner of insurance or the state auditor to obtain
13 any records from a financial institution relating to the
14 financial institution's sale of insurance or securities;

15 (3) The dissemination or publication of information
16 derived from financial records if the information cannot
17 be identified to any particular customer, deposit or
18 account, or if the information is in composite form and is
19 not disseminated or published in a way which identifies
20 any particular customer, deposit or account;

21 (4) The making of reports or returns specifically
22 required or permitted by federal or state law, including
23 applicable tax law or regulations;

24 (5) The disclosure of any information under the
25 provisions of the uniform commercial code governing the
26 dishonor of a negotiable instrument, or the disclosure to
27 any purported state entity payee or to any purported state
28 entity holder of a check, draft, order or other item,
29 whether or not such instrument has been accepted by such
30 payee or holder as payment, as to whether or not such
31 instrument would be honored if presented at the time of
32 such disclosure;

33 (6) A state entity obtaining a credit report or
34 consumer credit report from anyone other than a financial
35 institution;*

36 (7) The exchange, in the regular course of business, of
37 information showing the outstanding balance of a
38 mortgage loan account in connection with a sale,
39 refinancing or foreclosure of real property in a transaction
40 to which the state entity is a party; or the disclosure, in the
41 regular course of business, of information on a mortgage
42 or deed of trust on a subject property to a state entity as
43 holder of any subordinate mortgage, deed of trust or
44 security interest;

45 (8) The disclosure to the department of health and
46 human resources, upon written request, of an individual's
47 financial records which the department determines are
48 necessary to verify or confirm the individual's eligibility
49 or ineligibility for public assistance;

50 (9) The disclosure of an individual's financial records
51 in response to a written request by the department of
52 health and human resources, as authorized by the federal
53 parent locator service of the United States department of
54 health and human services;

55 (10) The examination or audit of financial records
56 relating to preneed funeral trust accounts pursuant to
57 article fourteen, chapter forty-seven of this code;

58 (11) The disclosure of financial records relating to
59 unclaimed property pursuant to article eight, chapter
60 thirty-six of this code, including the examination of
61 financial records by the state treasurer or his or her agent
62 to determine compliance with the handling and reporting
63 of unclaimed property as provided by, and subject to, the
64 limitations set forth in section twenty of said article;

65 (12) The presentation to appropriate local, state or
66 federal law-enforcement authorities of a certificate under
67 oath by an authorized representative of a financial
68 institution drawee that declares the dishonor of the check,
69 draft or order by the drawee, the lack of an account with
70 the drawee at the time of utterance or the insufficiency of
71 the drawer's funds at the time of presentation and
72 utterance in connection with any criminal action for
73 obtaining property or services by a worthless check, draft
74 or order;

75 (13) The notification to appropriate local, state or
76 federal law-enforcement authorities or regulatory agencies
77 that the financial institution, its officers, employees or
78 agents thereof have information which may be relevant to
79 a possible violation of any statute or regulation. The
80 disclosure of any information pursuant to this subdivision
81 may only include the name or other identifying
82 information concerning any individual, corporation or
83 account involved in and the nature of any suspected illegal
84 activity;

85 (14) The disclosure of information or records by a
86 financial institution to any court or other appropriate state
87 entity which is incidental to recording a lien, perfecting a
88 security interest, proving a claim in bankruptcy or
89 otherwise collecting on a debt owing either to the financial
90 institution itself or in its role as a fiduciary;

91 (15) The disclosure of information or records by a
92 financial institution which is incidental to processing an
93 application for assistance to a customer in the form of a
94 government loan, loan guaranty, or loan insurance
95 agreement, or which is incidental to processing a default
96 on, or administering, a government guaranteed or insured
97 loan or to initiating contact with an appropriate state entity

98 for the purpose of providing any financial record
99 necessary to permit such authority to carry out its
100 responsibilities under a loan, loan guaranty or loan
101 insurance agreement;

102 (16) The disclosure of information incidental to a
103 transaction in the normal course of business of the
104 financial institution where there is no reasonable cause to
105 believe that the information is intended to be used by the
106 state entity in connection with an investigation of the
107 customer;

108 (17) The preparation, review, handling or maintenance
109 of financial records in the ordinary course of business by
110 any officer, employee or agent of a financial institution
111 having custody of the records; or

112 (18) The disclosure to appropriate law-enforcement
113 officials of the financial records of any officer, director,
114 employee or controlling shareholder of a financial
115 institution by a financial institution or by any state or
116 federal regulatory agency having authority to regulate the
117 financial institution, if there is reason to believe that the
118 financial record is relevant to a possible violation by such
119 person of any law relating to a crime against the financial
120 institution or any such state or federal regulatory agency.
121 No state or federal regulatory agency which discloses any
122 information pursuant to this subdivision shall be deemed
123 to have waived any privilege applicable to that record
124 under law.

125 (b) Nothing in this article shall preclude a state entity
126 from obtaining information that is public record without
127 regard to this article although the information may have
128 been derived from financial records.

129 (c) Nothing in this article shall preclude a state entity
130 from obtaining information or financial records
131 voluntarily submitted to it by others in an attempt to seek
132 governmental assistance or redress of a grievance,
133 including legislative change: *Provided*, That the financial
134 record or information was not solicited by the state entity
135 in an effort to evade the requirements of this article or

136 submitted by a financial institution in contravention of
137 section seven of this article.

§31A-2A-5. Subpoena and notice requirements.

1 (a) A financial institution may disclose or produce
2 financial records to a state entity in compliance with a
3 subpoena served upon it if the subpoena contains a
4 certification that: (1) A copy of the subpoena has been
5 served on the customer whose records are sought by the
6 state entity seeking disclosure or production of the records
7 at least ten days prior to the date on which disclosure or
8 production is sought; or (2) that service on the customer
9 has been waived for good cause by the circuit court of
10 Kanawha County or other circuit court of competent
11 jurisdiction.

12 (b) Any person whose financial records are to be
13 disclosed pursuant to a subpoena served under the
14 provisions of subdivision (1), subsection (a) of this section
15 may challenge the subpoena by filing a motion to quash
16 in a court of competent jurisdiction at any time prior to
17 the disclosure of the records. After the filing and service
18 of the motion upon the financial institution and the state
19 entity requesting the issuance of the subpoena, the
20 production of financial records shall be stayed, without
21 liability to the financial institution, until the court holds a
22 hearing on the motion and an order is entered sustaining,
23 modifying or quashing the subpoena.

§31A-2A-6. Subpoena issued by grand jury.

1 (a) In addition to the requirements of section five of
2 this article, financial records obtained pursuant to a
3 subpoena issued under the authority of a grand jury:

4 (1) Shall be returned and actually presented to the
5 grand jury;

6 (2) Shall be used only: (A) For the purpose of
7 considering whether to issue an indictment or presentment
8 by that grand jury; (B) for the purpose of prosecuting a
9 crime for which that indictment or presentment is issued;
10 or (C) for any other purpose authorized by the West
11 Virginia rules of criminal procedure; and

12 (3) Shall be destroyed or returned to the financial
13 institution if not used for one of the purposes specified in
14 subdivision (2) of this subsection.

15 (b) Financial records obtained pursuant to a subpoena
16 issued under the authority of a grand jury and any
17 descriptions of the contents of such financial records must
18 be maintained in sealed records of the grand jury unless
19 such financial records or descriptions thereof have been
20 used in the prosecution of a crime for which the grand
21 jury issued an indictment or presentment or for any other
22 purpose authorized by the West Virginia rules of criminal
23 procedure.

§31A-2A-7. Penalties.

1 (a) Any state, county or local government official or
2 employee who knowingly and willfully discloses financial
3 records with intent to violate this article, or who knowingly
4 and willfully induces or attempts to induce an officer,
5 employee, agent or director of a financial institution to
6 disclose financial records to a state entity with intent to
7 violate this article, is guilty of a misdemeanor and, upon
8 conviction thereof, shall be fined not more than one
9 thousand dollars.

10 (b) Any customer whose financial records or the
11 information contained therein has been negligently
12 disclosed by a state entity or a financial institution in
13 violation of this article may file an action in any circuit
14 court of this state against the state entity or financial
15 institution and, if the customer proves that the state entity
16 or financial institution negligently disclosed the
17 customer's financial records or the information contained
18 therein, may recover from the state entity or financial
19 institution an amount equal to the sum of:

20 (1) Up to one thousand dollars in civil damages, as
21 penalty, without regard to the volume of records involved
22 or lack of actual damages;

23 (2) Any actual damages sustained by the customer as a
24 result of the disclosure; and

25 (3) The costs of the action, including reasonable
26 attorney's fees, as may be allowed by the court.

27 (c) No financial institution or person shall be held
28 liable, notwithstanding subsection (a) or (b) of this section,
29 for the disclosure of financial records pursuant to a
30 subpoena, summons, warrant, court order or administrative
31 order which on its face appears to have been issued upon
32 lawful authority. No financial institution or agent or
33 employee thereof who discloses financial records pursuant
34 to this article: (i) In good faith reliance upon a certificate
35 by any state entity that this article has been complied with;
36 or (ii) pursuant to the provisions of subdivision (13),
37 subsection (a), section four of this article shall be liable
38 under this article or any other law or rule of this state or
39 any political subdivision hereof.

§31A-2A-8. Statute of limitations; tolling of statute.

1 (a) An action to enforce any provision of this article
2 may be brought in any circuit court of competent
3 jurisdiction in this state within three years from the date on
4 which the violation occurs or the date of discovery of such
5 violation, whichever is later.

6 (b) If any customer files a motion or application
7 under this article which has the effect of delaying the
8 access of a state entity to financial records pertaining to
9 such customer, any applicable statute of limitations shall
10 be tolled for the period extending from the date such
11 motion or application was filed until the date an order is
12 entered pursuant thereto.

§31A-2A-9. Injunctive relief; recovery of attorney fees.

1 In addition to any other remedy contained in this
2 article, injunctive relief shall be available to require
3 compliance with any procedure established in this article.
4 Any customer awarded injunctive relief pursuant to this
5 section may recover costs and reasonable attorney's fees as
6 determined by the court.

§31A-2A-10. Exclusive remedies.

1 The remedies provided in this article are exclusive for
2 any violations or alleged violations of this article.

**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENER-
ALLY.**

§31A-4-10a. Stockholder inspection of books and records.

1 (a) Any stockholder or group of stockholders of a
2 state banking institution, holding of record the number of
3 voting shares of such bank specified below, upon making
4 written demand stating a proper purpose, shall have the
5 right to examine, in person or by agent or attorney, at any
6 reasonable time or times, nonconfidential portions of its
7 books and records of account, minutes and record of
8 stockholders and to make extracts therefrom. Such right
9 of examination is limited to a stockholder or group of
10 stockholders holding of record:

11 (1) Voting shares having a cost of not less than one
12 hundred thousand dollars or constituting not less than one
13 percent of the total outstanding voting shares: *Provided*,
14 That such stockholder or group of stockholders have held
15 of record such voting shares for a period of at least six
16 months before making such written demand; or

17 (2) Not less than five percent of the total outstanding
18 voting shares.

19 (b) Except as provided in subsection (a) of this section
20 and in section ten of this article with respect to inspection
21 of a list of stockholders, no stockholder or group of
22 stockholders of a state banking institution shall have any
23 other right under this section or common law to examine
24 its books and records of account, minutes and record of
25 stockholders.

26 (c) The right to examination authorized by subsection
27 (a) of this section and any right to inspect the list of
28 stockholders provided by a bank's bylaws to an extent
29 greater than that authorized under section ten of this
30 article may be denied to any stockholder or group of
31 stockholders upon the refusal of any such stockholder or
32 group of stockholders to furnish such institution, its
33 transfer agent or registrar an affidavit that such

34 examination or inspection is not desired for any purpose
35 which is in the interest of a business or object other than
36 the business of the institution, that such stockholder has
37 not within the five years preceding the date of the affidavit
38 sold or offered for sale, and does not now intend to sell or
39 offer for sale, any list of stockholders of the bank or of
40 any other bank or bank holding company, and that such
41 stockholder has not within said five-year period aided or
42 abetted any other person in procuring any list of
43 stockholders for purposes of selling or offering such list
44 for sale.

45 (d) Notwithstanding any provision of this section or
46 any common law, no stockholder or group of
47 stockholders shall have the right to obtain, inspect or copy
48 any portion of any books or records of a state banking
49 institution containing:

50 (1) A list of depositors in, borrowers from or
51 customers of such banking institution;

52 (2) The addresses of the banking institution's
53 depositors, borrowers or customers;

54 (3) Individual deposit or loan balances or records of
55 the banking institution's depositors, borrowers or
56 customers; or

57 (4) Any data from which such information could be
58 reasonably constructed.

59 (e) For purposes of this section, a confidential record
60 includes, but is not limited to:

61 (1) Any document or information relating to a
62 nonpublic market strategy or plan of the bank;

63 (2) Any document or information relating to matters
64 declared confidential under state or federal law, including,
65 but not limited to, bank regulatory reports;

66 (3) Any document or information relating to a
67 proposed merger, acquisition or sale of assets which has
68 not yet been disclosed to the public by the bank, including
69 any document or information which constitutes inside

70 information for purposes of state or federal securities law;
71 and

72 (4) Any document or information deemed by the
73 bank as proprietary relating to the loan policy established
74 by the bank.

CHAPTER 31C. CREDIT UNIONS.

ARTICLE 5. DIRECTION OF CREDIT UNION AFFAIRS.

§31C-5-11. Inspection of books and records by members.

1 (a) Each credit union shall keep at its principal office
2 in this state a record of the names and addresses of its
3 members entitled to vote. A credit union shall keep
4 correct and complete books and records of account and
5 shall keep minutes of the proceedings of its members,
6 board of directors and committees having any of the
7 authority of the board of directors. Any member or
8 group of members of a credit union, upon making a
9 demand stating a proper purpose, shall have the right to
10 examine, in person or by agent or attorney, at any
11 reasonable time or times, nonconfidential portions of its
12 books and records of account, minutes and records of
13 members and to make extracts therefrom.

14 (b) The right to examination authorized by subsection
15 (a) of this section and any right to inspect the list of
16 members provided by a credit union's bylaws to an extent
17 greater than that provided by this section may be denied
18 to any member or group of members upon the refusal of
19 any such member or group of members to furnish the
20 credit union with an affidavit that such examination or
21 inspection is not desired for any purpose which is in the
22 interest of a business or object other than the business of
23 the credit union.

24 (c) Notwithstanding any provision of this section or
25 common law, no member or group of members shall have
26 the right to obtain, inspect or copy any portion of any
27 books or records of a credit union containing:

28 (1) Individual deposit or loan balances or records
29 regarding other credit union members or information
30 respecting their personal affairs; or

31 (2) Any data from which such information could be
32 reasonably constructed.

33 (d) For purposes of this section, a confidential record
34 includes, but is not limited to, the following:

35 (1) Any document or information relating to a
36 nonpublic market strategy or plan of the credit union;

37 (2) Any document or information relating to matters
38 declared confidential under state or federal law, including,
39 but not limited to, credit union regulatory reports; and

40 (3) Any document or information deemed by the
41 credit union as proprietary relating to the loan policy
42 established by the credit union.

CHAPTER 69

(H. B. 4038—By Delegates Thompson and Kominar)

[Passed February 16, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing West Virginia state-chartered banks authority and parity with national banks in the marketing and sale of insurance and annuities.

Be it enacted by the Legislature of West Virginia:

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

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

§31A-4-13. Powers of state banking institutions generally.

1 (a) Any state-chartered banking institution shall have
2 and exercise all of the powers necessary for, or incidental
3 to, the business of banking, and without limiting or
4 restricting such general powers, it shall have the right to
5 buy or discount promissory notes and bonds, negotiate
6 drafts, bills of exchange and other evidences of
7 indebtedness, borrow money, receive deposits on such
8 terms and conditions as its officers may prescribe, buy and
9 sell, exchange, bank notes, bullion or coin, loan money on
10 personal or other security, rent safe-deposit boxes and
11 receive on deposit, for safekeeping, jewelry, plate, stocks,
12 bonds and personal property of whatsoever description
13 and provide customer services incidental to the business of
14 banking, including, but not limited to, the issuance and
15 servicing of and lending money by means of credit cards
16 as letters of credit or otherwise. Any state-chartered
17 banking institution may accept, for payment at a future
18 date, not to exceed one year, drafts drawn upon it by its
19 customers. Any state-chartered banking institution may
20 issue letters of credit, with a specified expiration date or
21 for a definite term, authorizing the holders thereof to draw
22 drafts upon it or its correspondents, at sight or on time.
23 Any such banking institution may organize, acquire, own,
24 operate, dispose of, and otherwise manage wholly owned
25 subsidiary corporations for purposes incident to the
26 banking powers and services authorized by this chapter.

27 (b) Any state-chartered banking institution may
28 acquire, own, hold, use and dispose of real estate, which
29 shall in no case be carried on its books at a value greater
30 than the actual cost: *Provided*, That such property shall be
31 necessary for the convenient transaction of its business,
32 including any buildings, office space or other facilities to
33 rent as a source of income: *Provided, however*, That such
34 investment hereafter made shall not exceed sixty-five
35 percent of the amount of its capital stock and surplus,
36 unless the consent in writing of the commissioner of
37 banking is first secured.

38 (c) Any state-chartered banking institution may
39 acquire, own, hold, use and dispose of real estate, which
40 shall be carried on its books at the lower of fair value or
41 cost as defined in rules promulgated by the commissioner
42 of banking, subject to the following limitations:

43 (1) Such as shall be mortgaged to it in good faith as
44 security for debts in its favor;

45 (2) Such as shall be conveyed to it in satisfaction of
46 debts previously contracted in the course of its business
47 dealings; and

48 (3) Such as it shall purchase at sales under judgments,
49 decrees, trust deeds or mortgages in its favor, or shall
50 purchase at private sale, to secure and effectuate the
51 payment of debts due to it.

52 (d) The value at which any real estate is held shall not
53 be increased by the addition thereto of taxes, insurance,
54 interest, ordinary repairs, or other charges which do not
55 materially enhance the value of the property.

56 (e) Any real estate acquired by any such banking
57 institution under subdivisions (2) and (3) of subsection (c)
58 of this section shall be disposed of by the banking
59 institution at the earliest practicable date, but the officers
60 thereof shall have a reasonable discretion in the matter of
61 the time to dispose of such property in order to save the
62 banking institution from unnecessary losses: *Provided*,
63 That in every case such property shall be disposed of
64 within ten years from the time it is acquired by the
65 banking institution, unless an extension of time is given in
66 writing by the commissioner of banking.

67 (f) The sale of insurance by state-chartered banking
68 institutions shall be subject to the following:

69 Any state-chartered banking institution having its
70 main or a branch office in any place the population of
71 which does not exceed five thousand inhabitants, as shown
72 by the last preceding decennial census, through its
73 employees or agents, may, from that place or office,
74 directly or through a controlled subsidiary, act as agent
75 for any fire, life, casualty, liability or other insurance
76 company authorized by the authorities of the state to do
77 business in this state, by soliciting and selling insurance
78 and collecting premiums on policies issued by such
79 company; and may receive for services so rendered all
80 permissible fees or commissions as may be agreed upon
81 between the bank and the insurance company for which it
82 may act as agent: *Provided*, That no such bank shall in
83 any case assume or guarantee the payment on insurance
84 policies issued through its agency by its principal:

85 *Provided, however,* That the bank shall not guarantee the
86 truth of any statement made by an insured in filing his,
87 her or its application for insurance. For purposes of this
88 section, a "controlled subsidiary" is one in which the state-
89 chartered banking institution owns at least eighty percent
90 of all classes of stock. This provision is intended to give
91 state-chartered banking institutions parity with national
92 banks operating in this state with regard to the marketing
93 and sale of insurance notwithstanding the prohibitions and
94 limitations contained in article eight-c or elsewhere in this
95 chapter, and shall be construed consistently with
96 interpretations of 12 U.S.C. §92, the regulations
97 promulgated thereunder, and any successor legislation or
98 regulations.

99 (g) Any state-chartered banking institution may,
100 through its employees or agents, market and sell, as agent,
101 annuities, either at its main office or at any of its branches.
102 The marketing and sale of annuities may be made by the
103 bank, through its employees or agents, directly, or through
104 a controlled subsidiary, as defined in subsection (f) above.
105 This provision is intended to give state-chartered banks
106 parity with national banks operating in this state with
107 regard to the sale of annuities, notwithstanding the
108 prohibitions and limitations contained in article eight-c or
109 elsewhere in this chapter.

110 (h) Unless waived in writing by the commissioner, a
111 state-chartered bank may not invest or otherwise expend
112 in excess of ten percent of its capital and surplus
113 calculated at the end of the previous calendar year on the
114 activities permitted by subsections (f) and (g) on an
115 aggregate basis together with any of its approved
116 financially related products and services. For purposes of
117 this section, approved financially related products and
118 services means those products and services offered by a
119 state-chartered bank pursuant to an approved application
120 submitted under article eight-c of this chapter.

121 (i) The commissioner shall promulgate rules in
122 accordance with chapter twenty-nine-a of this code
123 relating to the sale of insurance or annuities, including, but
124 not limited to, rules requiring notice of the intention to
125 engage in such activities and relating to the policies and
126 procedures state-chartered banking institutions should
127 adopt in connection with such activities.

128 (j) Any state-chartered banking institution and its
129 employees or agents engaged in the sale of insurance or
130 annuities permitted hereby must also comply with all
131 applicable requirements for the sale of such products
132 imposed by the West Virginia commissioner of insurance
133 and by any state or federal securities regulator.

134 (k) No state-chartered banking institution shall
135 hereafter invest more than twenty percent of the amount
136 of its capital and surplus in furniture and fixtures, whether
137 the same be installed in a building owned by such banking
138 institution, or in quarters leased by it, unless the consent in
139 writing of the commissioner of banking is first secured.

CHAPTER 70

(H. B. 4101—By Delegates Thompson, Dempsey, Jenkins,
Faircloth, Kominar, Clements and Laird)

[Passed February 16, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing state banks with the ability to file their quarterly reports with the commissioner of banking by electronic transmission; and to revise the provisions to conform with changes in federal law regarding publication of reports.

Be it enacted by the Legislature of West Virginia:

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

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

§31A-4-19. Reports.

1 Every state banking institution shall make at least four
2 reports each year to the commissioner of banking upon
3 his or her call therefor. The reports shall be called for as
4 nearly as conveniently may be on the dates on which the
5 comptroller of the currency shall call for reports by
6 national banking associations, and be in the form and
7 contain the details as shall be prescribed by the
8 commissioner of banking. The reports shall be verified
9 by the oath of the president or active vice president or
10 cashier and attested by the signatures of at least three
11 directors of the banking institution. Each report shall
12 show in detail, under appropriate heads, the resources and
13 liabilities of the banking institution at the close of business
14 on the date specified by the banking commissioner, and
15 shall be transmitted to the commissioner within ten days
16 from the receipt of the request for the report. The reports
17 may be submitted or made available electronically in a
18 format specified by the commissioner of banking. An
19 electronic filing with the appropriate federal bank
20 regulatory agency may be deemed as meeting the
21 requirements of this section, unless the commissioner
22 objects in writing and requires alternative filing(s).

23 In lieu of the report, the commissioner of banking
24 shall have discretion to accept from a banking institution
25 which is a member of the federal reserve system a report,
26 the submission thereof which is required of the banking
27 institution by the federal reserve board, or by its agency,
28 provided that the report shall show in detail, under
29 appropriate heads, the resources and liabilities of the
30 banking institution at the close of business on the day
31 specified by the federal reserve board, or by its agency,
32 and shall contain such further details as may be deemed
33 necessary or desirable by the commissioner of banking.

34 Any report shall be at the expense of the banking
35 institution.

CHAPTER 71

(Com. Sub. for H. B. 4040—By Delegates Thompson, Jenkins, Amores, Kominar, Trump, Johnson and Smirl)

[Passed February 11, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-five, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reproduction of checks and other records and disposition of originals; and providing separate retention periods for the accounting and legal documents related to trusts and fiduciary relationships and for the supporting transactional records related to such trusts and relationships.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-35. **Reproduction of checks and other records; admissibility of copies in evidence; disposition of originals; record production generally.**

1 (a) Any bank may cause to be copied or reproduced,
2 by any photographic, photostatic, microphotographic or
3 by similar miniature photographic process or by
4 nonerasable optical image disks (commonly referred to as
5 compact disks) or by other records retention technology
6 approved by rule of the commissioner of banking, all or
7 any number of its checks, and all or any part of its
8 documents, books, records, correspondence and all other
9 instruments, papers and writings, in any manner relating to
10 the operation of its business, other than its notes, bonds,
11 mortgages and other securities and investments, and may
12 substitute such copies or reproductions either in positive
13 or negative form for the originals thereof. Thereafter,

14 such copy or reproduction in the form of a positive print
15 thereof, shall be deemed for all purposes to be an original
16 counterpart of and shall have the same force and effect as
17 the original thereof and shall be admissible in evidence in
18 all courts and administrative agencies in this state, to the
19 same extent, and for the same purposes as the original
20 thereof, and the banking institution may destroy or
21 otherwise dispose of the original, but every banking
22 institution shall retain either the originals or such copies or
23 reproductions of its records of final entry, including,
24 without limiting the generality of the foregoing, cards
25 used under the card system and deposit tickets for deposits
26 made, for a period of at least six years from the date of the
27 last entry on such books or the date of making of such
28 deposit tickets and card records, or, in the case of a
29 banking institution exercising trust or fiduciary powers,
30 accounting and legal records shall be retained until the
31 expiration of six years from the date of termination of any
32 trust or fiduciary relationship relating to such accounting
33 and legal records by a final accounting, release, court
34 decree or other proper means of termination, and
35 supporting documentation for fiduciary account
36 transactions shall be retained for six years from the dates
37 of entry of such transactions.

38 All circumstances surrounding the making or issuance
39 of such checks, documents, books, records, correspon-
40 dence and other instruments, papers or writings, or the
41 photographic, photostatic or microphotographic copies or
42 optical disks or other permissible reproductions thereof,
43 when the same are offered in evidence, may be shown to
44 affect the weight but not the admissibility thereof.

45 Any device used to copy or reproduce such
46 documents and records shall be one which correctly and
47 accurately reproduces the original thereof in all details
48 and any disk or film used therein shall be of durable
49 material.

50 (b) When a subpoena duces tecum is served upon a
51 custodian of records of any bank in an action or
52 proceeding in which the bank is neither a party nor the
53 place where any cause of action is alleged to have arisen

54 and the subpoena requires the production of all or any
55 part of the records of the bank relating to the conduct of
56 its business with its customers, the bank shall be entitled to
57 a search fee not to exceed ten dollars, together with
58 reimbursement for costs incurred in the copying or other
59 reproduction of any such record or records which have
60 already been reduced to written form, in an amount not to
61 exceed seventy-five cents per page. Any and all such
62 costs shall be borne by the party requesting the
63 production of the record or records.

CHAPTER 72

(Com. Sub. for H. B. 4039—By Delegates Thompson, Kominar, H. White, Jenkins,
Amores, Clements and Cann)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve-a, article eight, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the establishment and use of mobile bank facilities.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES;
JUDICIAL REVIEW; UNLAWFUL ACTS;
PENALTIES.**

§31A-8-12a. Banking from mobile units; limitation of messenger services.

1 (a) It is illegal for any banking institution or other
2 depository institution to conduct its business in a facility
3 that is a mobile unit not permanently attached to the real
4 estate upon which it is located, except: (i) That such
5 mobile units may be used as temporary banking quarters

6 pending construction of a permanent bank building on
7 the same or adjacent property thereto if a charter for said
8 bank has previously been approved; or except (ii) as
9 provided by subsection (b) of this section. This section
10 shall not be construed or interpreted to prohibit a financial
11 institution from providing messenger services to its
12 customers by which items are received by mail, armored
13 car service or other courier or delivery service for
14 subsequent deposit: *Provided*, That all such messenger
15 services are confined to the territorial boundaries of the
16 county in which an office of such financial institution is
17 located or within fifty miles of an office of such financial
18 institution.

19 (b) Upon the approval of the commissioner, a banking
20 institution may establish one or more mobile facilities to
21 accept or withdraw deposits, pay checks, issue cashier's
22 checks, traveler's checks and other instruments, as well as
23 perform other banking services. Each mobile facility shall
24 be affiliated with and operated by a bank or branch office
25 of a bank physically located and authorized to do business
26 in West Virginia. All mobile facilities permitted hereunder
27 are confined to the territorial boundaries of the county in
28 which an office of such financial institution is located or
29 within thirty miles of an office of such financial
30 institution. A mobile facility shall be viewed as an
31 extension of the qualified offices of the bank located in
32 West Virginia and the transactions shall be governed by
33 the laws applicable as if made at such offices. The term
34 "mobile facility" shall include a mobile customer bank
35 communications terminal which is intended to be moved
36 or driven from place to place. A mobile customer bank
37 communications terminal will be treated as an off-
38 premises unit subject to mandatory sharing laws and rules
39 notwithstanding any contrary provisions of this
40 subsection: *Provided*, That no mobile customer bank
41 communications terminal may serve as an automatic loan
42 machine (ALM) terminal on behalf of any other
43 institution other than the operating bank: *Provided*,
44 *however*, That no mobile facility may be operated within
45 two thousand feet of another bank's main office or
46 branch office.

CHAPTER 73

(Com. Sub. for H. B. 4591—By Delegates Thompson, Kominar, Seacrist,
Jenkins, H. White, Hutchins and L. White)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article two, chapter thirty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article three, all relating to licensing and regulating the businesses of the issuance and sale of checks and money orders, money transmitting, currency exchange, currency transportation, and check cashing; providing procedures for license application, issuance and renewal; setting fees; authorizing the banking commissioner to propose legislative rules; establishing qualifications for licenses and renewals including bonding and net worth requirements; establishing the right of the commissioner to examine licensee's records; granting the commissioner subpoena powers; establishing notification requirements; establishing an affirmative duty of licensee to keep and maintain records; establishing criminal and civil penalties for violations of this article; granting the commissioner the power to revoke or suspend licenses in certain circumstances, to enter into consent orders and issue cease and desist orders; providing for civil liability of licensees; providing for confidentiality of records; providing hearing procedures; permitting the commissioner to limit certain advertising by legislative rule; permitting licensees to conduct business through authorized delegates; requiring a license for check cashing services not incidental to a merchant's business; limiting service fees for check cashing; prohibiting check cashing loans; establishing penalties for violations; and providing for injunctive relief.

Be it enacted by the Legislature of West Virginia:

That article two, chapter thirty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be

amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article three, all to read as follows:

Article

- 2. Checks and Money Order Sales, Money Transmission Services, Transportation and Currency Exchange.**
- 3. Check Cashing.**

ARTICLE 2. CHECKS AND MONEY ORDER SALES, MONEY TRANSMISSION SERVICES, TRANSPORTATION AND CURRENCY EXCHANGE.

- §32A-2-1. Definitions.
- §32A-2-2. License required.
- §32A-2-3. Exemptions.
- §32A-2-4. License application, issuance, and renewal.
- §32A-2-5. Fees.
- §32A-2-6. Denial of license or renewal of license.
- §32A-2-7. Authorization to propose rules.
- §32A-2-8. Qualifications for license or renewal of license.
- §32A-2-9. Access to criminal history information.
- §32A-2-10. Bond.
- §32A-2-11. Examination and fraudulently structured transactions.
- §32A-2-12. Investigations and subpoenas.
- §32A-2-13. Notification requirements.
- §32A-2-14. Records maintenance.
- §32A-2-15. Transaction records.
- §32A-2-16. Enforcement.
- §32A-2-17. Cooperative agreements.
- §32A-2-18. Criminal penalty.
- §32A-2-19. Civil penalty.
- §32A-2-20. Injunction.
- §32A-2-21. Consent orders.
- §32A-2-22. Cease and desist orders.
- §32A-2-23. Liability of licensees.
- §32A-2-24. Confidential information.
- §32A-2-25. Hearing on suspension or revocation of license.
- §32A-2-26. Deceptive name or advertising.
- §32A-2-27. Authorized delegates.
- §32A-2-28. Revocation or suspension of authorized delegates.

§32A-2-1. Definitions.

1 (1) "Commissioner" means the commissioner of
2 banking of this state.

3 (2) "Check" or "payment instrument" means any
4 check, traveler's check, draft, money order, or other
5 instrument for the transmission or payment of money
6 whether or not the instrument is negotiable. The term
7 does not include a credit card voucher, a letter of credit or
8 any instrument that is redeemable by the issuer in goods
9 or services.

10 (3) "Currency" means a medium of exchange
11 authorized or adopted by a domestic or foreign
12 government.

13 (4) "Currency exchange" means the conversion of the
14 currency of one government into the currency of another
15 government, but does not include the issuance and sale of
16 travelers checks denominated in a foreign currency.
17 Transactions involving the electronic transmission of
18 funds by licensed money transmitters which may permit,
19 but do not require, the recipient to obtain the funds in a
20 foreign currency outside of West Virginia are not
21 currency exchange transactions: *Provided*, That they are
22 not reportable as currency exchange transactions under
23 federal laws and regulations.

24 (5) "Currency exchange, transportation, transmission
25 business" means a person who is engaging in currency
26 exchange, currency transportation, or currency
27 transmission as a service or for profit.

28 (6) "Currency transmission" or "money transmission"
29 means engaging in the business of selling or issuing
30 checks or the business of receiving currency for the
31 purpose of transmitting the currency or its equivalent by
32 wire, facsimile, or other electronic means, or through the
33 use of a financial institution, financial intermediary, the
34 federal reserve system, or other funds transfer network. It
35 includes the transmission of funds through the issuance
36 and sale of stored value cards which are intended for
37 general acceptance and use in commercial or consumer
38 transactions.

39 (7) "Currency transportation" means knowingly
40 engaging in the business of physically transporting
41 currency from one location to another in a manner other
42 than by a licensed armored car service exempted under
43 section three of this article.

44 (8) "Licensee" means a person licensed by the
45 commissioner under this article.

46 (9) "Money order" means any instrument for the
47 transmission or payment of money in relation to which the
48 purchaser or remitter appoints or purports to appoint the
49 seller thereof as his agent for the receipt, transmission or
50 handling of money, whether the instrument is signed by
51 the seller, the purchaser or remitter, or some other person.

52 (10) "Person" means any individual, partnership,
53 association, joint stock association, limited liability
54 company, trust or corporation.

55 (11) "Principal" means a licensee's owner, president,
56 senior officer responsible for the licensee's business, chief
57 financial officer or any other person who performs similar
58 functions or who otherwise controls the conduct of the
59 affairs of a licensee. A person controlling ten percent or
60 more of the voting stock of any corporate applicant is a
61 principal under this provision.

62 (12) "Securities" means all bonds, debentures or other
63 evidences of indebtedness: (a) Issued by the United States
64 of America or any agency thereof, or guaranteed by the
65 United States of America, or for which the credit of the
66 United States of America or any agency thereof is pledged
67 for the payment of the principal and interest thereof;
68 and/or (b) which are direct general obligations of this state,
69 or any other state if unconditionally guaranteed as to the
70 principal and interest by the other state and if the other
71 state has the power to levy taxes for the payment of the
72 principal and interest thereof and is not in default in the
73 payment of any part of the principal or interest owing by
74 it upon any part of its funded indebtedness; and/or (c)
75 which are general obligations of any county, school
76 district or municipality in this state, issued pursuant to law
77 and payable from ad valorem taxes levied on all of the

78 taxable property located therein, if the county, school
79 district or municipality is not in default in the payment of
80 any part of the principal or interest on any debt evidenced
81 by its bonds, debentures or other evidences of
82 indebtedness.

§32A-2-2. License required.

1 (a) Except as provided by section three of this article,
2 a person may not engage in the business of currency
3 exchange, transportation, or transmission in this state
4 without a license issued under this article.

5 (b) Any person who was previously licensed as a
6 check seller under this chapter who holds a valid license
7 on the effective date of this article shall be issued a
8 provisional license under this article without the need of
9 an additional application and fee. This provisional license
10 shall expire upon six months of its issuance, during which
11 time the licensee may continue to conduct its check selling
12 business, provided that it maintains the net worth and
13 security required under its previous license. The
14 commissioner may require the licensee to obtain
15 expanded bond coverage consistent with this article for the
16 protection of purchasers of money transmission services
17 and currency exchange services, as well as for covered
18 currency transportation services, when the licensee
19 conducts one or more of these businesses. At the
20 expiration of a provisional license granted by this section,
21 any person who wishes to continue to engage in any
22 business regulated in this article shall apply for a license
23 and meet the criteria under the provisions of this article. A
24 provisional license granted by this section may upon
25 hearing be suspended or revoked by the commissioner for
26 good cause shown.

§32A-2-3. Exemptions.

1 (a) The following are exempt from the provisions of
2 this article:

3 (1) Banks, trust companies, foreign bank agencies,
4 credit unions, savings banks, and savings and loan
5 associations authorized to do business in the state, or

6 which qualify as federally insured depository institutions,
7 whether organized under the laws of this state, any other
8 state, or the United States;

9 (2) The United States and any department or agency
10 thereof;

11 (3) The United States post office;

12 (4) This state and any political subdivision thereof;

13 (5) The provision of electronic transfer of government
14 benefits for any federal, state or county governmental
15 agency as defined in Federal Reserve Board Regulation E,
16 by a contractor for and on behalf of the United States or
17 any department, agency or instrumentality of the United
18 States, or any state or any political subdivisions of a state;
19 and

20 (6) Persons engaged in the business of currency
21 transportation who operate an armored car service in this
22 state pursuant to licensure under article eighteen, chapter
23 thirty of this code: *Provided*, That the net worth of the
24 licensee exceeds five million dollars. The term "armored
25 car service" as used in this article means a service
26 provided by a person transporting or offering to transport,
27 under armed security guard, currency or other things of
28 value in a motor vehicle specially equipped to offer a high
29 degree of security. Persons seeking to claim this
30 exemption shall notify the commissioner of their intent to
31 do so and demonstrate that they qualify for its use.

32 (b) Any person who holds and maintains a valid
33 license under this article may engage in the business of
34 money transmission or currency exchange at one or more
35 locations in this state through or by means of an
36 authorized delegate or delegates as set forth in section
37 twenty-seven of this article, as said licensee may designate
38 and appoint from time to time, and no such authorized
39 delegate shall be required to obtain a separate license
40 under this article.

41 (c) The issuance and sale of stored value cards which
42 are intended to purchase items only from the issuer or

43 seller of the stored value card is exempt from the
44 provisions of this article.

§32A-2-4. License application, issuance, and renewal.

1 (a) An applicant for a license shall submit an
2 application to the commissioner on a form prescribed by
3 the commissioner.

4 (b) Each application shall be accompanied by a
5 nonrefundable application fee and a license fee. If the
6 application is approved, the application fee is the license
7 fee for the first year of licensure.

8 (c) The commissioner shall issue a license if the
9 commissioner finds that the applicant meets the
10 requirements of this article and the rules adopted under
11 this article. The commissioner shall approve or deny
12 every application for an original license within one
13 hundred twenty days from the date a complete application
14 is submitted, unless the commissioner extends the period
15 for good cause. A license is valid for one year from the
16 date the license is issued by the commissioner.

17 (d) The licensee at each office it owns and operates in
18 West Virginia shall prominently display, or maintain
19 available for inspection, a copy of the license authorizing
20 the conduct of a currency exchange business, if the
21 location offers and provides such services. Where the
22 currency exchange business is conducted through a
23 licensee's authorized delegates in this state, each
24 authorized delegate location offering such services shall
25 maintain available for inspection, proof of their
26 appointment by the licensee to conduct such business.

27 (e) As a condition for renewal of a license, the licensee
28 must submit to the commissioner an application for
29 renewal on a form prescribed by the commissioner and an
30 annual license renewal fee.

31 (f) A license issued under this article may not be
32 transferred or assigned.

33 (g) An applicant for a license who is not located in this
34 state shall file an irrevocable consent, duly acknowledged,

35 that suits and actions may be commenced against the
36 applicant in the courts of this state by service of process
37 upon a person located within the state designated to accept
38 service, or by service upon the secretary of state, as well as
39 by service as set forth in this chapter.

§32A-2-5. Fees.

1 (a) The commissioner shall charge and collect the
2 license application fees, license fees, license renewal fees,
3 and examination fees in amounts reasonable and
4 necessary to defray the cost of administering this article as
5 follows:

6 (1) For applying for a license, an application and
7 licensing fee of five hundred dollars, plus ten dollars for
8 each location within the state at which the applicant and its
9 authorized delegates are conducting business or propose
10 to conduct business excepting the applicant's principal
11 place of business.

12 (2) For renewal of a license, a fee of two hundred
13 fifty dollars plus ten dollars for each location within the
14 state at which the licensee and its authorized delegates are
15 conducting business or propose to conduct business
16 excepting the applicant's principal place of business.

17 (3) The total of fees required by subdivisions (1) or
18 (2) of this subsection may not exceed two thousand five
19 hundred dollars for any one application.

20 (4) For a change in address by the licensee of its
21 principal place of business, a fee of one hundred dollars.

22 (5) For failure to timely submit an application of
23 renewal or file audited financial statements required for
24 renewal as set forth in this article, a penalty fee of ten
25 dollars per day for each day late, unless an extension of
26 time has been granted or the fee waived by the
27 commissioner.

28 (b) Beginning one year after the effective date of this
29 article, the commissioner may, by rules proposed for
30 legislative approval in accordance with the provisions of
31 article three, chapter twenty-nine-a of this code, amend the

32 fees set forth in this section and in subsection (b), section
33 eleven of this article.

34 (c) Fees and moneys received and collected under this
35 article shall be paid into the special revenue account in the
36 state treasury for the division of banking established in
37 section eight, article two, chapter thirty-one-a of this code.

§32A-2-6. Denial of license or renewal of license.

1 (a) The commissioner may deny the grant of a license
2 or renewal of a license for a failure to comply or otherwise
3 meet the requirements and qualifications of this article or
4 a rule adopted under this article, including failure to
5 submit a complete application.

6 (b) The denial of a license or denial of renewal by the
7 commissioner and the appeal from that action are
8 governed by the procedures for a contested case hearing
9 under the provisions of article five, chapter twenty-nine-a
10 of this code and shall conform to that provided for
11 financial institutions pursuant to sections one and two,
12 article eight, chapter thirty-one-a of this code and the rules
13 thereunder.

14 (c) Whenever the commissioner refuses to issue a
15 license, or refuses to renew a license, he or she shall make
16 and enter an order to that effect and shall cause a copy of
17 the order to be served in person or by certified mail,
18 return receipt requested, or in any other manner in which
19 process in a civil action in this state may be served, on the
20 applicant or licensee, as the case may be.

§32A-2-7. Authorization to propose rules.

1 The commissioner may propose rules necessary to
2 implement this article for legislative approval in
3 accordance with the provisions of article three, chapter
4 twenty-nine-a of this code.

§32A-2-8. Qualifications for license or renewal of license.

1 (a) The commissioner may issue a license to an
2 applicant only upon first determining that the financial
3 condition, business experience, and character and general

4 fitness of an applicant are such that the issuance of the
5 license is in the public interest.

6 (b) An applicant for a license shall agree in writing to
7 comply with the currency reporting and record-keeping
8 requirements of 31 U.S.C. § 5313, as well as those set
9 forth in 31 C.F.R. Part 103 and any other relevant federal
10 law.

11 (c) A person is not eligible for a license or shall
12 surrender an existing license if, during the previous ten
13 years:

14 (1) The person or a principal of the person, if a
15 business:

16 (A) Has been convicted of a felony or a crime
17 involving fraud, deceit, or moral turpitude under the laws
18 of this state, any other state, or the United States;

19 (B) Has been convicted of a crime under the laws of
20 another country that involves fraud, deceit, or moral
21 turpitude or would be a felony if committed in the United
22 States; or

23 (C) Has been convicted under a state or federal law
24 relating to currency exchange or transmission or any state
25 or federal monetary instrument reporting requirement; or

26 (2) The person, a principal of the person, or the
27 spouse of the person or a principal of the person has been
28 convicted of an offense under a state or federal law
29 relating to drug trafficking, money laundering, or a
30 reporting requirement of the Bank Secrecy Act (Pub. L.
31 91-508).

32 (d) The commissioner will review the application to
33 determine whether the applicant:

34 (1) Has recklessly failed to file or evaded the
35 obligation to file a currency transaction report as required
36 by 31 U.S.C. Section 5313 during the previous three
37 years;

38 (2) Has recklessly accepted currency for exchange,
39 transport, or transmission during the previous three years

40 in which a portion of the currency was derived from an
41 illegal transaction or activity;

42 (3) Will conduct its authorized business within the
43 bounds of state and federal law, including, but not limited
44 to, section forty-nine, article one, chapter thirty-one of this
45 code;

46 (4) Warrants the trust of the community;

47 (5) Has and will maintain a minimum net worth of
48 fifty thousand dollars computed according to generally
49 accepted accounting principles as shown by the most
50 recent audited financial statement filed with and
51 satisfactory to the commissioner, and in addition has and
52 will maintain a minimum net worth of twenty-five
53 thousand dollars, computed according to generally
54 accepted accounting principles for each office or delegate
55 location in the state other than its principal office at which
56 its licensed business is transacted, except that an applicant
57 for a license or renewal of a license may not be required
58 by this article to maintain a net worth of more than one
59 million dollars, computed according to generally accepted
60 accounting principles; and

61 (6) Does not owe delinquent taxes, fines, or fees to any
62 local or state taxing authority or governmental agency,
63 department, or other political subdivision of this state.

64 (e) A person is not eligible for a license, and a person
65 who holds a license shall surrender the license to the
66 commissioner, if the person or a principal of the person
67 has at any time been convicted of:

68 (1) A felony involving the laundering of money that is
69 the product of or proceeds from criminal activity under
70 chapter sixty-one of this code, or a similar provision of the
71 laws of another state or the United States; or

72 (2) A felony violation of 31 U.S.C. Section 5313 or
73 5324 or a rule adopted under those sections.

74 (f) Before approving an application for a license of an
75 applicant who has less than one year's experience in the
76 proposed business governed by this article as a regulated

77 entity in another state, or whose license has been
78 suspended or revoked by another state, the commissioner
79 may, in his or her discretion, conduct an on-site
80 investigation of an applicant at the sole expense of the
81 applicant and may require the applicant to pay a
82 nonrefundable payment of the anticipated expenses for
83 conducting the investigation. Failure to make the payment
84 or cooperate with the investigation is grounds for denying
85 the application.

§32A-2-9. Access to criminal history information.

1 The commissioner may refuse to grant a license or may
2 suspend or revoke a license if the applicant or licensee
3 fails to provide information required by section four,
4 article two, chapter thirty-one-a of this code, or other
5 information sought by the commissioner relevant to
6 conducting an adequate criminal background check.

§32A-2-10. Bond.

1 (a) A person who is licensed under this article shall
2 post a bond with a qualified surety company doing
3 business in this state that is acceptable to the
4 commissioner. The bond shall be in the amount of one
5 hundred thousand dollars for a licensee which issues or
6 sells checks or money orders, or which engages in
7 currency exchange; or three hundred thousand dollars for
8 a licensee which engages in receiving money for
9 transmission by wire, facsimile or electronic transfer, or
10 which engages in currency transportation. A licensee
11 which engages in multiple types of these activities shall
12 post the higher amount. A merchant obtaining a license
13 solely to engage in the check cashing business not
14 incidental to the main business of the merchant as
15 required by article three of this chapter shall post a bond
16 of one hundred thousand dollars. The amount of the
17 surety bond will be increased by twenty-five thousand
18 dollars per licensee location or authorized delegate in the
19 state, but in no event to exceed one million dollars.

20 (b) Instead of the bond required under subsection (a) of
21 this section, a licensee, with the prior written permission of
22 the commissioner, may deposit with the commissioner or a

23 federally-insured depository institution in this state
24 designated by the licensee and approved for that purpose
25 by the commissioner, United States currency or cash
26 equivalent instruments or securities acceptable to the
27 commissioner. The amount of currency or the fair market
28 value of the instruments or securities shall be an amount
29 equal to or exceeding the amount required for the bond
30 under subsection (a) of this section. When securities are
31 deposited as aforesaid, the value of the securities shall at
32 all times be equal to the amount of bond otherwise
33 required, computed on the basis of the principal amount
34 or the market value thereof, whichever is lower.

35 (c) A bond posted by a licensee shall be conditioned
36 upon compliance with the provisions of this article and
37 any rules thereunder for as long as the person holds the
38 license. The deposit or bond, as the case may be, shall be
39 made to the state of West Virginia for the benefit and
40 protection of any claimant against the applicant or
41 licensee with respect to the receipt, handling, transmission,
42 and payment of money by the licensee or authorized
43 delegate in connection with the licensed operations in this
44 state. A claimant damaged by a breach of the conditions
45 of the bond or deposit shall, upon the assent of the
46 commissioner, have a right of action against the bond or
47 deposit for damages suffered thereby and may bring suit
48 directly thereon, or the commissioner may bring suit on
49 behalf of the claimant. The aggregate liability of the
50 surety in no event shall exceed the principal sum of the
51 bond. So long as the person making a deposit under this
52 section is not in violation of any of the provisions of this
53 article, that person is permitted to receive all interest and
54 dividends on the deposit, and shall have the right, with the
55 approval of the commissioner, to substitute other
56 securities. If the deposit is made at a bank, any custodial
57 fees therefor shall be paid by the person making the
58 deposit.

59 (d) A penalty fee under subdivision (5), subsection (a),
60 section five of this article, expenses under section eleven
61 of this article, or a civil penalty under section nineteen of
62 this article may be paid out of and collected from the
63 proceeds of a bond or deposit under this section.

64 (e) After receiving a license, the licensee shall
65 maintain the required bond or securities until five years
66 after it ceases to do business in this state unless all
67 outstanding checks/payment instruments are cleared or
68 covered by the provisions of article eight, chapter thirty-
69 six of this code pertaining to the distribution of unclaimed
70 property which have become operative and are adhered to
71 by the licensee. Notwithstanding this provision, however,
72 the commissioner may permit the security to be reduced
73 following cessation of business in the state to the extent
74 the amount of the licensee's checks/payment instruments
75 outstanding in this state are reduced.

76 (f) If the commissioner at any time reasonably
77 determines that the required bond or deposit is insecure,
78 deficient in amount, or exhausted, in whole or in part, he
79 or she may in writing require the filing of a new or
80 supplemental bond or other security in order to secure
81 compliance with this article and may demand compliance
82 with the requirement within thirty days following service
83 on the licensee. The total amount of the bonds or security
84 required of the licensee may not, however, exceed the one
85 million dollars set forth in subsection (a) of this section.

**§32A-2-11. Examination and fraudulently structured transac-
tions.**

1 (a) Each licensee is subject to a periodic examination
2 of the licensee's business records by the commissioner at
3 the expense of the licensee. For the purpose of carrying
4 out this article, the commissioner may examine all books,
5 records, papers, or other objects that the commissioner
6 determines are necessary for conducting a complete
7 examination and may also examine under oath any person
8 associated with the license holder, including an officer,
9 director, or employee of the licensee or authorized
10 delegate. Unless it will interfere with the commissioner's
11 duties under this article, reasonable notice shall be given to
12 the licensee and any authorized delegate before any on-
13 site examination visit. If a person required by the
14 commissioner to submit to an examination refuses to
15 permit the examination or to answer any question

16 authorized by this article, the commissioner may suspend
17 the person's license until the examination is completed.

18 (b) The licensee shall bear the cost of any on-site
19 examination made pursuant to this section, at a rate of
20 fifty dollars for each examiner hour expended, together
21 with all reasonable and necessary travel expenses incurred
22 in connection with the examination.

23 (c) A person, for the purpose of evading a reporting
24 or record-keeping requirement of 31 U.S.C. Section 5313,
25 or 31 C.F.R. Part 103, or by this article, or a rule adopted
26 under this article, may not with respect to a transaction
27 with a licensee:

28 (1) Cause or attempt to cause the licensee to:

29 (A) Not maintain a record or file a report required by
30 a law listed by this subsection; or

31 (B) Maintain a record or file a report required by a
32 law listed by this subsection that contains a material
33 omission or misstatement of fact; or

34 (2) Fraudulently structure the transaction.

35 (d) For the purposes of this article, a person
36 fraudulently structures a transaction if the person conducts
37 or attempts to conduct a transaction in any amount of
38 currency with a licensee in a manner having the purpose
39 of evading a record-keeping or reporting requirement of
40 this article, or of a law listed by subsection (c) of this
41 section, including the division of a single amount of
42 currency into smaller amounts or the conduct of a
43 transaction or series of transactions in amounts equal to or
44 less than the reporting or record-keeping threshold of a
45 law listed by subsection (c) of this section.

46 (e) A transaction is not required to exceed a record-
47 keeping or reporting threshold of a single licensee on a
48 single day to be a fraudulently structured transaction.

§32A-2-12. Investigations and subpoenas.

1 (a) In addition to the examinations required by section
2 eleven of this article, the commissioner is authorized to

3 inspect, examine and audit the books, records, accounts
4 and papers of all licensees and their authorized delegates
5 at times that the circumstances in his or her opinion may
6 warrant. Unless it will interfere with the commissioner's
7 duties under this article, reasonable notice shall be given to
8 an authorized delegate or licensee before any on-site
9 examination visit. However, an authorized delegate is
10 deemed to consent to the commissioner's inspection, with
11 or without prior notice to the licensee or authorized
12 delegate, of the books and records of the authorized
13 delegate when the commissioner has a reasonable basis to
14 believe that the licensee or authorized delegate is in
15 noncompliance with this article. The commissioner may
16 call for and require any data, reports or information from
17 any licensees under his or her jurisdiction at any time,
18 and in the form, content and detail the commissioner
19 determines to be necessary in the faithful discharge of his
20 or her duty.

21 (b) In connection with the investigations undertaken
22 pursuant to this article, the commissioner is authorized to
23 issue subpoenas and subpoenas duces tecum, administer
24 oaths, examine persons under oath, and hold and conduct
25 hearings, with any subpoenas or subpoenas duces tecum to
26 be issued, served and enforced in the manner provided in
27 section one, article five, chapter twenty-nine-a of this code.
28 Any person appearing and testifying at the hearing may
29 be accompanied by an attorney.

§32A-2-13. Notification requirements.

1 (a) A licensee shall notify the commissioner of any
2 change in its principal place of business, or its
3 headquarters office if different from its principal place of
4 business, within fifteen days after the date of the change.

5 (b) A licensee shall notify the commissioner of any of
6 the following significant developments within fifteen days
7 after gaining actual notice of its occurrence:

8 (1) The filing of bankruptcy or for reorganization
9 under the bankruptcy laws;

10 (2) The institution of license revocation or suspension
11 procedures against the licensee in any other state;

12 (3) A felony indictment related to money
13 transmission, currency exchange, fraud, failure to fulfill a
14 fiduciary duty, or other activities of the type regulated
15 under this article of the licensee or its authorized delegates
16 in this state, or of the licensee's or authorized delegate's
17 officers, directors, or principals; and

18 (4) A felony conviction or plea related to the money
19 transmission, currency exchange, fraud, failure to fulfill a
20 fiduciary duty, or other activities of the type regulated
21 under this article of the licensee or its authorized delegates
22 in this state, or of the licensee's or authorized delegate's
23 officers, directors, or principals.

24 (c) A licensee shall notify the commissioner of any
25 merger or acquisition which may result in a change of
26 control or a change in principals of a licensee within
27 fifteen days of announcement or publication of the
28 proposal, or its occurrence, whichever is earlier. Upon
29 notice of these circumstances by a corporate licensee, the
30 commissioner may require all information necessary to
31 determine whether it results in a transfer or assignment of
32 the license and thus if a new application is required in
33 order for the company to continue doing business under
34 this article. A licensee that is an entity other than a
35 corporation shall in these circumstances submit a new
36 application for licensure at the time of notice.

§32A-2-14. Records maintenance.

1 (a) A licensee shall keep its business books, accounts,
2 and records in accordance with generally accepted
3 accounting principals. A licensee shall retain all of its
4 records of final entry for the period of time as required in
5 section thirty-five, article four, chapter thirty-one-a of this
6 code for banking institutions. The licensee shall also
7 preserve its general ledger, settlement sheets from its
8 authorized delegates, bank statements, and bank
9 reconciliation records for this said same established period
10 of time.

11 (b) Unless the documents or data therefrom has been
12 transmitted to the licensee for recordation, the licensee
13 shall require its authorized delegates to preserve records
14 relating to its licensed activities for the period set forth in
15 subsection (a) of this section.

16 (c) Records may be kept using retention technologies,
17 including nonerasable optical disk, as is provided for
18 banking institutions and with the same effect as set forth in
19 section thirty-five, article four, chapter thirty-one-a of this
20 code.

21 (d) A licensee shall maintain records relating to its
22 business under this article at its principal place of business,
23 or with notice to the commissioner, at another location
24 designated by the licensee. If the records are located
25 outside the state, the licensee at its option shall make them
26 available to the commissioner at a convenient location
27 within this state within seven days, or shall pay the
28 reasonable and necessary expenses for the commissioner
29 or his or her representatives to examine them at the place
30 where they are maintained.

§32A-2-15. Transaction records.

1 (a) Every check sold by the licensee or its authorized
2 delegates shall bear the name of the licensee and a unique
3 number clearly stamped or imprinted thereon. When an
4 order for the transmission of money results in the issuance
5 of a check, both the order and the check may bear the
6 same number.

7 (b) The licensee or its authorized delegates shall
8 record the face amount and unique number of its checks
9 upon their sale.

10 (c) The licensee or its authorized delegates shall
11 record the date on which money was received for
12 transmission, the amount transmitted, the name of the
13 customer and the intended recipient, and the location to
14 which the money was transmitted if specified by the
15 customer. Unless otherwise directed by the customer, the
16 transmission of money or availability of funds shall be
17 made by the licensee or authorized delegate within three

18 business days after the receipt of payment. The customer
19 shall be provided a written receipt sufficient to identify the
20 transaction, the licensee, and the amount.

21 (d) If the transaction involves the exchange of foreign
22 currency, or the sale of travelers checks denominated in a
23 foreign currency, the licensee or authorized delegate shall
24 record the date of the transaction, the amount of the
25 transaction, and the rate of exchange at the time of
26 transaction. The customer shall be provided a written
27 receipt sufficient to identify the transaction, the licensee,
28 and the amount.

29 (e) Records required by this section shall be
30 maintained by the licensee or authorized delegate as set
31 forth in section fourteen of this article, and shall be
32 available for examination by the commissioner.

§32A-2-16. Enforcement.

1 The commissioner, with the assistance of the West
2 Virginia state police, may investigate violations of this
3 article or rules adopted under this article. Based on the
4 investigation, the commissioner or any law-enforcement
5 agency may file a criminal referral with the prosecuting
6 attorney of Kanawha County or with the prosecuting
7 attorney of the county in which a violation is alleged to
8 have occurred. In addition, the commissioner may bring
9 civil actions to enforce the provisions of this article or the
10 rules adopted under this article.

§32A-2-17. Cooperative agreements.

1 (a) The commissioner shall cooperate with federal and
2 state agencies in discharging the commissioner's
3 responsibilities under this article. The commissioner may:

4 (1) Arrange for the exchange of information among
5 government officials concerning the regulation of a
6 currency exchange, transportation or transmission
7 business;

8 (2) Cooperate in and coordinate training programs
9 concerning the regulation of currency exchange,
10 transportation or transmission businesses; and

11 (3) Assist state and federal agencies in their
12 enforcement and investigatory activities and supply those
13 agencies with documentation and information.

14 (b) The commissioner may request the assistance of
15 the West Virginia state police in enforcing this article.

§32A-2-18. Criminal penalty.

1 (a) A person commits a criminal offense if the person
2 knowingly:

3 (1) Violates a requirement of this article;

4 (2) Makes a false, fictitious, or fraudulent statement,
5 representation, or entry in a record or report required
6 under 31 U.S.C. Section 5313 or 31 C.F.R. Part 103, or
7 by this article, or a rule adopted under this article; or

8 (3) Fraudulently structures or attempts to fraudulently
9 structure a transaction in violation of section eleven of this
10 article.

11 (b) An offense under this section is a felony.

12 (c) Any officer, director, employee or agent of any
13 licensee or any other person guilty of any felony offense
14 as provided in this section shall, upon conviction thereof,
15 be imprisoned in the penitentiary not less than one nor
16 more than five years and also, in the discretion of the
17 court, may be fined up to ten thousand dollars for each
18 violation. Each transaction in violation of this article and
19 each day that a violation continues is a separate offense.

§32A-2-19. Civil penalty.

1 The commissioner may bring civil actions to enforce
2 this article in the circuit court of Kanawha County or the
3 county in which the violation occurred and seek civil
4 penalties. If, after notice and a hearing, the court finds
5 that a person has violated this article, a rule adopted under
6 this article, or an order of the commissioner issued under
7 this article, the court may order the person to pay to the
8 state a civil penalty. The amount of a civil penalty under
9 this section may not exceed five thousand dollars for each
10 violation or, in the case of a continuing violation, up to

11 five thousand dollars for each day that the violation
12 continues. A civil penalty assessed may be collected from
13 the bond or deposit required under section ten of this
14 article.

§32A-2-20. Injunction.

1 If it appears to the commissioner that a person has
2 committed or is about to commit a violation of this article,
3 a rule promulgated thereunder, or an order of the
4 commissioner, the commissioner may apply to the circuit
5 court of Kanawha County or the county in which the
6 violation occurred for an order enjoining the person from
7 violating or continuing to violate the article, rule, or order
8 and for injunctive or other relief that the nature of the case
9 may require and may, in addition, request the court to
10 assess civil penalties as provided under this article.

§32A-2-21. Consent orders.

1 (a) The commissioner may enter into consent orders
2 at any time with a person to resolve a matter arising under
3 this article. A consent order shall be signed by the person
4 to whom it is issued and shall indicate agreement to the
5 terms contained in it. A consent order need not constitute
6 an admission by a person that this article or a rule or order
7 issued or promulgated under this article has been violated,
8 nor need it constitute a finding by the commissioner that
9 the person has committed a violation.

10 (b) Notwithstanding the issuance of a consent order,
11 the commissioner may seek civil or criminal penalties or
12 compromise civil penalties concerning matters
13 encompassed by the consent order unless by its terms the
14 consent order expressly precludes the commissioner from
15 doing so.

§32A-2-22. Cease and desist orders.

1 (a) If the commissioner, upon information, has cause
2 to believe that a licensee or other person is engaged in
3 practices contrary to this article or the rules adopted under
4 this article, the commissioner may issue an order directing
5 the licensee or person to cease and desist the violation. A
6 cease and desist order is appropriate in any case where the

7 commissioner, upon information, reasonably believes that
8 a principal or the licensee acting through any authorized
9 person has:

10 (1) Violated or refused to comply with a provision of
11 this article, a rule adopted under this article, or any other
12 law or regulation applicable to a currency exchange,
13 transportation or transmission business, or to the business
14 of check cashing;

15 (2) Committed a fraudulent practice in the conduct of
16 the licensee's business;

17 (3) Refused to submit to an examination;

18 (4) Conducted business in an unsafe or unauthorized
19 manner; or

20 (5) Violated any condition of its license or of any
21 agreement entered into with the commissioner.

22 (b) The commissioner shall serve notice and a copy of
23 the cease and desist order on the affected party either
24 personally or by certified mail, return receipt requested.
25 Service by mail shall be deemed completed if the notice is
26 deposited in the post office, postage prepaid, addressed to
27 the last known address for a licensee or the person
28 designated by the licensee to accept service in this state.

29 (c) The order shall include a statement of the alleged
30 conduct of the licensee or principal which gave rise to the
31 order, and set forth the facts and law on which it is based.

32 (d) A person is entitled to a hearing on the cease and
33 desist order before the commissioner, or a hearing
34 examiner appointed by him or her, if the person files with
35 the commissioner a written demand for hearing within ten
36 days after receiving written notice of the order, or within
37 thirty days after the date of service, whichever occurs first.
38 A person's right to a hearing as provided by this
39 subsection shall be disclosed in the notice of service.

40 (e) Hearings and judicial review of any order shall be
41 under procedures provided in sections one and two, article
42 eight, chapter thirty-one-a of this code and procedural
43 rules thereunder.

44 (f) The issuance of a cease and desist order under this
45 section shall not be a prerequisite to the taking of any
46 action by the commissioner or others under any other
47 section of this article.

§32A-2-23. Liability of licensees.

1 Except in cases of gross negligence or intentional acts
2 that result in harm to a person, a licensee's responsibility
3 to a person for a money transmission conducted on that
4 person's behalf by the licensee or the licensee's
5 authorized delegate is limited to the amount of money
6 transmitted or the face amount of the payment instrument
7 purchased.

§32A-2-24. Confidential information.

1 (a) Reports of investigation and examination, together
2 with related documents and financial information not
3 normally available to the public that is submitted in
4 confidence by a person regulated under this article, are
5 confidential and may not be disclosed to the public by the
6 commissioner or employees of the division of banking,
7 and are not subject to the state's freedom of information
8 act. The commissioner may release information if:

9 (1) The commissioner finds that immediate and
10 irreparable harm is threatened to the licensee's customers
11 or potential customers or the general public;

12 (2) The licensee consents before the release;

13 (3) The commissioner finds that release of the
14 information is required in connection with a hearing
15 under this article, in which event information may be
16 related to the parties of that hearing; or

17 (4) The commissioner finds that the release is
18 reasonably necessary for the protection of the public and
19 in the interest of justice, in which event information may
20 be distributed to representatives of an agency, department,
21 or instrumentality of this state, any other state, or the
22 federal government.

23 (b) Nothing herein prevents release to the public of
24 any list of licensees or aggregated financial data for the

25 licensees, prevents disclosure of information the presiding
26 officer deems relevant to the proper adjudication or
27 administration of justice at public administrative or
28 judicial hearings, or prevents disclosure of information
29 relevant to supporting the issuance of any administrative
30 or judicial order.

§32A-2-25. Hearing on suspension or revocation of license.

1 (a) A license may not be revoked or suspended except
2 after notice and opportunity for hearing on that action.
3 The commissioner may issue to a person licensed under
4 this article an order to show cause why the license should
5 not be revoked, or should not be suspended for a period
6 not in excess of six months. The order shall state the place
7 for a hearing and set a time for the hearing that is no less
8 than ten days from the date of the order. After the hearing
9 the commissioner shall revoke or suspend the license if he
10 or she finds that:

11 (1) The licensee has knowingly or repeatedly violated
12 this chapter or any rule or order lawfully made or issued
13 pursuant to this article;

14 (2) The licensee has failed to remit its required
15 renewal fees;

16 (3) Facts or conditions exist which would clearly have
17 justified the commissioner in refusing to grant a license
18 had these facts or conditions been known to exist at the
19 time the application for the license was made;

20 (4) The licensee does not have available the net worth
21 required by the provisions of section eight of this article,
22 and after ten days' written notice from the commissioner,
23 fails to take steps that the commissioner determines are
24 necessary to remedy the deficiency; or

25 (5) The licensee has failed or refused to keep the bond
26 or other security required by section ten of this article in
27 full force and effect.

28 (b) No revocation or suspension of a license under
29 this article is lawful unless prior to institution of
30 proceedings by the commissioner notice is given to the

31 licensee of the facts or conduct which warrant the intended
32 action, and the licensee is given an opportunity to show
33 compliance with all lawful requirements for retention of
34 the license.

35 (c) If the commissioner finds that probable cause for
36 revocation of a license exists and that enforcement of this
37 article to prevent imminent harm to public welfare
38 requires immediate suspension of the license pending
39 investigation, the commissioner may, after a hearing upon
40 five days' written notice, enter an order suspending the
41 license for not more than thirty days.

42 (d) Nothing in this section limits the authority of the
43 commissioner to take action against a licensee or person
44 under other sections of this article.

45 (e) Whenever the commissioner revokes or suspends a
46 license, an order to that effect shall be entered and the
47 commissioner shall forthwith notify the licensee of the
48 revocation or suspension. Within five days after the entry
49 of the order the commissioner shall mail by registered or
50 certified mail, or shall provide for personal delivery to the
51 licensee, of a copy of the order and the findings
52 supporting the order.

53 (f) Any person holding a license under this article
54 may relinquish the license by notifying the commissioner
55 in writing of its relinquishment, but any relinquishment
56 does not affect a person's liability for acts previously
57 committed.

58 (g) No revocation, suspension, or relinquishment of a
59 license shall impair or affect the obligation of any
60 preexisting lawful contract between the licensee and any
61 person.

62 (h) The commissioner may reinstate a license,
63 terminate a suspension or grant a new license to a person
64 whose license has been revoked or suspended if no fact or
65 condition then exists which clearly would have justified
66 the commissioner in refusing to grant a license.

§32A-2-26. Deceptive name or advertising.

1 (a) A licensee who advertises the prices to be charged
2 by the currency exchange or currency transmission
3 business for services that are governed by this article shall
4 specifically state in the advertisement all fees or
5 commissions to be charged to the consumer.

6 (b) The commissioner may propose for legislative
7 approval rules establishing requirements for the size and
8 type of lettering a licensee is permitted to use in an
9 advertisement for prices or rates.

10 (c) A person who violates this section or a rule
11 adopted under this section commits an unfair and
12 deceptive act or practice within the meaning of section one
13 hundred four, article six, chapter forty-six-a of this code.

14 (d) A corporate licensee may not use the same name
15 as, or a name deceptively similar to, the name of any
16 domestic corporation existing under the laws of this state,
17 or the name of any foreign corporation authorized to
18 transact business in this state, except as otherwise provided
19 by the commissioner or secretary of state pursuant to law.

§32A-2-27. Authorized delegates.

1 (a) A licensee may conduct the business of money
2 transmission and currency exchange regulated by this
3 article at one or more locations in this state through
4 authorized delegates designated by the licensee.

5 (b) A licensee may not knowingly authorize a person
6 to act as its delegate who has, within the previous ten years,
7 a disqualifying criminal conviction of the type set forth in
8 subdivision (2), subsection (c), section eight of this article.

9 (c) A licensee shall enter into a contract with its
10 authorized delegate detailing the nature and scope of the
11 relationship between the licensee and the authorized
12 delegate. The contract shall require that the authorized
13 delegate operate in full compliance with the laws of this
14 state and of the United States. The licensee shall, upon
15 request, provide the commissioner with the sample written
16 contract.

17 (d) The financial responsibility of a licensee for the
18 actions of its authorized delegate shall not exceed the
19 amount of funds received by the authorized delegate on
20 behalf of its licensee for the business regulated under this
21 article.

22 (e) An authorized delegate has an affirmative duty
23 not to: (i) Commit fraud or misrepresentation; or (ii)
24 submit fraudulent statements to the licensee. A licensee
25 shall promptly report to the commissioner and to any
26 other appropriate state or federal official when it has
27 probable cause to believe that an authorized delegate has
28 violated the affirmative duty set forth in this subsection.

29 (f) The licensee shall require the authorized delegate
30 to hold in trust for the licensee from the moment of
31 receipt of the proceeds of any business transacted under
32 this article in an amount equal to the amount of proceeds
33 due the licensee less the amount due the authorized
34 delegate. The funds shall remain the property of the
35 licensee whether or not commingled by the authorized
36 delegate with its own funds. In the event that the license is
37 revoked by the commissioner, all proceeds held in trust by
38 the authorized delegate of that licensee are considered to
39 be assigned to the commissioner. If an authorized
40 delegate fails to remit funds to the licensee in accordance
41 with the time specified in the contract with the licensee, the
42 licensee may bring a civil action against the authorized
43 delegate for three times the actual damages. The
44 commissioner may by rule set a maximum remittance time
45 for authorized delegates.

46 (g) An authorized delegate shall report to the licensee
47 the theft or loss of payment instruments within twenty-
48 four hours from the time the authorized delegate knew or
49 should have known of the theft or loss.

50 (h) Upon any suspension or revocation of a license,
51 the failure of a licensee to renew a license, or the denial of
52 the renewal of a license, the licensee shall notify its
53 authorized delegates of the event and demand that they
54 immediately cease operations as authorized delegates.

55 (i) A licensee shall report the removal of an
56 authorized delegate location, or the termination of
57 operations of an authorized delegate location, to the
58 commissioner on a quarterly basis, and shall in the report
59 list any new authorized delegate locations in this state.

60 (j) No authorized delegate shall act outside its scope
61 of authority as defined under this article and by its
62 contract with the licensee with regard to any transaction
63 regulated by this article.

§32A-2-28. Revocation or suspension of authorized delegates.

1 (a) The commissioner may issue an order suspending
2 an authorized delegate, or barring a person from
3 becoming an authorized delegate of any licensee, during
4 the period for which the order is in effect. Upon issuance
5 of the order, the licensee shall terminate its relationship
6 with the authorized delegate according to the terms of the
7 order. Orders may be issued if, after notice and a hearing,
8 the commissioner finds that any authorized delegate of a
9 licensee or any administrator, officer, employee or
10 principal of the authorized delegate:

11 (1) Has violated a provision of this article or of any
12 rule or order issued under this article;

13 (2) Has engaged in or participated in an unsafe or
14 unsound act with respect to the business of selling or
15 issuing payment instruments of the licensee or the
16 business of money transmission; or

17 (3) Has made or caused to be made in any application
18 or report filed with the commissioner or in any
19 proceeding before the commissioner a statement that was,
20 at the time and in the circumstances under which it was
21 made, false or misleading with respect to any material fact,
22 or has omitted to state in the application or report a
23 material fact required to be stated.

24 (b) An authorized delegate to whom an order is
25 issued under this section may apply to the commissioner
26 to modify or rescind the order. The commissioner may
27 not grant the application unless the commissioner finds
28 that it is in the public interest to do so and that it is

29 reasonable to believe that the person will comply with all
30 applicable provisions of this chapter and of any rule and
31 order issued under this chapter if the order is modified or
32 rescinded.

33 (c) The right of a person to whom an order is issued
34 under this section to petition for judicial review of an
35 order is not affected by the failure of the person to apply
36 to the commissioner to modify or rescind the order.

ARTICLE 3. CHECK CASHING.

§32A-3-1. Check cashing permitted.

§32A-3-2. Obstruction of investigations.

§32A-3-3. Violations and penalties.

§32A-3-4. Injunctions.

§32A-3-1. Check cashing permitted.

1 (a) A merchant primarily in the business of making
2 retail consumer sales may offer check cashing services at
3 its stores to accommodate its customers in the course of
4 said business, and may collect a fee for the service, if the
5 check cashing service and any fees charged are incidental
6 to the main business of the merchant. Except as set forth
7 in subsection (b) of this section, the term "check cashing
8 services" does not include a transaction where a customer
9 presents a check for the exact amount of a purchase. Fees
10 charged in connection with check cashing services may
11 not exceed the greater of one dollar, or one percent of the
12 face value of the check cashed.

13 (b) Merchants may not, in connection with providing
14 check cashing services, agree to hold checks submitted to
15 them for deposit at a later date for the purpose of
16 providing a loan of money and deriving profit therefrom.

17 (c) No license is required as a condition for a
18 merchant providing check cashing services in conformity
19 with subsections (a) and (b) of this section.

20 (d) Where a merchant derives more than five percent
21 of his or her gross revenues from cashing checks, the
22 check cashing services are not considered incidental to the
23 main business of the merchant, and the merchant is
24 required to be licensed under article two of this chapter.

25 (e) Persons holding a license pursuant to article two
26 of this chapter may in conjunction with their licensed
27 business, or other lawful business, engage in the business
28 of check cashing in West Virginia. Fees charged for
29 check cashing services by a licensee under article two of
30 this chapter shall be posted and conform to those
31 permitted merchants under this section. No licensee may
32 in connection with providing check cashing services agree
33 to hold checks submitted to it for deposit at a later date for
34 the purpose of providing a loan of money and deriving
35 profit therefrom.

36 (f) Federally-insured depository institutions, foreign
37 bank agencies, and governmental entities exempt from
38 licensure as money transmitters under this chapter are
39 exempt from the provisions of this article. Other financial
40 institutions licensed by and under the jurisdiction of the
41 commissioner of banking may upon written approval
42 engage in the check cashing business permitted merchants
43 under this article.

44 (g) Except as provided or allowed by this article, no
45 person may engage in the check cashing business. As
46 used in this article the term "check cashing business"
47 means any person who engages in the business of cashing
48 checks, including drafts, money orders, or other
49 instruments for the transmission or payment of money for
50 a fee. However, the term "check" as used in this article
51 does not include a travelers check or a foreign
52 denomination check.

§32A-3-2. Obstruction of investigations.

1 No merchant or person subject to this article may
2 obstruct or refuse to permit any lawful investigation into
3 their check cashing activities by the commissioner of
4 banking, a person acting on behalf of an agency of the
5 state or political subdivision thereof, or a law-enforcement
6 officer.

§32A-3-3. Violations and penalties.

1 (a) The charging of fees for check cashing services in
2 excess of those permitted under this article gives rise to a

3 cause of action by the injured party to recover twice the
4 actual damages suffered by reason of the violation.

5 (b) The charging of fees for check cashing services in
6 violation of the provisions of subsections (b) or (e),
7 section one of this article, prohibiting lending through a
8 check cashing transaction, constitutes prohibited finance
9 charges, and gives rise to a cause of action by the party
10 upon whom the charge was imposed to recover all fees
11 paid and all actual damages suffered by reason of the
12 violation. Where the transaction is of an amount and for
13 purposes that would constitute a consumer loan, the
14 conduct of impermissible check cashing services is
15 considered an unfair and deceptive act and may be subject
16 to provisions and penalties set forth in chapter forty-six-a
17 of this code.

18 (c) Engaging in the check cashing business without
19 the license required by this article gives rise to a cause of
20 action by the injured party to recover all fees paid and all
21 actual damages suffered by reason of the violation.

22 (d) Actions brought under this article by customers
23 for recovery of actual damages shall be brought within
24 one year of the occurrence of the transaction.

§32A-3-4. Injunctions.

1 If any merchant or person is in violation of this article,
2 the commissioner of banking or other appropriate law-
3 enforcement officer may apply to the circuit court of
4 Kanawha County or the county in which the violation
5 occurred for an order enjoining the merchant or person
6 from violating or continuing to violate the article, rule, or
7 order and for injunctive or other relief that the nature of
8 the case may require. The authority to seek injunctions
9 under this section is cumulative with any other
10 enforcement right accruing under other provisions of law
11 and this code.

CHAPTER 74

(Com. Sub. for H. B. 4554—By Delegates Doyle and Manuel)

[Passed March 13, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing the boundary line between Jefferson County, West Virginia, and Loudoun County, Virginia.

Be it enacted by the Legislature of West Virginia:

That section three, article twenty-three, 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 23. WEST VIRGINIA BOUNDARY COMMISSION.

§29-23-3. Establishing and marking boundary line between Jefferson County, West Virginia, and Loudoun County, Virginia; effect of certain rights and prosecutions; transmission to members of Congress; effective date.

1 (a) The boundary line between Jefferson County, West
 2 Virginia, and Loudoun County, Virginia, is hereby, on the
 3 part of this state, established and declared to be the
 4 watershed line of the top of the ridge of the Blue Ridge
 5 mountains, as established by the survey approved by the
 6 commission on the twenty-ninth day of April, one
 7 thousand nine hundred ninety-seven, and to be recorded
 8 in the land books in the courthouses of Jefferson County,
 9 West Virginia, and Loudoun County, Virginia.

10 (b) No vested right of any individual, partnership or
 11 corporation within the territory affected by this section
 12 may in any way be impaired, restricted or affected by this
 13 section. This section is not retrospective in its operation

14 and it does not in any way affect the rights of any
15 individual, partnership or corporation in any suit now
16 pending in any of the courts of this state or of the United
17 States wherein the cause of action arose over, or is in any
18 way based upon, the territory affected. This section in no
19 way precludes the state of West Virginia from prosecuting
20 any individual, partnership or corporation for violation of
21 any of the criminal laws of this state within the territory
22 until this section goes into effect.

23 (c) The secretary of state shall furnish a certified copy
24 of this section to the governor of the commonwealth of
25 Virginia and shall also furnish certified copies to the
26 United States senators from the state of West Virginia and
27 to the representative from the second congressional district
28 of West Virginia in the House of Representatives, who are
29 requested to have the section presented to the Congress of
30 the United States.

31 (d) The commission created by section two of this
32 article is continued and is directed, in cooperation with the
33 like commission created by the commonwealth of
34 Virginia, or other agency designated by the
35 commonwealth of Virginia for the purpose, to complete its
36 work, including: (i) The recordation of the survey in the
37 Jefferson County courthouse not later than the first day of
38 April, one thousand nine hundred ninety-eight, which
39 survey shall take into account KD Map 25A Parcel 0002
40 through which the watershed line runs and which includes
41 such residence on the Virginia side of the boundary line;
42 and (ii) the erection of permanent markers designating the
43 boundary line set forth in this section. The markers shall
44 be of the nature and kind the commission considers
45 appropriate.

46 (e) This section shall take effect upon the adoption
47 and approval by the General Assembly of the
48 commonwealth of Virginia of appropriate legislation
49 ratifying the boundary line set forth herein.

CHAPTER 75

(H. B. 4453—By Delegates Amores, Trump and Linch)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eleven, twelve, thirteen, fourteen and fifty-one, article one, 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 six-a; to amend and reenact sections one hundred five and one hundred six, article one, chapter thirty-one-b of said code; to amend and reenact sections two hundred three and two hundred eleven, article two of said chapter; to amend and reenact section one thousand two, article ten of said chapter; to amend and reenact sections four and five, article eight, chapter forty-seven of said code; to amend and reenact sections two, three and fifty-one, article nine of said chapter; to amend and reenact sections one through six, inclusive, article nine-a of said chapter; and to further amend said article by adding thereto a new section, designated section seven, all relating to certification and registration requirements for business entities; requiring business entities to notify the secretary of state of changes in officers, trustees, and members authorized to execute certain documents to be filed with the secretary of state; setting forth name requirements and requiring that names of business entities be distinguishable from the names of other business entities and trade names; providing for the reservation of corporate names, including a temporary name reservation procedure; authorizing the registration of corporate names by foreign corporations and the renewal of such registrations; updating various provisions to recognize new authorized business entities; authorizing the use and reservation of names for limited liability companies; modifying requirements for articles of incorporation, the filing of annual reports, and applications for certificates of authority for limited liability companies; revising requirements for the filing of applications for registration of trade names; providing for names and the reservation of names of limited partnerships and the registration of names of foreign limited partnerships; setting forth detailed procedures for the certification and registration of business trusts and voluntary associations; requiring the secretary of

state to issue certificates which must be filed with the clerk of certain county commissions; creating various requirements for business trusts and voluntary associations, including requirements relating to the names of such entities, the adoption and use of trade names and seals, the amendment of organizing documents, changes in the identities of authorized persons and agents for receipt of service of process, and the dissolution and withdrawal of such entities; permitting business trusts and voluntary associations to use trade names and providing for the acknowledgment of certain deeds and other writings; validating previously executed instruments; and providing for the repeal of inconsistent acts and the severability of provisions.

Be it enacted by the Legislature of West Virginia:

That sections eleven, twelve, thirteen, fourteen and fifty-one, article one, 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 six-a; that sections one hundred five and one hundred six, article one, chapter thirty-one-b of said code be amended and reenacted; that sections two hundred three and two hundred eleven, article two of said chapter be amended and reenacted; that section one thousand two, article ten of said chapter be amended and reenacted; that sections four and five, article eight, chapter forty-seven of said code be amended and reenacted; that sections two, three and fifty-one, article nine of said chapter be amended and reenacted; that sections one through six, inclusive, article nine-a be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section seven, all to read as follows:

Chapter

31. Corporations.

31B. Uniform Limited Liability Company Act.

47. Regulation of Trade.

CHAPTER 31. CORPORATIONS.

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

- §31-1-6a. Signatures on documents filed with the secretary of state.
- §31-1-11. Corporate name; requirements; certain names prohibited.
- §31-1-12. Reserved name.
- §31-1-13. Registered name.
- §31-1-14. Renewal of registered name.

§31-1-51. Corporate name of foreign corporation; when certificate of authority shall not be issued.

§31-1-6a. Signatures on documents filed with the secretary of state.

1 (a) No document which is required to be executed or
2 verified by an officer or officers of a corporation shall be
3 filed with the secretary of state unless:

4 (1) The officers who have executed or verified the
5 document to be filed are the current officers of the
6 corporation and the secretary of state has on file: (A) A
7 current annual return of the corporation filed pursuant to
8 section three, article twelve-c, chapter eleven of this code
9 which identifies such officers; or (B) another corporate
10 document which identifies such officers; or

11 (2) The document to be filed is accompanied by
12 appropriate documentation showing that the persons
13 executing or verifying the document are current officers
14 of the corporation or are otherwise authorized to execute
15 or verify the document on behalf of the current officers of
16 the corporation.

17 (b) For purposes of subsection (a) of this section, the
18 term "appropriate documentation" means: (1) A copy of
19 the minutes of the board of directors of the corporation
20 reflecting the election or appointment of new officers,
21 which copy includes or is accompanied by a notarized
22 statement of authenticity signed by at least one director;
23 (2) a court order reflecting the identity of the current
24 officers or the authorization of any person to act for any
25 officer; or (3) any other legally authorized document
26 assigning to the person executing or verifying the
27 document clear authority to execute or verify documents
28 on behalf of the corporation.

§31-1-11. Corporate name; requirements; certain names prohibited.

1 (a) Except for corporations in existence prior to the
2 effective date of this article, the corporate name:

3 (1) Shall contain the word "corporation," "company,"
4 "incorporated" or "limited," or shall contain an
5 abbreviation of one of such words.

6 (2) Shall not contain any word or phrase which
7 indicates or implies that it is organized for any purpose
8 other than one or more of the purposes contained in its
9 articles of incorporation.

10 (3) Shall not be the same as, and shall be
11 distinguishable from: (A) The name of any domestic
12 corporation, domestic limited partnership, domestic
13 limited liability partnership, or domestic limited liability
14 company existing under the laws of this state; (B) the
15 name of any foreign corporation, foreign limited
16 partnership, foreign limited liability partnership, foreign
17 limited liability company, or any other foreign business
18 entity authorized to conduct affairs or transact business
19 in this state; (C) a name the exclusive right to which is, at
20 the time, reserved in the manner provided by law; or (D)
21 the name of a corporation, limited partnership, limited
22 liability partnership, or limited liability company which
23 has in effect a registration of its business name as provided
24 by law. The requirements of this subdivision shall not
25 apply if the applicant files with the secretary of state either
26 (X) a written consent to the use and a written undertaking
27 by the present user, registrant or owner of a reserved name
28 submitted in a form satisfactory to the secretary of state to
29 change the name to a name that is distinguishable from
30 the name applied for or (Y) a certified copy of a final
31 order of a court of competent jurisdiction establishing the
32 prior right of the applicant to the use of such name in this
33 state. For purposes of this subdivision, any terms or
34 abbreviations required to be included in the business name
35 to identify the type of business entity shall not alone be
36 sufficient to make one name distinguishable from another.

37 (4) Shall be transliterated into letters of the English
38 alphabet, if it is not in English.

39 (b) A corporation with which another corporation,
40 domestic or foreign, is merged, or which is formed by the
41 reorganization or consolidation of one or more domestic
42 or foreign corporations or upon a sale, lease or other
43 disposition to or exchange with, a domestic corporation of
44 all or substantially all the assets of another corporation,
45 domestic or foreign, including its name, may have the
46 same name as that used in this state by any of such
47 corporations if such other corporation was organized
48 under the laws of, or is authorized to conduct affairs or do
49 or transact business in this state.

50 (c) After the effective date of this section, no
51 corporation shall be chartered in this state under any name
52 which includes the word "engineer," "engineers,"
53 "engineering" or any combination of same unless the
54 purpose of the corporation is to practice professional
55 engineering as defined in article thirteen, chapter thirty of
56 this code, as amended, and one or more of the
57 incorporators is a registered professional engineer as
58 therein defined.

§31-1-12. Reserved name.

1 (a) The exclusive right to the use of a corporate name
2 may be reserved by:

3 (1) Any person intending to organize a corporation
4 under this article.

5 (2) Any domestic corporation intending to change its
6 name.

7 (3) Any foreign corporation intending to make
8 application for a certificate of authority to conduct affairs
9 or do or transact business in this state.

10 (4) Any foreign corporation authorized to conduct
11 affairs or do or transact business in this state and intending
12 to change its name.

13 (5) Any person intending to organize a foreign
14 corporation and intending to have such corporation make
15 application for a certificate of authority to conduct affairs
16 or do or transact business.

17 (b) The reservation may be made by filing with the
18 secretary of state an application to reserve a specified
19 corporate name executed by the applicant and by
20 submitting the fee prescribed by section two, article one,
21 chapter fifty-nine of this code. If the secretary of state
22 finds that the name is available for corporate use, the name
23 shall be reserved for the exclusive use of the applicant for
24 a period of one hundred twenty days. A reservation may
25 be renewed for one additional period of one hundred
26 twenty days, but may not thereafter be reserved by the
27 same or associated persons within one calendar year of the
28 expiration of the last reservation period.

29 (c) A temporary reservation may be made in person
30 or by telephone without a fee through the office of

31 business registration established under article twelve-d,
32 chapter eleven of this code. If the secretary of state finds
33 that the name is available for corporate use, the name shall
34 be reserved for the exclusive use of the applicant for a
35 period of seven days. A reservation made under this
36 subsection shall expire on the seventh day after it is made
37 unless the name is first reserved pursuant to subsection (b)
38 of this section. A temporary reservation under this
39 subsection may not be renewed by another temporary
40 reservation. The secretary of state shall establish
41 procedures for the making of temporary reservations
42 under this subsection.

43 (d) The right to the exclusive use of a specified
44 corporate name so reserved may be transferred to any
45 other person or corporation by filing in the office of the
46 secretary of state a notice of such transfer, executed by the
47 applicant for whom the name was reserved, and specifying
48 the name and address of the transferee.

§31-1-13. Registered name.

1 Any corporation organized and existing under the
2 laws of any state or territory of the United States may
3 register its corporate name under this article, provided its
4 corporate name complies with the requirements of
5 subdivision (3), subsection (a), section eleven of this
6 article.

7 Such registration shall be made by:

8 (a) Filing with the secretary of state: (1) An
9 application for registration executed by the corporation
10 by an officer thereof, setting forth the name of the
11 corporation, the state or territory under the laws of which
12 it is incorporated, the date of its incorporation, a statement
13 that it is carrying on or doing business, and a brief
14 statement of the business in which it is engaged; and (2) a
15 certificate setting forth that such corporation is in good
16 standing under the laws of the state or territory wherein it
17 is organized, executed by the secretary of state of such
18 state or territory or by such other official as may have
19 custody of the records pertaining to corporations; and

20 (b) Paying to the secretary of state the registration fee
21 prescribed by section two, article one, chapter fifty-nine of
22 this code.

23 Such registration shall be effective until the close of
24 the fiscal year in which the application for registration is
25 filed.

§31-1-14. Renewal of registered name.

1 A corporation which has in effect a registration of its
2 corporate name may renew such registration from year to
3 year by annually filing an application for renewal setting
4 forth the facts required to be set forth in an original
5 application for registration and a certificate of good
6 standing as required for the original registration and by
7 paying the fee prescribed by section two, article one,
8 chapter fifty-nine of this code. A renewal application may
9 be filed between the first day of April and the thirtieth day
10 of June in each year, and shall extend the registration for
11 the following fiscal year.

**§31-1-51. Corporate name of foreign corporation; when
certificate of authority shall not be issued.**

1 (a) No certificate of authority shall be issued to a
2 foreign corporation unless the corporate name of such
3 corporation:

4 (1) Shall contain the word "corporation," "company,"
5 "incorporated" or "limited," or shall contain an
6 abbreviation of one of such words, or such corporation
7 shall, for use in this state, add at the end of its name one of
8 such words or an abbreviation thereof.

9 (2) Shall not contain any word or phrase which
10 indicates or implies that it is organized for any purpose
11 other than one or more of the purposes in its articles of
12 incorporation, or if the corporate name of such
13 corporation indicates or implies that it is authorized or
14 empowered to conduct the business of banking or
15 insurance unless such corporation is so authorized or
16 empowered under the laws of this state.

17 (3) Shall comply with subdivision (3), subsection (a),
18 section eleven of this article.

19 (4) Shall be transliterated into letters of the English
20 alphabet, if it is not in English.

21 (b) The provisions of subdivision (3), subsection (a) of
22 this section shall not apply if the foreign corporation

23 applying for a certificate of authority files with the
24 secretary of state any one of the following:

25 (1) A resolution of its board of directors adopting a
26 fictitious name for use in conducting affairs or doing or
27 transacting business in this state, which fictitious name
28 complies with the requirements of subdivision (3),
29 subsection (a), section eleven of this article, or

30 (2) A written consent to the use and a written
31 undertaking of the present user, registrant or owner of a
32 reserved name submitted in a form satisfactory to the
33 secretary of state to change the name to a name that is
34 distinguishable from the name applied for; or

35 (3) A certified copy of a final order of a court of
36 competent jurisdiction establishing the prior right of such
37 foreign corporation to the use of such name in this state.

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

Article

1. General Provisions.

2. Organization

10. Foreign Limited Liability Companies.

ARTICLE 1. GENERAL PROVISIONS.

§31B-1-105. Name.

§31B-1-106. Reserved name.

§31B-1-105. Name.

1 (a) The name of a limited liability company must
2 contain "limited liability company" or "limited company"
3 or the abbreviation "L.L.C.", "LLC", "L.C." or "LC".
4 "Limited" may be abbreviated as "Ltd." and "company"
5 may be abbreviated as "Co.".

6 (b) Except as authorized by subsections (c) and (d) of
7 this section, the name of a limited liability company must
8 be distinguishable upon the records of the secretary of
9 state from:

10 (1) The name of any corporation, limited partnership,
11 limited liability partnership or limited liability company
12 incorporated, organized or authorized to transact business
13 in this state;

14 (2) A name reserved or registered under sections 1-
15 106 or 1-107 of this article or under sections twelve or
16 thirteen of article one, chapter thirty-one of this code.

17 (3) A fictitious name approved under section 10-1005
18 for a foreign company authorized to transact business in
19 this state because its real name is unavailable.

20 (c) A limited liability company may apply to the
21 secretary of state for authorization to use a name that is
22 not distinguishable upon the records of the secretary of
23 state from one or more of the names described in
24 subsection (b) of this section. The secretary of state shall
25 authorize use of the name applied for if:

26 (1) The present user, registrant or owner of a reserved
27 name consents to the use in a record and submits an
28 undertaking in form satisfactory to the secretary of state to
29 change the name to a name that is distinguishable upon
30 the records of the secretary of state from the name applied
31 for; or

32 (2) The applicant delivers to the secretary of state a
33 certified copy of the final judgment of a court of
34 competent jurisdiction establishing the applicant's right to
35 use the name applied for in this state.

36 (d) A limited liability company may use the name,
37 including a fictitious name, of another domestic or foreign
38 company which is used in this state if the other company
39 is organized or authorized to transact business in this state
40 and the company proposing to use the name has:

41 (1) Merged with the other company;

42 (2) Been formed by reorganization with the other
43 company; or

44 (3) Acquired substantially all of the assets, including
45 the name, of the other company.

§31B-1-106. Reserved name.

1 (a) A person may reserve the exclusive use of the
2 name of a limited liability company, including a fictitious
3 name for a foreign company whose name is not available,
4 by delivering an application to the secretary of state for
5 filing. The application must set forth the name and
6 address of the applicant and the name proposed to be
7 reserved. If the secretary of state finds that the name

8 applied for is available, it must be reserved for the
9 applicant's exclusive use for a one hundred twenty-day
10 period. The reservation may be renewed for one
11 additional period of one hundred twenty days, but may
12 not thereafter be reserved by the same or associated
13 persons within one calendar year of the expiration of the
14 last reservation period.

15 (b) The owner of a name reserved for a limited
16 liability company may transfer the reservation to another
17 person by delivering to the secretary of state a signed
18 notice of the transfer which states the name and address of
19 the transferee.

ARTICLE 2. ORGANIZATION.

§31B-2-203. Articles of organization.

§31B-2-211. Annual report for secretary of state.

§31B-2-203. Articles of organization.

1 (a) Articles of organization of a limited liability
2 company must set forth:

3 (1) The name of the company;

4 (2) The address of the initial designated office;

5 (3) The name and street address of the initial agent for
6 service of process;

7 (4) The name and address of each organizer and of
8 each member having authority to execute instruments on
9 behalf of the limited liability company;

10 (5) Whether the company is to be a term company
11 and, if so, the term specified;

12 (6) Whether the company is to be manager-managed,
13 and, if so, the name and address of each initial manager;
14 and

15 (7) Whether one or more of the members of the
16 company are to be liable for its debts and obligations
17 under section 3-303(c).

18 (b) Articles of organization of a limited liability
19 company may set forth:

20 (1) Provisions permitted to be set forth in an operating
21 agreement; or

22 (2) Other matters not inconsistent with law.

23 (c) Articles of organization of a limited liability
24 company may not vary the nonwaivable provisions of
25 section 1-103(b). As to all other matters, if any provision
26 of an operating agreement is inconsistent with the articles
27 of organization:

28 (1) The operating agreement controls as to managers,
29 members and members' transferees; and

30 (2) The articles of organization control as to persons
31 other than managers, members and their transferees who
32 reasonably rely on the articles to their detriment.

§31B-2-211. Annual report for secretary of state.

1 (a) A limited liability company, and a foreign limited
2 liability company authorized to transact business in this
3 state, shall deliver to the secretary of state for filing an
4 annual report that sets forth:

5 (1) The name of the company and the state or country
6 under whose law it is organized;

7 (2) The address of its designated office and the name
8 and address of its agent for service of process in this state;

9 (3) The address of its principal office; and

10 (4) The names and business addresses of any
11 managers and the name and address of each member
12 having authority to execute instruments on behalf of the
13 limited liability company.

14 (b) Information in an annual report must be current as
15 of the date the annual report is signed on behalf of the
16 limited liability company.

17 (c) The first annual report must be delivered to the
18 secretary of state between the first day of January and the
19 first day of April of the year following the calendar year
20 in which a limited liability company was organized or a
21 foreign company was authorized to transact business.
22 Subsequent annual reports must be delivered to the
23 secretary of state between the first day of January and the
24 first day of April of the ensuing calendar years.

25 (d) If an annual report does not contain the
26 information required in subsection (a) of this section, the
27 secretary of state shall promptly notify the reporting
28 limited liability company or foreign limited liability
29 company and return the report to it for correction. If the
30 report is corrected to contain the information required in
31 subsection (a) of this section and delivered to the secretary
32 of state within thirty days after the effective date of the
33 notice, it is timely filed.

ARTICLE 10. FOREIGN LIMITED LIABILITY COMPANIES.

§31B-10-1002. Application for certificate of authority.

1 (a) A foreign limited liability company may apply for
2 a certificate of authority to transact business in this state
3 by delivering an application to the secretary of state for
4 filing, together with a fee in the amount of one hundred
5 fifty dollars. The application must set forth:

6 (1) The name of the foreign company or, if its name is
7 unavailable for use in this state, a name that satisfies the
8 requirements of section 10-1005;

9 (2) The name of the state or country under whose law
10 it is organized;

11 (3) The street address of its principal office;

12 (4) The name and address of each member having
13 authority to execute instruments on behalf of the limited
14 liability company;

15 (5) The address of its initial designated office in this
16 state;

17 (6) The name and street address of its initial agent for
18 service of process in this state;

19 (7) Whether the duration of the company is for a
20 specified term and, if so, the period specified;

21 (8) Whether the company is manager-managed, and,
22 if so, the name and address of each initial manager; and

23 (9) Whether the members of the company are to be
24 liable for its debts and obligations under a provision
25 similar to section 3-303(c).

26 (b) A foreign limited liability company shall deliver
27 with the completed application a certificate of existence or

28 a record of similar import authenticated by the secretary
 29 of state or other official having custody of company
 30 records in the state or country under whose law it is
 31 organized.

CHAPTER 47. REGULATION OF TRADE.

Article

8 . Trade Names

9 . Uniform Limited Partnership Act.

9A. Voluntary Associations and Business Trusts.

ARTICLE 8. TRADE NAMES.

§47-8-4. Corporations, associations, limited partnerships, limited liability partnerships, and limited liability companies not to conduct business under assumed name without certificate of trade name; application; issuance of certificate of trade name.

§47-8-5. Penalty for violations.

§47-8-4. Corporations, associations, limited partnerships, limited liability partnerships, and limited liability companies not to conduct business under assumed name without certificate of trade name; application; issuance of certificate of trade name.

1 (a) No business entity organized as a corporation,
 2 limited partnership, limited liability partnership, limited
 3 liability company, business trust or voluntary association
 4 required to register with the secretary of state in order to
 5 conduct business within the state may conduct or transact
 6 any business in this state under any assumed name, or
 7 under any designation, name or style, corporate or
 8 otherwise, other than the name established by the original
 9 certificate establishing the business entity or by an
 10 amendment thereto, unless the business entity files in the
 11 office of the secretary of state an application for
 12 registration of trade name. The application shall set forth:

13 (1) The name under which the business entity is
 14 organized and registered;

15 (2) The name under which the business of such
 16 business entity is, or is to be, conducted or transacted upon
 17 approval of the application, which name must be
 18 distinguishable from the name of any other corporation,
 19 limited partnership, limited liability partnership, limited
 20 liability company, business trust or voluntary association,

21 and from any name reserved or registered for any of those
22 business entities;

23 (3) The address of the principal office within the state
24 or, if no office is maintained within the state, the address
25 of the principal office in the state in which the business
26 entity is established; and

27 (4) The name, title and signature of a person having
28 authority to make the application.

29 The secretary of state shall grant a certificate of
30 registration to any applicant who has met the requirements
31 of this subsection. A new certificate of registration is to be
32 filed if the business entity desires to conduct or transact
33 any business in this state under any other assumed name
34 not on file in the office of the secretary of state.

35 (b) Two executed originals of the application for trade
36 name registration shall be delivered to the secretary of
37 state. If the filing officer finds that the application for
38 trade name registration conforms to law, he or she shall,
39 when all fees have been paid as prescribed by law: (i)
40 Endorse on each of the originals the word "filed" and the
41 month, day and year of the filing; (ii) file one of the
42 originals; and (iii) issue to the applicant the certificate of
43 registration of trade name with the other original attached.

44 (c) Upon discontinuing the use of a registered trade
45 name the certificate of registration of trade name shall be
46 withdrawn by filing a certificate of withdrawal with the
47 office of the secretary of state setting forth the name to be
48 discontinued, the real name, the address of the party
49 transacting business and the date upon which the original
50 certificate of registration of trade name was filed.

51 (d) Any corporation authorized to transact business in
52 this state shall procure an amended certificate of
53 incorporation in the event it changes its corporate name
54 by filing articles of amendment with the office of the
55 secretary of state as provided in article one, chapter
56 thirty-one of this code.

57 (e) A domestic business entity having its principal
58 office within the state shall file a certified copy of any
59 certificate of trade name with the clerk of the county
60 commission of the county in which the principal office is
61 located. A foreign business entity having its principal
62 office outside the state shall file a certified copy of any

63 such certificate with the clerk of the county commission of
64 a county in which its principal business is transacted.

65 (f) The secretary of state shall keep an alphabetical
66 index by trade name of all certificates issued under this
67 section.

68 (g) Any corporation registering a trade name pursuant
69 to the provisions of this section is subject to the limitations
70 set forth in subsection (c), section eleven, article one,
71 chapter thirty-one of this code regarding use of the words
72 "engineer", "engineers", "engineering", or any combination
73 thereof.

74 (h) Any limited liability company registering a trade
75 name pursuant to the provisions of this section is subject
76 to the limitations set forth in section one hundred five,
77 article one, chapter thirty-one-b of this code.

§47-8-5. Penalty for violations.

1 Any individual, sole proprietorship, general
2 partnership, corporation, limited partnership, limited
3 liability partnership, limited liability company, business
4 trust or voluntary association or other person owning,
5 carrying on, conducting or transacting business as
6 aforesaid who willfully fails to comply with the provisions
7 of section two or four of this article shall be guilty of a
8 misdemeanor and, upon conviction thereof, shall be fined
9 not less than twenty-five nor more than one hundred
10 dollars, or imprisoned in the county jail for a term not
11 exceeding thirty days, or both fined and imprisoned.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-2. Name of limited partnership.

§47-9-3. Reservation of name.

§47-9-51. Registration of name of foreign limited partnership.

§47-9-2. Name of limited partnership.

1 The name of each limited partnership as set forth in its
2 certificate of limited partnership:

3 (1) Shall contain the words "limited partnership," or
4 the abbreviation "Ltd. Partnership," "LP" or "L.P.";

5 (2) May not contain the name of a limited partner
6 unless: (i) It is also the name of a general partner or the
7 corporate name of a corporate general partner; or (ii) the

8 business of the limited partnership had been carried on
9 under the name before the admission of that limited
10 partner;

11 (3) May not be the same as, and must be
12 distinguishable from, the name of any corporation, limited
13 partnership, limited liability partnership, or limited liability
14 company organized under the laws of this state or licensed
15 or registered as a foreign corporation, limited partnership,
16 limited liability partnership, or limited liability company
17 in this state; and

18 (4) May not include the words "engineer", "engineers",
19 "engineering" or any combination of those words unless
20 the purpose of the corporation is to practice professional
21 engineering as defined in article thirteen, chapter thirty of
22 this code, as amended, and one or more of the
23 incorporators is a registered professional engineer as
24 defined therein.

§47-9-3. Reservation of name.

1 (a) The exclusive right to the use of a name may be
2 reserved by:

3 (1) Any person intending to organize a limited
4 partnership under this article and to adopt that name;

5 (2) Any domestic limited partnership or any foreign
6 limited partnership registered in this state which, in either
7 case, intends to adopt that name;

8 (3) Any foreign limited partnership intending to
9 register in this state and adopt that name; and

10 (4) Any person intending to organize a foreign
11 limited partnership and intending to have it registered in
12 this state and adopt that name.

13 (b) The reservation shall be made by filing with the
14 secretary of state an application, executed by the applicant,
15 to reserve a specified name along with the fee prescribed
16 by section two, article one, chapter fifty-nine of this code.
17 If the secretary of state finds that the name is available for
18 use by a domestic or foreign limited partnership, he shall
19 reserve that name for the exclusive use of the applicant for

20 a period of one hundred twenty days. The reservation
 21 may be renewed for one additional period of one hundred
 22 twenty days, but may not thereafter be reserved by the
 23 same or associated persons within one calendar year of the
 24 expiration of the last reservation period. The right to the
 25 exclusive use of a reserved name may be transferred to
 26 any other person by filing in the office of the secretary of
 27 state a notice of the transfer, executed by the applicant for
 28 whom the name was reserved and specifying the name and
 29 address of the transferee.

§47-9-51. Registration of name of foreign limited partnership.

1 A foreign limited partnership may register with the
 2 secretary of state under any name, whether or not it is the
 3 name under which it is registered in its state of
 4 organization, that could be registered by a domestic
 5 limited partnership under the provisions of section two of
 6 this article.

ARTICLE 9A. VOLUNTARY ASSOCIATIONS AND BUSINESS TRUSTS.

§47-9A-1. Right to acquire and dispose of property; execution of deeds and other writings.

§47-9A-2. Application for registration of business trust; issuance of certificate of business trust; recording of certificate in county.

§47-9A-3. Filing of voluntary association; issuance of certificate of voluntary association; recordation in county.

§47-9A-4. Application of laws relating to corporations; name of business trust or voluntary association; adoption and use of trade name and seal; amendment of declaration, articles or agreement; change of agent for service of process, trustees, and members; dissolution; filing.

§47-9A-5. Providing for use of trade names; acknowledgment of deeds and other writings.

§47-9A-6. Validation of deeds and other writings heretofore executed.

§47-9A-7. Repeal of conflicting acts; severability.

§47-9A-1. Right to acquire and dispose of property; execution of deeds and other writings.

1 Any persons who are now or who have heretofore
 2 been voluntarily associated together for the transaction or

3 doing of business under and pursuant to the terms and
4 provisions of a declaration of trust or articles or agreement
5 of association, commonly designated as a Massachusetts
6 trust or business trust, or any other lawful voluntary
7 association by whatever name known, may purchase,
8 acquire, hold, deal in, sell, lease, convey, exchange, pledge,
9 mortgage and encumber any real estate or personal
10 property or interest therein within this state, and may
11 execute all deeds, leases, contracts, or other instruments in
12 writing with respect to real estate or personal property or
13 interest therein as may be necessary or required, either in
14 the name or names of the trustees for the time being
15 designated in such declaration, articles or agreement, or
16 their successors, or in the name or names of another
17 person or persons designated in such declaration, articles
18 or agreement, or by a descriptive, assumed or trade name,
19 when signed by a duly authorized officer or officers
20 thereof, all as may be provided for and stated in such
21 declaration, articles or agreement: *Provided*, That such
22 association or trust shall have qualified to do business in
23 West Virginia, as hereinafter provided for in sections two
24 and three of this article.

**§47-9A-2. Application for registration of business trust;
issuance of certificate of business trust;
recording of certificate in county.**

1 (a) For the purposes of this article, a "business trust"
2 is any trust organized for the purpose of conducting
3 business and commonly designated as a Massachusetts
4 trust.

5 (b) Any business trust organized in this state shall file
6 with secretary of state: (1) Two executed original copies of
7 an application for registration; and (2) two executed
8 original copies of the declaration, articles or agreement of
9 trust creating the business trust.

10 (c) Any business trust organized outside this state and
11 operating within this state shall file with the secretary of
12 state: (1) Two executed original copies of an application
13 for registration; (2) two executed original copies of the
14 declaration, articles or agreement of trust creating the
15 business trust as recorded in the state or country of origin
16 of the business trust; and (3) a statement or certificate

17 from the proper officer of the state or country of origin
18 that the business trust is in good standing.

19 (d) An application for registration shall set forth:

20 (1) The name of the business trust;

21 (2) If organized within the state, a statement that it is a
22 West Virginia business trust, or if organized outside the
23 state, the state in which it was organized and the formation
24 date of the business trust;

25 (3) The purpose or purposes for which the business
26 trust is organized;

27 (4) The address of its principal office;

28 (5) The name and address of the person to whom
29 notice of process may be sent;

30 (6) The names and addresses of all trustees having
31 authority to act on behalf of the business trust; and

32 (7) A statement reflecting the business trust's consent
33 to and recognition of the application to the business trust
34 of the law of this state with respect to corporations.

35 (e) An application for registration shall contain the
36 notarized signature of a trustee of the business trust.

37 (f) If the secretary of state determines that an
38 application for registration has been properly filed in
39 complete form and that the fee prescribed in section two,
40 article one, chapter fifty-nine of this code has been paid,
41 he or she shall stamp on each of the two executed original
42 copies of the application the word "Filed" and the month,
43 day and year of the filing. The secretary of state shall
44 then issue a certificate of business trust to the applicant
45 showing the applicant to be duly authorized and qualified
46 to do business in this state as a business trust, to which he
47 or she shall affix one of the stamped original copies of the
48 application. The secretary of state shall file the other
49 stamped original copy of the application for its records.

50 (g) A business trust shall file its certificate of business
51 trust, together with a copy of its declaration, articles or
52 agreement creating the business trust, in the office of the
53 clerk of the county commission of each county in this

54 state in which its business is or will be conducted or in
55 which it will purchase, acquire, hold, sell, lease, convey,
56 exchange, pledge, mortgage, encumber or otherwise
57 dispose of real or personal property or interests therein.

**§47-9A-3. Filing of voluntary association; issuance of
certificate of voluntary association; recordation
in county.**

1 (a) For purposes of this article, a “voluntary
2 association” is any association organized for the purpose
3 of conducting business in this state, but does not include
4 an organization formed as an unincorporated nonprofit
5 association under the provisions of article eleven, chapter
6 thirty-six of this code.

7 (b) Any voluntary association organized in this state
8 shall file with secretary of state: (1) Two executed original
9 copies of an application for registration; and (2) two
10 executed original copies of the agreement of association
11 creating the voluntary association (if such an agreement
12 exists apart from the application for registration itself).

13 (c) Any voluntary association organized outside this
14 state and operating within this state shall file with the
15 secretary of state: (1) Two executed original copies of an
16 application for registration; (2) two executed original
17 copies of the agreement of association creating the
18 voluntary association; and (3) a statement or certificate
19 from the proper officer of the state or country of origin
20 that the voluntary association is in good standing.

21 (d) An application for registration shall set forth:

22 (1) The name of the voluntary association;

23 (2) The physical address of the voluntary association;

24 (3) The mailing address of the voluntary association, if
25 different from the physical address;

26 (4) The name and address of the person to whom
27 notice of process may be sent;

28 (5) Whether the voluntary association is organized for
29 profit or as a nonprofit voluntary association;

30 (6) The purpose or purposes for which the voluntary
31 association is formed;

32 (7) The full names and addresses of one or more of
33 the organizers of the voluntary association;

34 (8) The full names and addresses of no fewer than two
35 officers, owners or members of the voluntary association
36 who have signatory authority for the association;

37 (9) Any additional statements as may be required for
38 the type of business to be conducted; and

39 (10) A statement reflecting the voluntary association's
40 consent to and recognition of the application of the law of
41 this state with respect to corporations to the voluntary
42 association.

43 (e) An application for registration shall contain the
44 notarized signature of at least one organizer or member of
45 the voluntary association.

46 (f) If the secretary of state determines that an
47 application for registration has been properly filed in
48 complete form and that the fee prescribed in section two,
49 article one, chapter fifty-nine of this code has been paid,
50 he or she shall stamp on each of the two original copies of
51 the application for registration the word "Filed" and the
52 month, day and year of the filing. The secretary of state
53 shall then issue a certificate of voluntary association to the
54 applicant showing the applicant to be duly authorized and
55 qualified to do business in this state as a voluntary
56 association, to which he or she shall affix one of the
57 stamped original copies of the application. The secretary
58 of state shall file the other stamped original copy of the
59 application for its records.

60 (g) A voluntary association shall file its certificate of
61 voluntary association, together with a copy of the
62 agreement of association creating the voluntary
63 association (if any), in the office of the clerk of the county
64 commission of the county or counties of this state in
65 which its business is or will be conducted or in which it
66 will purchase, acquire, hold, sell, lease, convey, exchange,
67 pledge, mortgage, encumber or otherwise dispose of real
68 or personal property or interests therein.

§47-9A-4. Application of laws relating to corporations; name of business trust or voluntary association; adoption and use of trade name and seal; amendment of declaration, articles or agreement; change of agent for service of process, trustees, and members; dissolution; filing.

1 (a) Unless otherwise specifically provided in this
2 article, any business trust or voluntary association
3 conducting business in this state is subject to the laws of
4 this state with respect to corporations, including laws
5 relating to license fees and all other taxes, to the extent
6 such laws are applicable.

7 (b) The name of any business trust or voluntary
8 association applying for registration shall meet the
9 requirements for corporate names set forth in section
10 eleven, article one, chapter thirty-one of this code, except
11 that the name shall not contain the words "incorporated,"
12 "corporation," "limited," or any abbreviation of these
13 terms.

14 (c) Any business trust or voluntary association may
15 use a trade name upon complying with the provisions of
16 section four, article eight, chapter forty-seven of this code.
17 Any business trust or voluntary association may adopt and
18 use a common seal.

19 (d) Upon the adoption of an amendment to the
20 declaration, articles or agreement of trust of a business
21 trust or the agreement of association of a voluntary
22 association, the business trust or voluntary association shall
23 file two executed original copies of the amendment,
24 containing the notarized signature of at least one trustee of
25 the business trust or at least one organizer or member of
26 the voluntary association, with the office of the secretary
27 of state and with the office of the clerk of the county
28 commission of each county in which the declaration,
29 articles or agreement of trust or the agreement of
30 association has been filed.

31 (e) Upon any change of trustees, organizers, members
32 or other persons previously recorded as having authority
33 to act on behalf of the business trust or voluntary
34 association, or upon any change of the agent of the

35 business trust or voluntary association for service of
36 process, a business trust or voluntary association shall file
37 notice of the change with the secretary of state.

38 (f) Upon the determination of the majority of trustees
39 of a business trust or a majority of members of a
40 voluntary association that the business trust or voluntary
41 association shall be dissolved, the business trust or
42 voluntary association shall file with the secretary of state a
43 statement of intent to dissolve containing the notarized
44 signature of at least one trustee of the business trust or at
45 least one organizer or member of the voluntary
46 association. After all debts, liabilities and obligations of
47 the business trust or voluntary association have been paid
48 and discharged, the business trust or voluntary association
49 shall distribute all of the remaining assets of the business
50 trust or voluntary association and file articles of
51 dissolution with the secretary of state in the manner
52 provided for corporations in section thirty-nine, article
53 one, chapter thirty-one of this code. Upon verification by
54 the appropriate state agencies that the business trust or
55 voluntary association has paid all taxes, assessments and
56 fees due to the state, the secretary of state shall issue a
57 certificate of dissolution to the business trust or voluntary
58 association.

59 (g) A business trust or voluntary association organized
60 outside the state and registered to do business within this
61 state may withdraw from the state in the manner provided
62 for corporations in section sixty, article one, chapter
63 thirty-one of this code.

64 (h) No document required to be filed by this section
65 shall be filed with the secretary of state unless the trustee
66 of the business trust or the organizer or member of the
67 voluntary association is currently authorized as such and
68 the secretary of state has on file a document which
69 identifies such trustee, organizer or member, or unless the
70 business trust or voluntary association attaches to the
71 document to be filed appropriate documentation showing
72 that the person signing the document is a current trustee,
73 organizer or member or is otherwise authorized to sign the
74 document on behalf of a current trustee, organizer or
75 member of the business trust or voluntary association. For
76 purposes of this subsection, the term "appropriate

77 documentation” means: (1) A notice of change filed
78 pursuant to subsection (e) of this section; (2) a court order
79 reflecting the identity of the current trustees, organizers or
80 members or the authorization of any person to act for any
81 trustee, organizer or member; or (3) any other legally
82 authorized document assigning to the person signing the
83 document clear authority to execute or verify documents
84 on behalf of the business trust or voluntary association.

§47-9A-5. Providing for use of trade names; acknowledgment of deeds and other writings.

1 Any declaration, articles or agreement of trust of a
2 business trust and any agreement of association of a
3 voluntary association which provides for the use of a trade
4 name shall authorize and designate or shall contain
5 provisions for the authorization or designation of persons
6 by whom deeds, leases, contracts and other written
7 instruments shall be executed. All such deeds, leases,
8 contracts and other instruments in writing shall be deemed
9 to be properly acknowledged for the purposes of
10 recordation if acknowledged in the form provided by
11 statute for acknowledgments by corporations, or, if
12 executed by trustees or other persons, then in the form
13 provided by statute therefor.

§47-9A-6. Validation of deeds and other writings heretofore executed.

1 All such deeds, leases, contracts and other written
2 instruments with respect to real or personal property or
3 any interest therein within this state heretofore made and
4 delivered by any business trust or voluntary association
5 which comply with the requirements of this article are
6 hereby expressly validated.

§47-9A-7. Repeal of conflicting acts; severability.

1 All acts or parts of acts in conflict with this article are
2 hereby repealed.

3 The provisions of this article shall be construed to be
4 severable and if any are held unconstitutional or otherwise
5 invalid, such invalidity or unconstitutionality shall not
6 affect the operation of the remaining provisions.

CHAPTER 76

(H. B. 4692—By Delegates Michael, Doyle and Facemyer)

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reducing the maximum tax credits available for qualified West Virginia capital companies and deleting restrictions requiring that the authority only accept applications from those companies which certify that their entire capital base will be invested in one or more small business investment corporations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-8. Tax credits.

1 (a) The total amount of tax credits authorized for a
2 single qualified company may not exceed two million
3 dollars. Capitalization of the company may be increased
4 pursuant to rule of the authority.

5 (b) The total credits authorized by the authority for all
6 companies may not exceed a total of ten million dollars
7 each fiscal year: *Provided*, That for the fiscal year
8 beginning on the first day of July, one thousand nine
9 hundred ninety-seven, the total credits authorized for all
10 companies may not exceed a total of five million five
11 hundred thousand dollars: *Provided, however*, That for
12 the fiscal year beginning on the first day of July, one
13 thousand nine hundred ninety-eight, the total credits
14 authorized for all companies may not exceed a total of six
15 million dollars: *Provided further*, That the capital base of
16 any such qualified company shall be invested in
17 accordance with the provisions of this article. The

18 authority shall allocate these credits to qualified
19 companies in the order that said companies are qualified.

20 (c) Any investor, including an individual, partnership
21 or corporation who makes a capital investment in a
22 qualified West Virginia capital company, is entitled to a
23 tax credit equal to fifty percent of the investment, except
24 as otherwise provided in this section or in this article. The
25 credit allowed by this article shall be taken after all other
26 credits allowed by chapter eleven of this code. It shall be
27 taken against the same taxes and in the same order as set
28 forth in subsections (c) through (i), inclusive, section five,
29 article thirteen-c, chapter eleven of this code. The credit
30 for investments by a partnership or by a corporation
31 electing to be treated as a Subchapter S corporation may
32 be divided pursuant to election of partners or
33 shareholders.

34 (d) The tax credit allowed under this section is to be
35 credited against the taxpayer's tax liability for the taxable
36 year in which the investment in a qualified West Virginia
37 capital company is made. If the amount of the tax credit
38 exceeds the taxpayer's tax liability for the taxable year, the
39 amount of the credit which exceeds the tax liability for the
40 taxable year may be carried to succeeding taxable years
41 until used in full, or until forfeited: *Provided, That:* (i)
42 Tax credits may not be carried forward beyond fifteen
43 years; and (ii) tax credits may not be carried back to prior
44 taxable years. Any tax credit remaining after the fifteenth
45 taxable year is forfeited.

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

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

53 (g) Notwithstanding any provision in this code to the
54 contrary, the tax commissioner shall publish in the state
55 register the name and address of every taxpayer, and the
56 amount, by category, of any credit asserted under this
57 article. The categories by dollar amount of credit received
58 shall be as follows:

- 59 (1) More than \$1.00, but not more than \$50,000;
 60 (2) More than \$50,000, but not more than \$100,000;
 61 (3) More than \$100,000, but not more than \$250,000;
 62 (4) More than \$250,000, but not more than \$500,000;
 63 (5) More than \$500,000, but not more than
 64 \$1,000,000;
 65 (6) More than \$1,000,000.

CHAPTER 77

(S. B. 760—By Senators Craigo, Anderson, Bailey, Chafin, Helmick,
 Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe,
 Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 13, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article four, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the department of administration; general services division; regulation of parking on state-owned property; requiring the construction of a state capitol parking garage; creating special funds for the construction of a parking garage and maintenance and repair of the Morris square properties; and authorizing the relocation of the land division of the auditor's office.

Be it enacted by the Legislature of West Virginia:

That section five, article four, 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 4. GENERAL SERVICES DIVISION.

§5A-4-5. Regulation of parking on state-owned property in Charleston; construction of parking garage for general public; penalties; jurisdiction; creation of funds.

- 1 (a) It is the intent of the Legislature to provide a
 2 parking facility for the general public and to direct the

3 secretary of the department of administration to plan and
4 construct a parking garage at the state capitol complex
5 that will provide sufficient and additional parking for the
6 general public.

7 (b) The secretary may regulate the parking of motor
8 vehicles in accordance with the provisions of this section
9 with regard to the following state-owned property in the
10 city of Charleston, Kanawha County:

11 (1) The east side of Greenbrier street between
12 Kanawha boulevard and Washington street, east;

13 (2) The west side of California avenue between
14 Kanawha boulevard and Washington street, east;

15 (3) Upon the state-owned grounds upon which state
16 office building no. 3 is located;

17 (4) Upon the state-owned grounds which state office
18 building no. 4, 112 California avenue, is located;

19 (5) In the state-owned parking garage at 212
20 California avenue and upon the state-owned grounds upon
21 which such parking garage is located;

22 (6) Upon the state-owned property at Michigan
23 avenue and Virginia terrace; and

24 (7) Upon any other property now or hereafter owned
25 by the state and used for parking purposes in conjunction
26 with the state capitol or state office buildings numbers
27 three and four, including the Laidley field complex:
28 *Provided*, That the secretary shall present to the joint
29 committee on government and finance for its suggestions,
30 on or before the first day of July, one thousand nine
31 hundred ninety-eight, plans for the construction of a state
32 capitol parking garage to be constructed, on property
33 owned by the state or to be purchased by the state, no later
34 than the thirtieth day of June, one thousand nine hundred
35 ninety-nine. The submitted plans shall include proposals
36 for general public parking, including the estimated use
37 and cost; relocation of parking for official state vehicles;
38 and state employee parking, including the estimated use
39 and cost.

40 (c) The secretary shall propose rules for promulgation
41 respecting parking and to allocate parking spaces to
42 public officers and employees of the state upon all of the
43 property set forth in subsection (a) of this section:

44 *Provided*, That during sessions of the Legislature,
45 including regular, extended, extraordinary and interim
46 sessions, parking on the east side of Greenbrier street
47 between Kanawha boulevard and Washington street, east,
48 in the science and culture center parking lot, on the north
49 side of Kanawha boulevard between Greenbrier street and
50 California avenue, and on the west side of California
51 avenue between Kanawha boulevard and Washington
52 street, east, is subject to rules promulgated jointly by the
53 speaker of the House of Delegates and the president of the
54 Senate. Any person parking any vehicle contrary to the
55 rules promulgated under authority of this subsection is
56 subject to a fine of not less than one dollar nor more than
57 twenty-five dollars for each offense. In addition, the
58 secretary or the Legislature, as the case may be, may cause
59 the removal at owner expense of any vehicle that is parked
60 in violation of the rules. Magistrates in Kanawha County
61 have jurisdiction of all the offenses.

62 (d) The secretary may employ the persons as may be
63 necessary to enforce the parking rules promulgated under
64 the provisions of this section.

65 (e) There is created in the department of
66 administration a special fund to be named the "Parking
67 Garage Fund" in which shall be deposited funds that are
68 appropriated and funds from other sources to be used for
69 the construction and maintenance of a parking garage on
70 the state capitol complex.

71 (f) There is created in the department of
72 administration a special fund to be named the "Morris
73 Square Repair Fund" in which shall be deposited funds
74 that are appropriated and funds from other sources to be
75 used for maintenance and repairs to the Morris square
76 properties.

77 (g) The secretary shall include within the planning for
78 the buildings to be constructed or remodeled pursuant to
79 subsections (e) and (f) of this section, the location of the
80 land division of the auditor's office. The secretary shall
81 consult with the auditor in planning the relocation of the
82 land division of the auditor's office.

CHAPTER 78

(S. B. 761—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 12, 1998; 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 to distribution of proceeds from net terminal income of racetrack video lottery proceeds; funding of veterans memorial archives, restoration and maintenance of monuments; funding the construction and maintenance of a parking garage on the state capitol complex; and funding maintenance and repairs of the Morris square properties.

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.

- 1 (a) The commission shall provide to manufacturers, or
- 2 applicants applying for a manufacturer's permit, the
- 3 protocol documentation data necessary to enable the
- 4 respective manufacturer's video lottery terminals to

5 communicate with the commission's central computer for
6 transmitting auditing program information and for
7 activation and disabling of video lottery terminals.

8 (b) The gross terminal income of a licensed racetrack
9 shall be remitted to the commission through the electronic
10 transfer of funds. Licensed racetracks shall furnish to the
11 commission all information and bank authorizations
12 required to facilitate the timely transfer of moneys to the
13 commission. Licensed racetracks must provide the
14 commission thirty days' advance notice of any proposed
15 account changes in order to assure the uninterrupted
16 electronic transfer of funds. From the gross terminal
17 income remitted by the licensee to the commission, the
18 commission shall deduct an amount sufficient to
19 reimburse the commission for its actual costs and expenses
20 incurred in administering racetrack video lottery at the
21 licensed racetrack, and the resulting amount after such
22 deduction shall be the net terminal income. The amount
23 deducted for administrative costs and expenses of the
24 commission may not exceed four percent of gross
25 terminal income.

26 (c) Net terminal income shall be divided as set out in
27 this subsection. The licensed racetrack's share shall be in
28 lieu of all lottery agent commissions and is considered to
29 cover all costs and expenses required to be expended by
30 the licensed racetrack in connection with video lottery
31 operations. The division shall be made as follows:

32 (1) The commission shall receive thirty percent of net
33 terminal income, which shall be paid into the general
34 revenue fund of the state to be appropriated by the
35 Legislature;

36 (2) Fourteen percent of net terminal income at a
37 licensed racetrack shall be deposited in the special fund
38 established by the licensee, and used for payment of
39 regular purses in addition to other amounts provided for
40 in article twenty-three, chapter nineteen of this code;

41 (3) The county where the video lottery terminals are
42 located shall receive two percent of the net terminal
43 income;

44 (4) One half of one percent of net terminal income
45 shall be paid for and on behalf of all employees of the
46 licensed racing association by making a deposit into a
47 special fund to be established by the racing commission to
48 be used for payment into the pension plan for all
49 employees of the licensed racing association;

50 (5) The West Virginia thoroughbred development
51 fund created under section thirteen-b, article twenty-three,
52 chapter nineteen of this code and the West Virginia
53 greyhound breeding development fund created under
54 section ten, article twenty-three, chapter nineteen of this
55 code shall receive an equal share of a total of not less than
56 one and one-half percent of the net terminal income:
57 *Provided*, That for any racetrack which does not have a
58 breeder's program supported by the thoroughbred
59 development fund or the greyhound breeding
60 development fund, the one and one-half percent provided
61 for in this subdivision shall be deposited in the special
62 fund established by the licensee and used for payment of
63 regular purses, in addition to other amounts provided for
64 in subdivision (2) of this subsection and article twenty-
65 three, chapter nineteen of this code;

66 (6) The West Virginia thoroughbred breeders classic
67 shall receive one percent of the net terminal income which
68 shall be used for purses. The moneys shall be deposited
69 in the separate account established for the classic under
70 section thirteen, article twenty-three, chapter nineteen of
71 this code;

72 (7) A licensee shall receive forty-seven percent of net
73 terminal income;

74 (8) The tourism promotion fund established in section
75 nine, article one, chapter five-b of this code shall receive
76 three percent of the net terminal income; and

77 (9) The veterans memorial program shall receive one
78 percent of the net terminal income until sufficient moneys
79 have been received to complete the veterans memorial on
80 the grounds of the state capitol complex in Charleston,
81 West Virginia. The moneys shall be deposited in the state
82 treasury in the division of culture and history special fund
83 created under section three, article one-i, chapter
84 twenty-nine of this code: *Provided*, That only after
85 sufficient moneys have been deposited in the fund to
86 complete the veterans memorial and to pay in full the
87 annual bonded indebtedness on the veterans memorial, not
88 more than twenty thousand dollars of the one percent of
89 net terminal income provided for in this subdivision shall
90 be deposited into a special revenue fund in the state
91 treasury, to be known as the "John F. 'Jack' Bennett
92 Fund". The moneys in this fund shall be expended by the
93 division of veterans affairs to provide for the placement of
94 markers for the graves of veterans in perpetual cemeteries
95 in this state. The division of veterans affairs shall
96 promulgate legislative rules pursuant to the provisions of
97 article three, chapter twenty-nine-a of this code specifying
98 the manner in which the funds are spent, determine the
99 ability of the surviving spouse to pay for the placement of
100 the marker, and setting forth the standards to be used to
101 determine the priority in which the veterans grave markers
102 will be placed in the event that there are not sufficient
103 funds to complete the placement of veterans grave
104 markers in any one year, or at all. Upon payment in full
105 of the bonded indebtedness on the veteran's memorial,
106 one hundred thousand dollars of the one percent of net
107 terminal income provided for in this subdivision shall be
108 deposited in the special fund in the division of culture and
109 history created under section three, article one-i, chapter
110 twenty-nine of this code and be expended by the division
111 of culture and history to establish a West Virginia veterans
112 memorial archives within the cultural center to serve as a
113 repository for the documents and records pertaining to the
114 veterans memorial, to restore and maintain the monuments
115 and memorial on the capitol grounds, and not more than
116 twenty thousand dollars be deposited in the "John F.

117 'Jack' Bennett Fund": *Provided, however,* That five
118 hundred thousand dollars of the one percent of net
119 terminal income shall be deposited in the state treasury in
120 a special fund of the department of administration, created
121 under section five, article four, chapter five-a of this code
122 to be used for construction and maintenance of a parking
123 garage on the state capitol complex: *Provided further,*
124 That the remainder of the one percent of net terminal
125 income shall be deposited in a special fund of the
126 department of administration created under section five,
127 article four, chapter five-a of this code to be used to
128 maintain and make repairs to the Morris square properties.

129 (d) Each licensed racetrack shall maintain in its
130 account an amount equal to or greater than the gross
131 terminal income from its operation of video lottery
132 machines, to be electronically transferred by the
133 commission on dates established by the commission.
134 Upon a licensed racetrack's failure to maintain this
135 balance, the commission may disable all of a licensed
136 racetrack's video lottery terminals until full payment of all
137 amounts due is made. Interest shall accrue on any unpaid
138 balance at a rate consistent with the amount charged for
139 state income tax delinquency under chapter eleven of this
140 code, which interest shall begin to accrue on the date
141 payment is due to the commission.

142 (e) The commission's central control computer shall
143 keep accurate records of all income generated by each
144 video lottery terminal. The commission shall prepare and
145 mail to the licensed racetrack a statement reflecting the
146 gross terminal income generated by the licensee's video
147 lottery terminals. Each licensed racetrack must report to
148 the commission any discrepancies between the
149 commission's statement and each terminal's mechanical
150 and electronic meter readings. The licensed racetrack is
151 solely responsible for resolving income discrepancies
152 between actual money collected and the amount shown on
153 the accounting meters or on the commission's billing
154 statement.

155 (f) Until an accounting discrepancy is resolved in
156 favor of the licensed racetrack, the commission may make
157 no credit adjustments. For any video lottery terminal

158 reflecting a discrepancy, the licensed racetrack shall
159 submit to the commission the maintenance log which
160 includes current mechanical meter readings and the audit
161 ticket which contains electronic meter readings generated
162 by the terminal's software. If the meter readings and the
163 commission's records cannot be reconciled, final
164 disposition of the matter shall be determined by the
165 commission. Any accounting discrepancies which cannot
166 be otherwise resolved shall be resolved in favor of the
167 commission.

168 (g) Licensed racetracks shall remit payment by mail if
169 the electronic transfer of funds is not operational or the
170 commission notifies licensed racetracks that remittance by
171 this method is required. The licensed racetracks shall
172 report an amount equal to the total amount of cash
173 inserted into each video lottery terminal operated by a
174 licensee, minus the total value of game credits which are
175 cleared from the video lottery terminal in exchange for
176 winning redemption tickets, and remit such amount as
177 generated from its terminals during the reporting period.
178 The remittance shall be sealed in a properly addressed and
179 stamped envelope and deposited in the United States mail
180 no later than noon on the day when the payment would
181 otherwise be completed through electronic funds transfer.

182 (h) Licensed racetracks may, upon request, receive
183 additional reports of play transactions for their respective
184 video lottery terminals and other marketing information
185 not considered confidential by the commission. The
186 commission may charge a reasonable fee for the cost of
187 producing and mailing any report other than the billing
188 statements.

189 (i) The commission has the right to examine all
190 accounts, bank accounts, financial statements and records
191 in a licensed racetrack's possession, under its control or in
192 which it has an interest and the licensed racetrack must
193 authorize all third parties in possession or in control of the
194 accounts or records to allow examination of any of those
195 accounts or records by the commission.

CHAPTER 79

(S. B. 752—By Senators Wooton, Ball, Bowman, Dittmar, Hunter, Kessler, Oliverio, Ross, Schoonover, Snyder, White, Deem and Kimble)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article five, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections fifteen and fifteen-a, article two, chapter forty-eight of said code; to further amend said article by adding thereto a new section, designated section ten-c; to amend and reenact section thirty, article one-a, chapter forty-eight-a of said code; to amend and reenact section nine, article one-b of said chapter; to amend and reenact sections twenty-two, twenty-four, thirty-one, thirty-two, thirty-three, thirty-three-a, thirty-four, thirty-five, forty and forty-one, article two of said chapter; to further amend said article by adding thereto two new sections, designated sections twenty-four-a and forty-three; to amend and reenact sections one, two, three, four and five, article five of said chapter; to further amend said article by adding thereto two new sections, designated sections four-a and seven; to amend and reenact sections one and four, article six of said chapter; and to amend and reenact section twelve, article one, chapter fifty-seven of said code, all relating to child support and authorizing the state registrar of vital statistics to offer voluntary paternity establishment services; providing for parent education classes for parents of minor children when the parents are involved in actions for divorce, paternity, custody or separate maintenance; authorizing the child support enforcement division to file a motion for modification of a child support order; transferring health care coverage for a child to a health plan offered by the obligated parent's new employer; defining "support order"; establishing who may use and what information may be requested from the state and federal parent locator services; establishing the time for disbursement of child support collections; authorizing the child support enforcement division to redirect support

payments administratively where someone other than the custodial parent has physical custody; specifying the conditions under which the child support enforcement division may obtain consumer credit reports; providing for submission of information by parties to support proceedings to the state case registry; allowing enforcement of subpoenas issued by out-of-state agencies administering certain programs for child support enforcement; providing for development of a data match system with financial institutions for obtaining information regarding obligor depositors and for immunity from liability for financial institutions supplying such information; reporting of information regarding employment and income by an employer and specifying who has access to such information; providing for an administrative review and adjustment of child support orders which differ from the child support guidelines; prohibiting the release of information on the whereabouts of a protected party or child; providing the child support enforcement division and certain out-of-state agencies access to records of public and private entities for purposes of child support enforcement; recording social security numbers in certain family matters; providing procedures for administrative enforcement of child support orders through writs of execution, suggestions or suggestee executions on personal property; withholding from income of amounts payable as support; creating liens against real property for overdue child support; providing for release of real property liens upon satisfaction of the overdue support obligation; providing procedures for enforcing liens on real property for overdue child support; authorizing the circuit court to order one found in contempt for violating a child support order to work or to pay support in accordance with a plan approved by the child support enforcement division; authorizing the child support enforcement division to increase monthly support payments to secure overdue child support; restating that there is no right to trial by jury in a paternity proceeding; issuing temporary child support in paternity actions in cases of clear and convincing evidence of paternity; providing for admission into evidence of bills for testing as prima facie evidence in a paternity case without third-party testimony; and requiring full faith and credit be given to records and

proceedings in other jurisdictions in conformity with federal law.

Be it enacted by the Legislature of West Virginia:

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

Chapter

16. Public Health.

48. Domestic Relations.

48A. Enforcement of Family Obligations.

57. Evidence and Witness.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5. VITAL STATISTICS.

§16-5-5. Duties of state registrar of vital statistics; enforcement of article.

- 1 (a) The state registrar of vital statistics shall:
- 2 (1) Administer and enforce the provisions of this
- 3 article and all other applicable laws of this state and all
- 4 lawful rules and regulations adopted and promulgated
- 5 thereunder;

6 (2) Direct and supervise the statewide system of vital
7 statistics and the operation of the division of vital statistics,
8 and act as custodian of its records;

9 (3) Direct, supervise and control the activities of local
10 registrars and the activities of public officers in relation to
11 the operation of the vital statistics system and provide
12 them with the postage necessary for them to carry out
13 their duties under this article;

14 (4) Prescribe, provide and distribute, subject to the
15 rules and regulations promulgated by the board of health,
16 all forms necessary to carry out the provisions of this
17 article and of the rules and regulations adopted and
18 promulgated thereunder;

19 (5) Prepare and publish annual reports of vital
20 statistics of this state, and such other reports as may be
21 required by the director of the state health department;
22 and

23 (6) Offer voluntary paternity establishment services.

24 (b) The state registrar of vital statistics may delegate
25 such functions and duties as are hereby vested in him or
26 her to officers and employees of the division of vital
27 statistics and to local registrars as the state registrar may
28 deem necessary or expedient.

29 (c) The state registrar, either personally or by a duly
30 delegated representative, shall have authority to investigate
31 cases of irregularity or violation of law arising under the
32 provisions of this article, and all local registrars, deputy
33 local registrars and subregistrars shall aid him or her, upon
34 request, in such investigations. When he or she shall deem
35 it necessary, he or she shall report cases of violation of any
36 of the provisions of this article to the prosecuting attorney
37 of the county, with a statement of the facts and
38 circumstances. When any such case is reported to him or
39 her by the state registrar, the prosecuting attorney shall
40 forthwith initiate and promptly prosecute the necessary
41 court proceedings against the person or corporation
42 responsible for the alleged violation of law. Upon request

43 of the state registrar, the attorney general shall assist in the
44 enforcement of the provisions of this article.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-10c. Parent education classes.

§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate maintenance.

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

§48-2-10c. Parent education classes.

1 (a) A circuit court, or a judge thereof, may, by
2 administrative rule or order, and with the approval of the
3 supreme court of appeals, designate an organization or
4 agency to establish and operate education programs
5 designed for parents who have filed an action for divorce,
6 paternity, support or separate maintenance and who have
7 minor children. The education programs shall be
8 designed to instruct and educate parents about the effects
9 of divorce and custody disputes on their children and to
10 teach parents ways to help their children and minimize
11 their trauma.

12 (b) The circuit court may issue an order requiring
13 parties to an action for divorce, paternity, custody or
14 separate maintenance to attend parental education classes
15 established pursuant to subsection (a) of this section and
16 may, by order, establish sanctions for failure to attend.

17 (c) The circuit court may require that each person
18 attending a parental education class pay a fee, not to
19 exceed twenty-five dollars, to the clerk of such court to
20 defray the cost of materials and of hiring teachers:
21 *Provided*, That where it is determined that a party is
22 indigent and unable to pay for such classes, the court shall
23 waive the payment of the fee for such party. The clerk of
24 the circuit court shall, on or before the tenth day of each
25 month, transmit all fees collected under this subsection to
26 the state treasurer for deposit in the state treasury to the
27 credit of special revenue fund to be known as the
28 "parental education fund", which is hereby created. All

29 moneys collected and received under this subsection and
30 paid into the state treasury and credited to the "parental
31 education fund" shall be used by the administrative office
32 of the supreme court of appeals solely for reimbursing the
33 provider of parental education classes for the costs of
34 materials and of providing such classes. Such moneys
35 shall not be treated by the auditor and treasurer as part of
36 the general revenue of the state.

37 (d) The administrative office of the supreme court of
38 appeals shall submit a report to the joint committee on
39 government and finance summarizing the effectiveness of
40 any program of parent education no later than two years
41 from the initiation of the program.

**§48-2-15. Relief upon ordering divorce or annulment or
granting decree of separate maintenance.**

1 (a) Upon ordering a divorce or granting a decree of
2 separate maintenance, the court may require either party
3 to pay alimony in the form of periodic installments, or a
4 lump sum, or both, for the maintenance of the other party.
5 Payments of alimony are to be ordinarily made from a
6 party's income, but when the income is not sufficient to
7 adequately provide for those payments, the court may,
8 upon specific findings set forth in the order, order the
9 party required to make those payments to make them
10 from the corpus of his or her separate estate. An award of
11 alimony shall not be disproportionate to a party's ability to
12 pay as disclosed by the evidence before the court.

13 (b) Upon ordering the annulment of a marriage or a
14 divorce or granting of decree of separate maintenance, the
15 court may further order all or any part of the following
16 relief:

17 (1) The court may provide for the custody of minor
18 children of the parties, subject to such rights of visitation,
19 both in and out of the residence of the custodial parent or
20 other person or persons having custody, as may be
21 appropriate under the circumstances. In every action
22 where visitation is awarded, the court shall specify a
23 schedule for visitation by the noncustodial parent:
24 *Provided*, That with respect to any existing order which

25 provided for visitation but which does not provide a
26 specific schedule for visitation by the noncustodial parent,
27 upon motion of any party, notice of hearing and hearing,
28 the court shall issue an order which provides a specific
29 schedule of visitation by the noncustodial parent;

30 (2) When the action involves a minor child or children,
31 the court shall require either party to pay child support in
32 the form of periodic installments for the maintenance of
33 the minor children of the parties in accordance with
34 support guidelines promulgated pursuant to article one-b,
35 chapter forty-eight-a of this code. Payments of child
36 support are to be ordinarily made from a party's income,
37 but in cases when the income is not sufficient to
38 adequately provide for those payments, the court may,
39 upon specific findings set forth in the order, order the
40 party required to make those payments to make them
41 from the corpus of his or her separate estate;

42 (3) When the action involves a minor child or children,
43 the court shall provide for medical support for any minor
44 children in accordance with section fifteen-a of this article;

45 (4) As an incident to requiring the payment of
46 alimony or child support, the court may order either party
47 to continue in effect existing policies of insurance
48 covering the costs of health care and hospitalization of the
49 other party: *Provided*, That if the other party is no longer
50 eligible to be covered by such insurance because of the
51 granting of an annulment or divorce, the court may
52 require a party to substitute such insurance with a new
53 policy to cover the other party or may consider the
54 prospective cost of such insurance in awarding alimony to
55 be paid in periodic installments. Payments made to an
56 insurer pursuant to this subdivision, either directly or by a
57 deduction from wages, shall be deemed to be alimony or
58 installment payments for the distribution of marital
59 property, in such proportion as the court shall direct:
60 *Provided, however*, That if the court does not set forth in
61 the order that a portion of such payments is to be deemed
62 installment payments for the distribution of marital
63 property, then all such payments made pursuant to this
64 subdivision shall be deemed to be alimony: *Provided*

65 *further*, That the designation of insurance coverage as
66 alimony under the provisions of this subdivision shall not,
67 in and of itself, give rise to a subsequent modification of
68 the order to provide for alimony other than insurance for
69 covering the costs of health care and hospitalization;

70 (5) The court may grant the exclusive use and
71 occupancy of the marital home to one of the parties,
72 together with all or a portion of the household goods,
73 furniture and furnishings reasonably necessary for such
74 use and occupancy. Such use and occupancy shall be for
75 a definite period, ending at a specific time set forth in the
76 order, subject to modification upon the petition of either
77 party. Except in extraordinary cases supported by
78 specific findings set forth in the order granting relief, a
79 grant of the exclusive use and occupancy of the marital
80 home shall be limited to those situations when such use
81 and occupancy is reasonably necessary to accommodate
82 the rearing of minor children of the parties. The court
83 may require payments to third parties in the form of home
84 loan installments, land contract payments, rent, property
85 taxes and insurance coverage if the amount of such
86 coverage is reduced to a fixed monetary amount set forth
87 in the court's order. When such third party payments are
88 ordered, the court shall specify whether such payments or
89 portions of payments are alimony, child support, a partial
90 distribution of marital property or an allocation of marital
91 debt: *Provided*, That if the court does not set forth in the
92 order that a portion of such payments is to be deemed
93 child support or installment payments for the distribution
94 of marital property, then all such payments made pursuant
95 to this subdivision shall be deemed to be alimony. When
96 such third party payments are ordered, the court shall
97 specify whether such payments or portions of payments
98 are alimony, child support, a partial distribution of marital
99 property or an allocation of marital debt. If the payments
100 are not designated in an order and the parties have waived
101 any right to receive alimony, the court may designate the
102 payments upon motion by any party. Nothing contained
103 in this subdivision shall abrogate an existing contract
104 between either of the parties and a third party or affect the

105 rights and liabilities of either party or a third party under
106 the terms of such contract;

107 (6) As an incident to requiring the payment of
108 alimony, the court may grant the exclusive use and
109 possession of one or more motor vehicles to either of the
110 parties. The court may require payments to third parties
111 in the form of automobile loan installments or insurance
112 coverage if available at reasonable rates, and any such
113 payments made pursuant to this subdivision for the benefit
114 of the other party shall be deemed to be alimony or
115 installment payments for the distribution of marital
116 property, as the court may direct. Nothing contained in
117 this subdivision shall abrogate an existing contract
118 between either of the parties and a third party or affect the
119 rights and liabilities of either party or a third party under
120 the terms of such contract;

121 (7) When the pleadings include a specific request for
122 specific property or raise issues concerning the equitable
123 division of marital property as defined in section one of
124 this article, the court shall order such relief as may be
125 required to effect a just and equitable distribution of the
126 property and to protect the equitable interests of the
127 parties therein;

128 (8) Unless a contrary disposition is ordered pursuant
129 to other provisions of this section, then upon the motion
130 of either party, the court may compel the other party to
131 deliver to the moving party any of his or her separate
132 estate which may be in the possession or control of the
133 respondent party and may make such further order as is
134 necessary to prevent either party from interfering with the
135 separate estate of the other;

136 (9) When allegations of abuse have been proven, the
137 court shall enjoin the offending party from molesting or
138 interfering with the other, or otherwise imposing any
139 restraint on the personal liberty of the other or interfering
140 with the custodial or visitation rights of the other. Such
141 order may permanently enjoin the offending party from
142 entering the school, business or place of employment of
143 the other for the purpose of molesting or harassing the
144 other; or from contacting the other, in person or by

145 telephone, for the purpose of harassment or threats; or
146 from harassing or verbally abusing the other in a public
147 place;

148 (10) The court may order either party to take
149 necessary steps to transfer utility accounts and other
150 accounts for recurring expenses from the name of one
151 party into the name of the other party or from the joint
152 names of the parties into the name of one party. Nothing
153 contained in this subdivision shall affect the liability of the
154 parties for indebtedness on any such account incurred
155 before the transfer of such account.

156 (c) When an annulment or divorce is denied, the court
157 shall retain jurisdiction of the case and may order all or
158 any portion of the relief provided for in subsections (a)
159 and (b) of this section which has been demanded or
160 prayed for in the pleadings.

161 (d) When a divorce or annulment is granted in this
162 state upon constructive service of process and personal
163 jurisdiction is thereafter obtained of the defendant in such
164 case, the court may order all or any portion of the relief
165 provided for in subsections (a) and (b) of this section
166 which has been demanded or prayed for in the pleadings.

167 (e) After the entry of an order pursuant to the
168 provisions of this section, the court may revise the order
169 concerning the maintenance of the parties and enter a new
170 order concerning the same, as the circumstances of the
171 parties may require.

172 The court may also from time to time afterward, upon
173 motion of either of the parties and upon proper service,
174 revise such order to grant relief pursuant to subdivision
175 (9), subsection (b) of this section, and enter a new order
176 concerning the same, as the circumstances of the parties
177 and the benefit of children may require. The court may
178 also from time to time afterward, upon the motion of
179 either of the parties or other proper person having actual
180 or legal custody of the minor child or children of the
181 parties, revise or alter the order concerning the custody
182 and support of the children, and make a new order
183 concerning the same, issuing it forthwith, as the

184 circumstances of the parents or other proper person or
185 persons and the benefit of the children may require:
186 *Provided*, That all orders modifying child support shall be
187 in conformance with the requirements of support
188 guidelines promulgated pursuant to article one-b, chapter
189 forty-eight-a of this code: *Provided, however*, That an
190 order providing for child support payments may be
191 revised or altered for the reason, inter alia, that the existing
192 order provides for child support payments in an amount
193 that is less than eighty-five percent or more than one
194 hundred fifteen percent of the amount that would be
195 required to be paid under the child support guidelines
196 promulgated pursuant to the provisions of said section:
197 *Provided further*, That the child support enforcement
198 division may review a child support order and, if
199 appropriate, file a motion with the circuit court for
200 modification of the child support order pursuant to the
201 provisions of section thirty-five, article two, chapter forty-
202 eight-a of this code.

203 In granting relief under this subsection, the court may,
204 when other means are not conveniently available, alter any
205 prior order of the court with respect to the distribution of
206 marital property, if such property is still held by the
207 parties, and if necessary to give effect to a modification of
208 alimony, child support or child custody or necessary to
209 avoid an inequitable or unjust result which would be
210 caused by the manner in which the modification will affect
211 the prior distribution of marital property.

212 (f) When a separation agreement is the basis for an
213 award of alimony, the court, in approving the agreement,
214 shall examine the agreement to ascertain whether it clearly
215 provides for alimony to continue beyond the death of the
216 payor party or to cease in such event. When alimony is to
217 be paid pursuant to the terms of a separation agreement
218 which does not state whether the payment of alimony is to
219 continue beyond the death of the payor party or is to
220 cease, or when the parties have not entered into a
221 separation agreement and alimony is to be awarded, the
222 court shall specifically state as a part of its order whether
223 such payments of alimony are to be continued beyond the
224 death of the payor party or cease.

225 (g) When a separation agreement is the basis for an
226 award of alimony, the court, in approving the agreement,
227 shall examine the agreement to ascertain whether it clearly
228 provides for alimony to continue beyond the remarriage
229 of the payee party or to cease in such event. When
230 alimony is to be paid pursuant to the terms of a separation
231 agreement which does not state whether the payment of
232 alimony is to continue beyond the remarriage of the
233 payee party or is to cease, or when the parties have not
234 entered into a separation agreement and alimony is to be
235 awarded, the court shall specifically state as a part of its
236 order whether such payments of alimony are to be
237 continued beyond the remarriage of the payee party or
238 cease.

239 (h) In addition to the disclosure requirements set forth
240 in section thirty-three of this article, the court may order
241 accounts to be taken as to all or any part of marital
242 property or the separate estates of the parties and may
243 direct that the accounts be taken as of the date of the
244 marriage, the date upon which the parties separated or any
245 other time in assisting the court in the determination and
246 equitable division of property.

247 (i) In determining whether alimony is to be awarded,
248 or in determining the amount of alimony, if any, to be
249 awarded under the provisions of this section, the court
250 shall consider and compare the fault or misconduct of
251 either or both of the parties and the effect of such fault or
252 misconduct as a contributing factor to the deterioration of
253 the marital relationship. However, alimony shall not be
254 awarded when both parties prove grounds for divorce and
255 are denied a divorce, nor shall an award of alimony under
256 the provisions of this section be ordered which directs the
257 payment of alimony to a party determined to be at fault,
258 when, as a grounds granting the divorce, such party is
259 determined by the court:

260 (1) To have committed adultery; or

261 (2) To have been convicted for the commission of a
262 crime which is a felony, subsequent to the marriage if such
263 conviction has become final; or

264 (3) To have actually abandoned or deserted his or her
265 spouse for six months.

266 (j) Whenever under the terms of this section or section
267 thirteen of this article a court enters an order requiring the
268 payment of alimony or child support, if the court
269 anticipates the payment of such alimony or child support
270 or any portion thereof to be paid out of "disposable
271 retired or retainer pay" as that term is defined in 10 U.S.C.
272 §1408, relating to members or former members of the
273 uniformed services of the United States, the court shall
274 specifically provide for the payment of an amount,
275 expressed in dollars or as a percentage of disposable
276 retired or retainer pay, from the disposable retired or
277 retainer pay of the payor party to the payee party.

278 (k) Any order which provides for the custody or
279 support of a minor child shall include:

280 (1) The name of the custodian;

281 (2) The amount of the support payments;

282 (3) The date the first payment is due;

283 (4) The frequency of the support payments;

284 (5) The event or events which trigger termination of
285 the support obligation;

286 (6) A provision regarding wage withholding;

287 (7) The address where payments shall be sent;

288 (8) A provision for medical support; and

289 (9) When child support guidelines are not followed, a
290 specific written finding pursuant to section fourteen,
291 article one-b, chapter forty-eight-a of this code.

292 (l) (1) Unless the best interests of the child require
293 otherwise, every final order and every modification order
294 which provides for the custody of a minor child of the
295 parties shall also provide for the following:

296 (A) The custodial parent shall be required to authorize
297 school authorities in the school in which the child is

298 enrolled to release to the noncustodial parent copies of
299 any and all information concerning the child which would
300 otherwise be properly released to the custodial parent;

301 (B) The custodial parent shall be required, promptly
302 after receipt, to transmit to the noncustodial parent a copy
303 of the child's grades or report card and copies of any
304 other reports reflecting the status or progress of the child;

305 (C) The custodial parent shall be required, when
306 practicable, to arrange appointments for parent-teacher
307 conferences at a time when the noncustodial parent can be
308 present;

309 (D) The custodial parent shall be required to authorize
310 medical providers to release to the noncustodial parent
311 copies of any and all information concerning medical care
312 provided to the child which would otherwise be properly
313 released to the custodial parent;

314 (E) The custodial parent shall be required to promptly
315 inform the noncustodial parent of any illness of the child
316 which requires medical attention; or, if the child is in the
317 actual physical custody of the noncustodial parent during
318 a period of visitation, the noncustodial parent shall be
319 required to promptly inform the custodial parent of any
320 illness of the child which requires medical attention;

321 (F) The custodial parent shall be required to consult
322 with the noncustodial parent prior to any elective surgery
323 being performed on the child; and in the event emergency
324 medical procedures are undertaken for the child which
325 require the parental consent of either parent, if time
326 permits, the other parent shall be consulted, or if time does
327 not permit such consultation, the other parent shall be
328 promptly informed of such emergency medical
329 procedures: *Provided*, That the same duty to inform the
330 custodial parent applies to the noncustodial parent in the
331 event that the emergency medical procedures are required
332 while the child is in the physical custody of the
333 noncustodial parent during a period of visitation:
334 *Provided, however*, That nothing contained herein shall be
335 deemed to alter or amend the law of this state as it
336 otherwise pertains to physicians or health care facilities

337 obtaining parental consent prior to providing medical care
338 or performing medical procedures.

339 (2) In the event a custodial parent shall fail or refuse
340 to authorize the release of school or medical records as
341 provided for by subdivision (1) of this subsection, then
342 upon the ex parte application of the noncustodial parent,
343 the family law master shall prepare an order for entry by
344 the circuit court which appoints the family law master as a
345 special commissioner authorized to execute a consent for
346 the release of such records and direct it to the appropriate
347 school authorities or medical providers.

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

1 (a) For the purposes of this section:

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

6 (2) "Obligated parent" means a natural or adoptive
7 parent who is required by agreement or order to pay for
8 insurance coverage and medical care, or some portion
9 thereof, for his or her child.

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

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

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

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

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

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

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

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

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

64 (5) The order shall require the obligor to continue to
65 provide the child support enforcement division created by
66 article two, chapter forty-eight-a of this code with
67 information as to his or her employer's name and address
68 and information as to the availability of employer-related
69 insurance programs providing medical care coverage so
70 long as the child continues to be eligible to receive
71 support.

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

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

83 (1) The name of the insurer;

84 (2) The policy number;

85 (3) An insurance card;

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

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

90 (6) A description of all deductibles; and

91 (7) Five copies of claim forms.

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

99 release information on the coverage for the children,
100 including the name of the insurer.

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

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

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

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

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

122 (2) If more than one plan is offered by the employer,
123 multiemployer trust or union, the child shall be enrolled in
124 the same plan as the obligated parent at a reasonable cost.

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

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

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

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

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

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

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

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

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

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

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

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

170 (4) All insurers in this state shall comply with the
171 provisions of section sixteen, article fifteen, chapter thirty-
172 three of this code and section eleven, article sixteen of said

173 chapter and shall provide insurance coverage for the child
174 of a covered employee notwithstanding the amount of
175 support otherwise ordered by the court and regardless of
176 the fact that the child may not be living in the home of the
177 covered employee.

178 (j) Where an obligated parent changes employment,
179 and the new employer provides the obligated parent's
180 health care coverage, the child support enforcement
181 division shall transfer to the new employer notice of the
182 obligated parent's duty to provide health care coverage.
183 Unless contested by the obligated parent in writing and in
184 accordance with section eight, article five, chapter forty-
185 eight-a of this code, the notice shall operate to enroll the
186 child in the new employer's health care plan.

187 (k) When an order for insurance coverage for a child
188 pursuant to this section is in effect and the obligated
189 parent's employment is terminated, or the insurance
190 coverage for the child is denied, modified or terminated,
191 the insurer shall in addition to complying with the
192 requirements of article sixteen-a, chapter thirty-three of
193 this code, within ten days after the notice of change in
194 coverage is sent to the covered employee, notify the
195 custodian for the child and provide an explanation of any
196 conversion privileges available from the insurer.

197 (l) A child of an obligated parent shall remain eligible
198 for insurance coverage until the child is emancipated or
199 until the insurer under the terms of the applicable
200 insurance policy terminates said child from coverage,
201 whichever is later in time, or until further order of the
202 court.

203 (m) If the obligated parent fails to comply with the
204 order to provide insurance coverage for the child, the
205 court shall:

206 (1) Hold the obligated parent in contempt for failing
207 or refusing to provide the insurance coverage or for
208 failing or refusing to provide the information required in
209 subsection (d) of this section;

210 (2) Enter an order for a sum certain against the
211 obligated parent for the cost of medical care for the child
212 and any insurance premiums paid or provided for the
213 child during any period in which the obligated parent
214 failed to provide the required coverage;

215 (3) In the alternative, other enforcement remedies
216 available under sections two and three, article five, chapter
217 forty-eight-a of this code, or otherwise available under law,
218 may be used to recover from the obligated parent the cost
219 of medical care or insurance coverage for the child;

220 (4) In addition to other remedies available under law,
221 the child support enforcement division may garnish the
222 wages, salary or other employment income of, and
223 withhold amounts from state tax refunds to any person
224 who:

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

228 (B) Has received payment from a third party for the
229 costs of such services but has not used the payments to
230 reimburse either the other parent or guardian of the child
231 or the provider of the services, to the extent necessary to
232 reimburse the state medicaid agency for its costs:
233 *Provided*, That claims for current and past due child
234 support shall take priority over these claims.

235 (n) Proof of failure to maintain court ordered
236 insurance coverage for the child constitutes a showing of
237 substantial change in circumstances or increased need
238 pursuant to section fifteen of this article, and provides a
239 basis for modification of the child support order.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

Article

1A. Definitions.

1B. Guidelines for Child Support Awards.

2. West Virginia Support Enforcement Commission; Child Support
Enforcement Division; Establishment and Organization.

5. Remedies for the Enforcement of Support Obligations and Visitation.
6. Establishment of Paternity.

ARTICLE 1A. DEFINITIONS.

§48A-1A-30. Support order.

1 (a) For cases being enforced pursuant to Title IV-D of
2 the Social Security Act, "support order" means a judgment,
3 decree or order, whether temporary, final, or subject to
4 modification, issued by a court or an administrative
5 agency of competent jurisdiction, for the support and
6 maintenance of a child, including a child who has attained
7 the age of majority under the law of the issuing state, or a
8 child and the parent with whom the child is living, which
9 provides for monetary support, health care, arrearage or
10 reimbursements, and which may include related costs and
11 fees, interest and penalties, income withholding, attorneys'
12 fees and other relief.

13 (b) For all other cases, "support order" means an order
14 as defined in subsection (a) of this section and, in addition,
15 an order for the support and maintenance of a spouse or
16 former spouse.

ARTICLE 1B. GUIDELINES FOR CHILD SUPPORT AWARDS.

§48A-1B-9. Adjustment for obligor's social security benefits sent directly to the child; receipt by child of supplemental security income.

1 (a) If a proportion of the obligor's social security
2 benefit is paid directly to the custodian of his or her
3 dependents who are the subject of the child support order,
4 the following adjustment shall be made. The total amount
5 of the social security benefit which includes the amounts
6 paid to the obligor and the obligee shall be counted as
7 gross income to the obligor. In turn, the child support
8 order will be calculated as described in section six of this
9 article. To arrive at the final child support amount,
10 however, the amount of the social security benefits sent
11 directly to the child's household will be subtracted from
12 the child support order. If the child support order amount
13 results in a negative amount it shall be set at zero.

14 (b) If a child is a recipient of disability payments as
 15 supplemental security income for aged, blind and
 16 disabled, under the provisions of 42 U.S.C. §1382, *et seq.*,
 17 and if support furnished by an obligor would be
 18 considered unearned income that renders the child
 19 ineligible for disability payments or medical benefits, no
 20 child support order shall be entered for that child. If a
 21 support order is entered for the child's siblings or other
 22 persons in the household, the child shall be excluded from
 23 the calculation of support, and the amount of support for
 24 the child shall be set at zero.

**ARTICLE 2. WEST VIRGINIA SUPPORT ENFORCEMENT COM-
 MISSION; CHILD SUPPORT ENFORCEMENT
 DIVISION; ESTABLISHMENT AND ORGANIZA-
 TION.**

- §48A-2-22. Establishment of parent locator service.
- §48A-2-24. Disbursements of amounts collected as support.
- §48A-2-24a. Amounts collected as support to be disbursed to person having custody; procedure for redirecting disbursement of payments where physical custody transferred to a person other than the custodial parent.
- §48A-2-31. Providing information to consumer reporting agencies; requesting consumer credit reports for child support purposes.
- §48A-2-32. Central state case registry.
- §48A-2-33. Subpoenas.
- §48A-2-33a. Liability for financial institutions providing financial records to the child support enforcement division; agreements for data match system; encumbrance or surrender of assets.
- §48A-2-34. Employment and income reporting.
- §48A-2-35. Review and adjustment of child support orders.
- §48A-2-40. Access to records, confidentiality.
- §48A-2-41. Access to information.
- §48A-2-43. Recording of social security numbers in certain family matters.

§48A-2-22. Establishment of parent locator service.

1 (a) The child support enforcement division shall
 2 establish a parent locator service to locate individuals for
 3 the purposes of establishing parentage and of establishing,
 4 modifying or enforcing child support obligations,
 5 utilizing all sources of information and available records
 6 and the parent locator service in the federal department of

7 health and human services. For purposes of obtaining
8 information from the parent locator service, any person,
9 agency or entity providing services to the child support
10 enforcement division pursuant to a contract that includes a
11 provision to ensure that the confidentiality of information
12 is maintained shall be deemed to be an agent of the child
13 support enforcement division.

14 (b) Upon entering into an agreement with the
15 secretary of the federal department of health and human
16 services for the use of that department's parent locator
17 service, the child support enforcement division shall accept
18 and transmit to the secretary of the federal department of
19 health and human services requests from authorized
20 persons for information with regard to the whereabouts of
21 a noncustodial obligor to be furnished by such federal
22 parent locator service. For purposes of this subsection,
23 "authorized persons" means: (1) An attorney or agent of
24 the child support enforcement division; (2) a family law
25 master or circuit judge or any agent thereof; or (3) a
26 resident parent, legal guardian, attorney or agent for a
27 child. The child support enforcement division shall charge
28 a reasonable fee sufficient to cover the costs to the state
29 and to the federal department of health and human
30 services incurred by reason of such requests, and shall
31 transfer to that department from time to time, so much of
32 the fees collected as are attributable to the costs incurred
33 by that department.

34 (c) The information obtained by the child support
35 enforcement division from the federal parent locator
36 service shall be used for, but not limited to, the following
37 purposes:

38 (1) Establishing parentage and establishing, setting the
39 amount of, modifying or enforcing child support
40 obligations;

41 (2) Obtaining and transmitting information to any
42 family law master or circuit court or agent thereof or to an
43 attorney or employee of the United States or of any state
44 responsible for enforcing any federal or state law with
45 respect to the unlawful taking or restraint of a child or

46 making or enforcing a child custody or visitation
47 determination.

48 (d) The child support enforcement division may
49 request from the federal parent locator service
50 information:

51 (1) About, or which will facilitate the discovery of
52 information about, the location of any individual: (A)
53 Who is under an obligation to pay child support; (B)
54 against whom such an obligation is sought; or (C) to
55 whom such an obligation is owed, including the
56 individual's social security number, or numbers, most
57 recent address, and the name, address and employer
58 identification number of the individual's employer;

59 (2) Concerning the individual's wages or other income
60 from, and benefits of, employment, including rights to
61 enrollment in group health care coverage; and

62 (3) Concerning the type, status, location and amount
63 of any assets of, or debts owed by or to, any such
64 individual.

65 (e) A circuit court shall have jurisdiction to hear and
66 determine, upon a petition by an authorized person, as
67 defined in subsection (b) of this section, whether the
68 release of information from the federal parent locator
69 service to that person could be harmful to the custodial
70 parent or the child.

§48A-2-24. Disbursements of amounts collected as support.

1 (a) Amounts collected as child or spousal support by
2 the child support enforcement division shall be distributed
3 within two business days after receipt from the employer
4 or other source of periodic income. Such amounts shall,
5 except as otherwise provided under the provisions of
6 subsection (c) of this section, be distributed as follows:

7 (1) Any amounts which are collected periodically
8 which represent monthly support payments shall be paid
9 by the child support enforcement division to the
10 appropriate administrative unit of the department of health
11 and human resources to reimburse it for assistance

12 payments to the family during that period (with
13 appropriate reimbursement of the federal government to
14 the extent of its participation in the financing);

15 (2) Amounts in excess of amounts required to
16 reimburse the department of health and human resources
17 under subdivision (1) of this subsection and not in excess
18 of the amount required to be paid during such period to
19 the family by a court order shall be paid to the obligee;
20 and

21 (3) Amounts in excess of amounts required to be
22 distributed under subdivisions (1) and (2) of this
23 subsection shall be: (A) Paid by the child support
24 enforcement division to the appropriate administrative unit
25 of the department of health and human resources (with
26 appropriate reimbursement of the federal government to
27 the extent of its participation in the financing) as
28 reimbursement for any past assistance payments made to
29 the family for which the department has not been
30 reimbursed; or (B) if no assistance payments have been
31 made by the department which have not been repaid, such
32 amounts shall be paid to the obligee.

33 (b) (1) Whenever a family for whom support
34 payments have been collected and distributed under the
35 provisions of this chapter ceases to receive assistance from
36 the department of health and human resources, the child
37 support enforcement division shall provide notice to the
38 family of their rights with regard to a continuation of
39 services. Unless notified by the family that services are no
40 longer desired, the child support enforcement division
41 shall continue to collect amounts of support payments
42 which represent monthly support payments from the
43 obligor and pay any amount so collected, which represents
44 monthly support payments, to the family (without
45 requiring any formal reapplication and without the
46 imposition of any application fee) on the same basis as in
47 the case of other obligees who are not receiving assistance
48 from the department of health and human resources.

49 (2) So much of any amounts of support so collected
50 shall be paid, first, to the obligee until all past due support
51 owed to the family by the obligor has been paid. After all

52 arrearages owing to the family have been paid, any
53 amounts of support collected which are in excess of the
54 required support payments shall be distributed in the
55 manner provided by paragraphs (A) and (B), subdivision
56 (3), subsection (a) of this section with respect to excess
57 amounts described in said subsection.

58 (c) Notwithstanding the preceding provisions of this
59 section, amounts collected by the child support
60 enforcement division as child support for months in any
61 period on behalf of a child for whom the department of
62 health and human resources is making foster care
63 maintenance payments shall:

64 (1) Be paid by the child support enforcement division
65 to the appropriate administrative unit of the department of
66 health and human resources to the extent necessary to
67 reimburse the department for foster care maintenance
68 payments made with respect to the child during such
69 period (with appropriate reimbursement of the federal
70 government to the extent of its participation in financing);

71 (2) Be paid to the appropriate administrative unit of
72 the department of health and human resources to the
73 extent that the amounts collected exceed the foster care
74 maintenance payments made with respect to the child
75 during such period but do not exceed the amounts
76 required by a court order to be paid as support on behalf
77 of the child during such period; and the department of
78 health and human resources may use the payments in the
79 manner it determines will serve the best interests of the
80 child, including setting such payments aside for the child's
81 future needs or making all or a part thereof available to
82 the person responsible for meeting the child's day-to-day
83 needs; and

84 (3) Be paid to the appropriate administrative unit of
85 the department of health and human resources if any
86 portion of the amounts collected remains after making the
87 payments required under paragraphs (1) and (2) of this
88 subsection, to the extent that such portion is necessary to
89 reimburse the department of health and human resources
90 (with appropriate reimbursement to the federal
91 government to the extent of its participation in the

92 financing), for any past foster care maintenance payments
93 or payments of aid to families with dependent children or
94 temporary assistance to needy families which were made
95 with respect to the child (and with respect to which past
96 collections have not previously been retained);

97 (d) The commission shall establish bonding
98 requirements for employees of the child support
99 enforcement division who receive, disburse, handle or have
100 access to cash.

101 (e) The director shall maintain methods of
102 administration which are designed to assure that
103 employees of the child support enforcement division or
104 any persons employed pursuant to a contract who are
105 responsible for handling cash receipts do not participate in
106 accounting or operating functions which would permit
107 them to conceal in the accounting records the misuse of
108 cash receipts: *Provided*, That the director may provide for
109 exceptions to this requirement in the case of sparsely
110 populated areas in this state where the hiring of
111 unreasonable additional staff in the local office would
112 otherwise be necessary.

113 (f) No penalty or fee may be collected by or
114 distributed to a recipient of child support enforcement
115 division services from the state treasury or from the child
116 support enforcement fund when child support is not
117 distributed to the recipient in accordance with the time
118 frames established herein.

119 (g) For purposes of this section, "business day"
120 means a day on which state offices are open for regular
121 business.

**§48A-2-24a. Amounts collected as support to be disbursed to
person having custody; procedure for
redirecting disbursement of payments where
physical custody transferred to a person other
than the custodial parent.**

1 (a) Any payment required to be made under the
2 provisions of section twenty-four of this article to a family
3 shall be made to the resident parent, legal guardian or

4 caretaker relative having custody of or responsibility for
5 the child or children.

6 (b) Where physical custody of the child has been
7 transferred from the custodial parent to another person,
8 the child support enforcement division may redirect
9 disbursement of support payments to such other person,
10 on behalf of the child, in the following circumstances:

11 (1) Where the noncustodial parent has physical
12 custody of the child, excluding visitation, upon filing with
13 the child support enforcement division:

14 (A) An affidavit attesting that the noncustodial parent
15 has obtained physical custody of the child, describing the
16 circumstances under which the transfer of physical
17 custody took place, and stating that he or she anticipates
18 that his or her physical custody of the child will continue
19 for the foreseeable future; and

20 (B) Documentary proof that the noncustodial parent
21 has instituted proceedings in circuit court for a
22 modification of legal custody.

23 (2) Where a person other than the custodial or
24 noncustodial parent has physical custody of the child,
25 excluding visitation, filing with the child support
26 enforcement division:

27 (A) An affidavit attesting that the person has obtained
28 physical custody of the child, describing the circumstances
29 under which the transfer of physical custody took place,
30 and stating that he or she anticipates that his or her
31 physical custody of the child will continue for the
32 foreseeable future; and

33 (B) Documentary proof that the person claiming
34 physical custody is currently the person responsible for
35 the child by producing at least one of the following:

36 (i) School records demonstrating that school
37 authorities consider the person claiming physical custody
38 the adult responsible for the child;

39 (ii) Medical records demonstrating that the person
40 claiming physical custody is empowered to make medical
41 decisions on behalf of the child;

42 (iii) Documents from another public assistance agency
43 showing that the person claiming physical custody is
44 currently receiving other public assistance on behalf of the
45 child;

46 (iv) A notarized statement from the custodial parent
47 attesting to the fact that he or she has transferred physical
48 custody to the person;

49 (v) A verifiable order of a court of competent
50 jurisdiction transferring physical or legal custody to the
51 person;

52 (vi) Documentation that the person claiming physical
53 custody has filed a petition in circuit court to be appointed
54 the child's guardian;

55 (vii) Documentation that the child, if over the age of
56 fourteen, has instituted proceedings in circuit court to have
57 the person claiming physical custody nominated as his or
58 her guardian; or

59 (viii) Any other official documents of a federal, state
60 or local agency or governing body demonstrating that the
61 person currently has physical custody of the child and has
62 taken action indicating that he or she anticipates such
63 physical custody to continue in the foreseeable future.

64 (c) The child support enforcement division shall mail,
65 by first class mail, a copy of the affidavit and supporting
66 documentary evidence required under subsection (b) of
67 this section, to the circuit court which issued the support
68 order being enforced by child support enforcement
69 division and to the parties to the order, at their last known
70 addresses, together with a written notice stating that any
71 party has ten days to object to the redirection of support
72 payments by filing an affidavit and evidence showing that
73 the person seeking redirection of the payments does not
74 have physical custody of the child. If no objection is
75 received by the child support enforcement division by the
76 end of the ten-day period, the division may order

77 payments redirected to the person claiming physical
78 custody for the benefit of the child. If a responsive
79 affidavit and supporting evidence is filed within the ten-
80 day period and, in the opinion of the child support
81 enforcement division, either disproves the claim of the
82 person seeking redirection of support payments or raises a
83 genuine issue of fact as to whether the person has actual
84 physical custody of the child, the child support
85 enforcement division shall continue to forward support
86 payments to the custodial parent. Any person who
87 disagrees with the determination of the child support
88 enforcement division may petition the circuit court for
89 modification of the child support order.

90 (d) Any person who files a false affidavit pursuant to
91 this section shall be guilty of false swearing and, upon
92 conviction thereof, shall be punished as provided by law
93 for such offense.

§48A-2-31. Providing information to consumer reporting agencies; requesting consumer credit reports for child support purposes.

1 (a) For purposes of this section, the term "consumer
2 reporting agency" means any person who, for monetary
3 fees, dues, or on a cooperative nonprofit basis, regularly
4 engages, in whole or in part, in the practice of assembling
5 or evaluating consumer credit information or other
6 information on consumers for the purpose of furnishing
7 consumer reports to third parties.

8 (b) The commission shall propose and adopt a
9 procedural rule in accordance with the provisions of
10 sections four and eight, article three, chapter twenty-nine-a
11 of this code, establishing procedures whereby information
12 regarding the amount of overdue support owed by an
13 obligor will be reported periodically by the child support
14 enforcement division to any consumer reporting agency,
15 after a request by the consumer reporting agency that it be
16 provided with the periodic reports.

17 (1) The procedural rule adopted by the commission
18 shall provide that any information with respect to an
19 obligor shall be made available only after notice has been

20 sent to the obligor of the proposed action, and such
21 obligor has been given a reasonable opportunity to contest
22 the accuracy of the information.

23 (2) The procedural rule adopted shall afford the
24 obligor with procedural due process prior to making
25 information available with respect to the obligor.

26 (c) The information made available to a consumer
27 reporting agency regarding overdue support may only be
28 made available to an entity that has furnished evidence
29 satisfactory to the division that the entity is a consumer
30 reporting agency as defined in subsection (a) of this
31 section.

32 (d) The child support enforcement division may
33 impose a fee for furnishing such information, not to
34 exceed the actual cost thereof.

35 (e) The head of the child support enforcement
36 division, or her or his designee, may request a consumer
37 reporting agency to prepare and furnish to the child
38 support enforcement division a consumer report for
39 purposes relating to child support, by certifying to the
40 consumer reporting agency that:

41 (1) The consumer report is needed for the purpose of
42 establishing an individual's capacity to make child support
43 payments or determining the appropriate level of such
44 payments in order to set an initial or modified child
45 support award;

46 (2) The paternity of the child of the individual has
47 been established or acknowledged by the individual in
48 accordance with state law;

49 (3) The individual whose report is being requested has
50 been given at least ten days' prior notice of such request
51 by certified mail to his or her last known address that such
52 report is being requested; and

53 (4) The consumer report will be kept confidential, will
54 be used solely for a purpose described in subdivision (1)
55 of this subsection and will not be used in connection with

56 any other civil, administrative or criminal proceeding or
57 for any other purpose.

§48A-2-32. Central state case registry.

1 (a) The child support enforcement division shall
2 establish and maintain a central state case registry of child
3 support orders. All orders in cases when any party
4 receives any service provided by the child support
5 enforcement division shall be included in the registry.
6 Any other support order entered or modified in this state
7 on or after the first day of October, one thousand nine
8 hundred ninety-eight, shall be included in the registry.
9 The child support enforcement division, upon receipt of
10 any information regarding a new hire provided pursuant
11 to section thirty-four of this article shall compare
12 information received to determine if the new hire's income
13 is subject to wage withholding and notify the employer
14 pursuant to that section.

15 (b) Each party to a child support proceeding shall,
16 upon entry of an order awarding or modifying child
17 support, complete and file with the clerk of the circuit
18 court issuing the order a form, to be promulgated by the
19 administrative office of the supreme court of appeals,
20 listing information concerning the location and identity of
21 a party including, but not limited to: The party's social
22 security number, residential and mailing address,
23 telephone number and driver's license number; the child's
24 name, birth date and social security number; and the
25 party's employer's name, address and telephone number.
26 The clerk shall promptly forward all such information to
27 the state case registry. The parties are required to notify
28 the state case registry of any change in the information
29 contained on the form, and every order for support shall
30 so state. All information provided to the state case registry
31 shall be subject to the privacy and confidentiality
32 safeguards contained in section forty of this article.

33 (c) In any subsequent child support enforcement
34 action between the parties, there shall be a presumption
35 that the requirements for notice and service of process
36 have been met upon a showing that the child support
37 enforcement division has made a diligent effort to

38 ascertain the location of a party by delivery of written
39 notice by certified mail, return receipt requested, to the
40 most recent employer or residential mailing address filed
41 with the state case registry pursuant to subsection (b) of
42 this section.

§48A-2-33. Subpoenas.

1 In order to obtain financial and medical insurance or
2 other information pursuant to the establishment,
3 enforcement and modification provisions set forth in this
4 chapter or chapter forty-eight of this code, the child
5 support enforcement division or any out-of-state agency
6 administering a program under Title IV-D of the Social
7 Security Act may serve, by certified mail or personal
8 service, an administrative subpoena on any person,
9 corporation, partnership, financial institution, labor
10 organization or state agency, for an appearance or for
11 production of financial or medical insurance or other
12 information. In case of disobedience to the subpoena, the
13 child support enforcement division may invoke the aid of
14 any circuit court in requiring the appearance or
15 production of records and financial documents. The child
16 support enforcement division may assess a civil penalty of
17 no more than one hundred dollars for the failure of any
18 person, corporation, financial institution, labor
19 organization or state agency to comply with requirements
20 of this section.

**§48A-2-33a. Liability for financial institutions providing
financial records to the child support
enforcement division; agreements for data
match system; encumbrance or surrender of
assets.**

1 (a) Notwithstanding any other provision of this code, a
2 financial institution shall not be liable under the law of this
3 state to any person for:

4 (1) Disclosing any financial record of an individual to
5 the child support enforcement division in response to a
6 subpoena issued by the division pursuant to section thirty-
7 three of this article;

8 (2) Disclosing any financial record of an individual to
9 the child support enforcement division pursuant to the
10 terms of an agreement with such financial institution
11 pursuant to subsection (f) of this section;

12 (3) Encumbering or surrendering assets held by such
13 financial institution in response to a notice of lien or levy
14 issued by the child support enforcement division as
15 provided in subsection (g) of this section; or

16 (4) For any other action taken in good faith to comply
17 with the requirements of this section.

18 (b) The child support enforcement division, after
19 obtaining a financial record of an individual from a
20 financial institution, may disclose such financial record
21 only for the purpose of, and to the extent necessary in,
22 establishing, modifying or enforcing a child support
23 obligation of such individual.

24 (c) The civil liability of a person who knowingly, or
25 by reason of negligence, discloses a financial record of an
26 individual in violation of subsection (b) of this section is
27 governed by the provisions of federal law as set forth in
28 42 U.S.C. §669A.

29 (d) For purposes of this section, the term "financial
30 institution" means:

31 (1) Any bank or savings association;

32 (2) A person who is an institution-affiliated party, as
33 that term is defined in the Federal Deposit Insurance Act,
34 12 U.S.C. §1813(u);

35 (3) Any federal credit union or state-chartered credit
36 union, including an institution-affiliated party of a credit
37 union; and

38 (4) Any benefit association, insurance company, safe
39 deposit company, money-market mutual fund, or similar
40 entity authorized to do business in this state.

41 (e) For purposes of this section, the term "financial
42 record" means an original of, a copy of, or information
43 known to have been derived from, any record held by a

44 financial institution pertaining to a customer's relationship
45 with the financial institution.

46 (f) Notwithstanding any provision of this code to the
47 contrary, the child support enforcement division shall
48 enter into agreements with financial institutions doing
49 business in the state to develop and operate, in
50 coordination with such financial institutions, a data match
51 system, using automated data exchanges, to the maximum
52 extent feasible, in which each financial institution is
53 required to provide for each calendar quarter the name,
54 record address, social security number or other taxpayer
55 identification number, and other identifying information
56 for each obligor, as defined in section twenty-three, article
57 one-a of this chapter, who maintains an account at such
58 institution and who owes past due support. The child
59 support enforcement division will identify to the financial
60 institution an obligor who owes past due support by his or
61 her name and social security number or other taxpayer
62 identification number. The child support enforcement
63 division, upon written request and proof of actual costs
64 incurred, may pay a reasonable fee to a financial
65 institution for conducting the data match not to exceed the
66 actual costs incurred by such financial institution.

67 (g) The financial institution, in response to a notice of
68 a lien or levy, shall encumber or surrender, as the case
69 may be, assets held by such institution on behalf of any
70 noncustodial parent who is subject to a lien for child
71 support.

§48A-2-34. Employment and income reporting.

1 (a) For purposes of this section:

2 (1) "Employee" means an individual who is an "em-
3 ployee" for purposes of federal income tax withholding,
4 as defined in 26 U.S.C. §3401;

5 (2) "Employer" means the person or entity for whom
6 an individual performs or performed any service of
7 whatever nature and who has control of the payment of
8 the individual's wages for performance of such service or
9 services, as defined in 26 U.S.C. §3401;

10 (3) An individual is considered a "new hire" on the
11 first day in which that individual performs services for
12 remuneration and on which an employer begins to
13 withhold amounts for income tax purposes.

14 (b) Except as provided in subsections (c) and (d) of
15 this section, all employers doing business in the state shall
16 report to the child support enforcement division:

17 (1) The hiring of any person who resides or works in
18 this state to whom the employer anticipates paying
19 earnings; and

20 (2) The rehiring or return to work of any employee
21 who resides or works in this state.

22 (c) Employers are not required to report the hiring,
23 rehiring or return to work of any person who is an
24 employee of a federal or state agency performing
25 intelligence or counterintelligence functions if the head of
26 such agency has determined that reporting could
27 endanger the safety of the employee or compromise an
28 ongoing investigation or intelligence mission.

29 (d) An employer that has employees in states other
30 than this state and that transmits reports magnetically or
31 electronically is not required to report to the child support
32 enforcement division the hiring, rehiring or return to work
33 of any employee if the employer has filed with the
34 secretary of the federal department of health and human
35 services, as required by 42 U.S.C. §653A, a written
36 designation of another state in which it has employees as
37 the reporting state.

38 (e) Employers shall report by mailing to the child
39 support enforcement division a copy of the employee's W-
40 4 form; however, an employer may transmit such
41 information through another means if approved in writing
42 by the child support enforcement division prior to the
43 transmittal. The report shall include the employee's name,
44 address and social security number, the employer's name
45 and address, any different address of the payroll office
46 and the employer's federal tax identification number. The

47 employer may report other information, such as date of
48 birth or income information, if desired.

49 (f) Employers shall submit a report within fourteen
50 days of the date of the hiring, rehiring or return to work
51 of the employee. However, if the employer transmits the
52 reports magnetically or electronically by two monthly
53 submissions, the reports shall be submitted not less than
54 twelve days nor more than sixteen days apart.

55 (g) An employer shall provide to the child support
56 enforcement division, upon its written request, information
57 regarding an obligor's employment, wages or salary,
58 medical insurance, and location of employment.

59 (h) Any employer who fails to report in accordance
60 with the provisions of this section shall be assessed a civil
61 penalty of no more than twenty-five dollars per failure. If
62 the failure to report is the result of a conspiracy between
63 the employer and the employee not to supply the required
64 report or to supply a false or incomplete report, the
65 employer shall be assessed a civil penalty of no more than
66 five hundred dollars.

67 (i) Employers required to report under this section
68 may assess each employee so reported one dollar for the
69 administrative costs of reporting.

70 (j) Uses for the new hire information include, but are
71 not limited to, the following:

72 (1) The state directory of new hires shall furnish the
73 information to the national directory of new hires;

74 (2) The child support enforcement division shall use
75 information received pursuant to this section to locate
76 individuals for purposes of establishing paternity and of
77 establishing, modifying and enforcing child support
78 obligations, and may disclose such information to any
79 agent of the agency that is under contract with the division
80 to carry out such purposes;

81 (3) State agencies responsible for administering a
82 program specified in 42 U.S.C. §1320b-7(b) shall have

83 access to information reported by employers for purposes
84 of verifying eligibility for the program; and

85 (4) The bureau of employment programs shall have
86 access to information reported by employers for purposes
87 of administering employment security and workers'
88 compensation programs.

§48A-2-35. Review and adjustment of child support orders.

1 (a) Either parent or, if there has been an assignment of
2 support to the department of health and human resources,
3 the child support enforcement division shall have the right
4 to request an administrative review of the child support
5 award in the following circumstances:

6 (1) Where the request for review is received thirty-six
7 months or more after the date of the entry of the order or
8 from the completion of the previous administrative review,
9 whichever is later, the child support enforcement division
10 shall conduct a review to determine whether the amount of
11 the child support award in such order varies from the
12 amount of child support that would be awarded at the time
13 of the review pursuant to the guidelines for child support
14 awards contained in article one-b of this chapter. If the
15 amount of the child support award under the existing
16 order differs by ten percent or more from the amount that
17 would be awarded in accordance with the child support
18 guidelines, the child support enforcement division shall
19 file with the circuit court a motion for modification of the
20 child support order. If the amount of the child support
21 award under the existing order differs by less than ten
22 percent from the amount that would be awarded in
23 accordance with the child support guidelines, the child
24 support enforcement division may, if it determines that
25 such action is in the best interest of the child or otherwise
26 appropriate, file with the circuit court a motion for
27 modification of the child support order.

28 (2) Where the request for review of a child support
29 award is received less than thirty-six months after the date
30 of the entry of the order or from the completion of the
31 previous administrative review, the child support
32 enforcement division shall undertake a review of the case

33 only where it is alleged that there has been a substantial
34 change in circumstances. If the child support
35 enforcement division determines that there has been a
36 substantial change in circumstances and if it is in the best
37 interests of the child, the division shall file with the circuit
38 court a motion for modification of the child support order
39 in accordance with the guidelines for child support awards
40 contained in article one-b of this chapter.

41 (b) The child support enforcement division shall
42 notify both parents at least once every three years of their
43 right to request a review of a child support order. The
44 notice may be included in any order granting or
45 modifying a child support award. The child support
46 enforcement division shall give each parent at least thirty
47 days' notice before commencing any review, and shall
48 further notify each parent, upon completion of a review,
49 of the results of the review, whether of a proposal to move
50 for modification or of a proposal that there should be no
51 change.

52 (c) When the result of the review is a proposal to move
53 for modification of the child support order, each parent
54 shall be given thirty days' notice of the hearing on the
55 motion, the notice to be directed to the last known address
56 of each party by first class mail. When the result of the
57 review is a proposal that there be no change, any parent
58 disagreeing with that proposal may, within thirty days of
59 the notice of the results of the review, file with the court a
60 motion for modification setting forth in full the grounds
61 therefor.

62 (d) For the purposes of this section, a "substantial
63 change in circumstances" includes, but is not limited to, a
64 changed financial condition, a temporary or permanent
65 change in physical custody of the child which the court
66 has not ordered, increased need of the child, or other
67 financial conditions. "Changed financial conditions"
68 means increases or decreases in the resources available to
69 either party from any source. Changed financial
70 conditions includes, but is not limited to, the application
71 for or receipt of any form of public assistance payments,
72 unemployment compensation and workers' compensation,

73 or a fifteen percent or more variance from the amount of
74 the existing order and the amount of child support that
75 would be awarded according to the child support
76 guidelines.

77 (e) All child support orders shall contain a notice
78 which contains language substantially similar to the
79 following: "The amount of the monthly child support can
80 be modified as provided by law based upon a change in
81 the financial or other circumstances of the parties if those
82 circumstances are among those considered in the child
83 support formula. In order to make the modification a
84 party must file a motion to modify the child support
85 amount. Unless a motion to modify is filed, the child
86 support amount will continue to be due and cannot later
87 be changed retroactively even though there has been a
88 change of circumstances since the entry of the order. Self
89 help forms for modification can be found at the circuit
90 clerk's office." The failure of an order to have such a
91 provision does not alter the effectiveness of the order.

§48A-2-40. Access to records, confidentiality.

1 (a) All records in the possession of the child support
2 enforcement division, including records concerning an
3 individual case of child or spousal support, shall be kept
4 confidential and shall not be released except as provided
5 below:

6 (1) Records shall be disclosed or withheld as required
7 by federal law or regulations promulgated thereunder
8 notwithstanding other provisions of this section.

9 (2) Information as to the whereabouts of a party or the
10 child shall not be released to a person against whom a
11 protective order has been entered with respect to such
12 party or child or where the state has reason to believe that
13 the release of the information to the person making the
14 request may result in physical or emotional harm to the
15 party or the child.

16 (3) The phone number, address, employer and other
17 information regarding the location of the obligor, the
18 obligee and the child shall only be disclosed: (A) Upon

19 his or her written consent, to the person whom the consent
20 designates; or (B) notwithstanding subdivision (4) of this
21 subsection, to the obligee, the obligor, the child or the
22 caretaker or representative of the child, upon order of a
23 court if the court finds that the disclosure is for a bona
24 fide purpose, is not contrary to the best interest of a child
25 and does not compromise the safety of any party:
26 *Provided*, That the identity and location of the employer
27 may be disclosed on the letters, notices and pleadings of
28 the division as necessary and convenient for the
29 determination of support amounts and the establishment,
30 investigation, modification, enforcement, collection and
31 distribution of support.

32 (4) Information and records other than the phone
33 number, address, employer and information regarding the
34 location of the obligor, the obligee and the child shall be
35 disclosed to the obligor, the obligee, the child or the
36 caretaker of the child or his or her duly authorized
37 representative, upon his or her written request: *Provided*,
38 That when the obligor requests records other than
39 collection and distribution records, financial records
40 relevant to the determination of the amount of support
41 pursuant to the guidelines, or records the obligor has
42 supplied, the division shall mail a notice by first class mail
43 to the last known address of the obligee notifying him or
44 her of the request. The notice shall advise the obligee of
45 his or her right to object to the release of records on the
46 grounds that the records are not relevant to the
47 determination of the amount of support, or the
48 establishment, modification, enforcement, collection or
49 distribution of support. The notice shall also advise the
50 obligee of his or her right to disclosure of records
51 provided in this section in order to determine what records
52 the child support enforcement division may have. In the
53 event of any objection, the division shall determine
54 whether or not the information shall be released.

55 (5) Information in specific cases may be released as is
56 necessary or to determine the identity, location,
57 employment, income and assets of an obligor.

58 (6) Information and records may be disclosed to the
59 bureau of vital statistics, bureau of employment programs,
60 the workers' compensation division, state tax department
61 and the internal revenue service, or other state or federal
62 agencies or departments as may be necessary or desirable
63 in obtaining any address, employment, wage or benefit
64 information for the purpose of determining the amount of
65 support or establishing, enforcing, collecting and
66 distributing support.

67 (b) Any person who willfully violates this section shall
68 be guilty of a misdemeanor and, upon conviction thereof,
69 shall be fined not less than one hundred nor more than
70 one thousand dollars, or confined in jail not more than six
71 months, or both fined and imprisoned.

§48A-2-41. Access to information.

1 (a) All state, county and municipal agencies, offices
2 and employers, including profit, nonprofit and
3 governmental employers, receiving a request for
4 information and assistance from the child support
5 enforcement division or any out-of-state agency
6 administering a program under Title IV-D of the Social
7 Security Act, shall cooperate with the division or with the
8 out-of-state agency in the location of parents who have
9 abandoned and deserted children and shall provide the
10 division or the out-of-state agency with all available
11 pertinent information concerning the location, income and
12 property of those parents.

13 (b) Notwithstanding any other provision of law to the
14 contrary, any entity conducting business in this state or
15 incorporated under the laws of this state shall, upon
16 certification by the division or any out-of-state agency
17 administering a program under Title IV-D of the Social
18 Security Act that the information is needed to locate a
19 parent for the purpose of collecting or distributing child
20 support, provide the division or the out-of-state agency
21 with the following information about the parent: Full
22 name, social security number, date of birth, home address,
23 wages and number of dependents listed for income tax
24 purposes: *Provided*, That no entity may provide any

25 information obtained in the course of providing legal
26 services, medical treatment or medical services.

27 (c) (1) The child support enforcement division shall
28 have access, subject to safeguards on privacy and
29 information security, and to the nonliability of entities that
30 afford such access under this subdivision, to information
31 contained in the following records, including automated
32 access, in the case of records maintained in automated data
33 bases:

34 (A) Records of other state and local government
35 agencies including, but not limited to:

36 (i) Vital statistics, including records of marriage, birth
37 and divorce;

38 (ii) State and local tax and revenue records, including
39 information on residence address, employer, income and
40 assets;

41 (iii) Records concerning real and titled personal
42 property;

43 (iv) Records of occupational and professional licenses,
44 and records concerning the ownership and control of
45 corporations, partnerships, and other business entities;

46 (v) Employment security records;

47 (vi) Records of agencies administering public
48 assistance programs;

49 (vii) Records of the division of motor vehicles; and

50 (viii) Corrections records.

51 (B) Certain records held by private entities with respect
52 to individuals who owe or are owed support or certain
53 individuals against, or with respect to, whom a support
54 obligation is sought, consisting of:

55 (i) The names and addresses of such individuals and
56 the names and addresses of the employers of such
57 individuals, as appearing in the customer records of public
58 utilities and cable television companies, pursuant to an

59 administrative subpoena authorized by section thirty-three,
60 article two of this chapter; and

61 (ii) Information, including information on assets and
62 liabilities, on such individuals held by financial
63 institutions.

64 (2) Out-of-state agencies administering programs
65 under Title IV-D of the Social Security Act shall, without
66 the need for any court order, have the authority to access
67 records in this state by making a request through the child
68 support enforcement division.

69 (d) All federal and state agencies conducting activities
70 under Title IV-D of the Social Security Act shall have
71 access to any system used by this state to locate an
72 individual for purposes relating to motor vehicles or law
73 enforcement.

74 (e) Out-of-state agencies administering programs
75 under Title IV-D of the Social Security Act shall have the
76 authority and right to access and use, for the purpose of
77 establishing or enforcing a support order, the state law-
78 enforcement and motor vehicle data bases.

79 (f) The child support enforcement division and out-
80 of-state agencies administering programs under Title IV-D
81 of the Social Security Act shall have the authority and
82 right to access and use, for the purpose of establishing or
83 enforcing a support order, interstate networks that state
84 law-enforcement agencies and motor vehicle agencies
85 subscribe to or participate in, such as the national law-
86 enforcement telecommunications system (NLETS) and the
87 American association of motor vehicle administrators
88 (AAMVA) networks.

§48A-2-43. Recording of social security numbers in certain family matters.

1 (a) The social security number, if any, of any
2 applicant for a professional license, driver's license,
3 occupational license, recreational license, or marriage
4 license must be recorded on the application for such
5 license.

6 (b) The social security number of any individual who
 7 is subject to a divorce decree, support order, or paternity
 8 determination or acknowledgment must be placed in the
 9 records relating to the matter.

10 (c) For the purposes of subsection (a) of this section, if
 11 the licensing authority allows the use of a number other
 12 than the social security number on the face of the
 13 document while the social security number is kept on file
 14 at the agency, the applicant shall be so advised by such
 15 authority.

**ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT
 OBLIGATIONS AND VISITATION.**

§48A-5-1. Action to obtain an order for support of minor child.

§48A-5-2. Arrearages; liens on personal property; enforcement through writ
 of execution, suggestion or suggestee execution.

§48A-5-3. Withholding from income of amounts payable as support.

§48A-5-4. Liens against real property for overdue support.

§48A-5-4a. Enforcement by the child support enforcement division of lien on
 real property.

§48A-5-5. Enforcement of support orders by contempt proceedings;
 penalties.

§48A-5-7. Increase in monthly payments.

**§48A-5-1. Action to obtain an order for support of minor
 child.**

1 (a) An action may be brought in circuit court to
 2 obtain an order for the support of a minor child when:

3 (1) Such child has a parent and child relationship with
 4 an obligor;

5 (2) Such obligor is not the primary caretaker or
 6 guardian of the child;

7 (3) The obligor is not meeting an obligation to
 8 support the child;

9 (4) An enforceable order for the support of the child
 10 by the obligor has not been entered by a court of
 11 competent jurisdiction; and

12 (5) There is no pending action for divorce, separate
13 maintenance or annulment in which the obligation of
14 support owing from the obligor to the child is at issue.

15 (b) An action may be brought under the provisions of
16 subsection (a) of this section by:

17 (1) A custodial parent of a child, when the divorce
18 order or other order which granted custody did not make
19 provision for the support of the child by the obligor;

20 (2) A primary caretaker of a child;

21 (3) A guardian of the property of a child or the
22 committee for a child; or

23 (4) The child support enforcement division, on behalf
24 of the state, when the department of health and human
25 resources is providing assistance on behalf of the child in
26 the form of temporary assistance to needy families, and
27 any right to support has been assigned to the department
28 or in any other case wherein a party has applied for child
29 support enforcement services from the child support
30 enforcement division.

31 (c) An action under the provisions of this section may
32 be brought in the county where the obligee, the obligor or
33 the child resides.

34 (d) When an action for child support is brought under
35 the provisions of this section by an obligee against his or
36 her spouse, such obligee may also seek spousal support
37 from the obligor, unless such support has been previously
38 waived by agreement or otherwise.

39 (e) Every order of support heretofore or hereafter
40 entered or modified under the provisions of this section
41 shall include a provision for the income withholding in
42 accordance with the provisions of section fifteen-a or
43 fifteen-b, article two, chapter forty-eight of this code.

44 (f) At any time after the entry of an order for support,
45 the court may, upon the verified petition of an obligee or
46 the obligor, revise or alter such order, and make a new
47 order, as the altered circumstances or needs of a child, an

48 obligee, or the obligor may render necessary to meet the
49 ends of justice.

§48A-5-2. Arrearages; liens on personal property; enforcement through writ of execution, suggestion or suggestee execution.

1 (a) The total of any matured, unpaid installments of
2 child support required to be paid by an order entered or
3 modified by a court of competent jurisdiction, or by the
4 order of a magistrate court of this state, shall stand, by
5 operation of law, as a decretal judgment against the
6 obligor owing such support. The amount of unpaid
7 support shall bear interest from the date it accrued, at a
8 rate of ten dollars upon one hundred dollars per annum,
9 and proportionately for a greater or lesser sum, or for a
10 longer or shorter time. A child support order shall not be
11 retroactively modified so as to cancel or alter accrued
12 installments of support. When an obligor is in arrears in
13 the payment of support which is required to be paid by
14 the terms of such order, an obligee may file an abstract of
15 the order giving rise to the support obligation and an
16 "Affidavit of Accrued Support", setting forth the
17 particulars of such arrearage and requesting a writ of
18 execution, suggestion or suggestee execution. The filing
19 of the abstract and affidavit shall give rise, by operation of
20 law, to a lien against personal property of an obligor who
21 resides within this state for overdue support.

22 (b) If the duty of support is based upon an order from
23 another jurisdiction, the obligee shall first register the
24 order in accordance with the provisions of chapter forty-
25 eight-b of this code: *Provided*, That nothing in this
26 subsection shall prevent the child support enforcement
27 division from enforcing foreign orders for support
28 without registration of the order in accordance with the
29 provisions of section five hundred seven, article five,
30 chapter forty-eight-b of this code.

31 (c) The affidavit may be filed with the clerk of the
32 circuit court in the county wherein the obligee or the
33 obligor resides, or where the obligor's source of income is
34 located.

35 (d) The affidavit may be filed when a payment
36 required by such order has been delinquent, in whole or in
37 part, for a period of fourteen days.

38 (e) The affidavit shall:

39 (1) Identify the obligee and obligor by name and
40 address, and shall list the obligor's social security number
41 or numbers, if known;

42 (2) Name the court which entered the support order
43 and set forth the date of such entry;

44 (3) State the total amount of accrued support which
45 has not been paid by the obligor;

46 (4) List the date or dates when support payments
47 should have been paid but were not, and the amount of
48 each such delinquent payment; and

49 (5) If known, the name and address of the obligor's
50 source of income.

51 (f) Upon receipt of the affidavit, the clerk shall issue a
52 writ of execution, suggestion or suggestee execution, and
53 shall mail a copy of the affidavit and a notice of the filing
54 of the affidavit to the obligor, at his last known address. If
55 the child support enforcement division is not acting on
56 behalf of the obligee in filing the affidavit, the clerk shall
57 forward a copy of the affidavit and the notice of the filing
58 to the child support enforcement division.

59 (g) The notice provided for in subsection (f) of this
60 section shall inform the obligor that if he or she desires to
61 contest the affidavit on the grounds that the amount
62 claimed to be in arrears is incorrect or that a writ of
63 execution, suggestion or suggestee execution is not proper
64 because of mistakes of fact, he or she must, within
65 fourteen days of the date of the notice: (1) Inform the
66 child support enforcement division in writing of the
67 reasons why the affidavit is contested and request a
68 meeting with the child support enforcement division; or
69 (2) where a court of this state has jurisdiction over the
70 parties, obtain a date for a hearing before the circuit court
71 or the family law master and mail written notice of such

72 hearing to the obligee and to the child support
73 enforcement division on a form prescribed by the
74 administrative office of the supreme court of appeals and
75 made available through the office of the clerk of the
76 circuit court.

77 (h) Upon being informed by an obligor that he or she
78 desires to contest the affidavit, the child support
79 enforcement division shall inform the circuit court of such
80 fact, and the circuit court shall require the obligor to give
81 security, post a bond, or give some other guarantee to
82 secure payment of overdue support.

83 (i) The clerk of the circuit court shall make available
84 form affidavits for use under the provisions of this section.
85 Such form affidavits shall be provided to the clerk by the
86 child support enforcement division. The notice of the
87 filing of an affidavit shall be in a form prescribed by the
88 child support enforcement division.

89 (j) Writs of execution, suggestions or suggestee
90 executions issued pursuant to the provisions of this section
91 shall have priority over any other legal process under the
92 laws of this state against the same income, except for
93 withholding from income of amounts payable as support
94 in accordance with the provisions of section three of this
95 article, and shall be effective despite any exemption that
96 might otherwise be applicable to the same income.

97 (k) Notwithstanding any other provision of this code
98 to the contrary, the amount to be withheld from the
99 disposable earnings of an obligor pursuant to a suggestee
100 execution in accordance with the provisions of this section
101 shall be the same amount which could properly be
102 withheld in the case of a withholding order under the
103 provisions of subsection (e), section three of this article.

104 (l) Any person who files a false affidavit shall be
105 guilty of false swearing and, upon conviction thereof, shall
106 be punished as provided by law for such offense.

107 (m) The provisions of this section apply to support
108 orders issued by an out-of-state court or tribunal, as

109 defined in section one hundred one, article one, chapter
110 forty-eight-b of this code, of any other state.

§48A-5-3. Withholding from income of amounts payable as support.

1 (a) The withholding from an obligor's income of
2 amounts payable as spousal or child support shall be
3 enforced by the child support enforcement division in
4 accordance with the provisions of section fifteen-a or
5 fifteen-b, article two, chapter forty-eight of this code.
6 Every support order heretofore or hereafter entered by a
7 circuit court or a magistrate of this state and every support
8 order entered by a court of competent jurisdiction of
9 another state shall be considered to provide for an order
10 of income withholding in accordance with the provisions
11 of said sections, notwithstanding the fact that such support
12 order does not in fact provide for such an order of
13 withholding.

14 (b) When immediate income withholding is not
15 required due to the findings required by subsection (c),
16 section fifteen-b, article two, chapter forty-eight of this
17 code, the child support enforcement division shall mail a
18 notice to the obligor pursuant to this section when the
19 support payments required by the order are in arrears in
20 an amount equal to:

21 (1) One month's support, if the order requires support
22 to be paid in monthly installments;

23 (2) Four weeks' support, if the order requires support
24 to be paid in weekly or biweekly installments; or

25 (3) Two biweekly installments, if biweekly payments
26 are provided.

27 (c) When withholding is required by either subsection
28 (a) or (b) of this section, the child support enforcement
29 division shall send by first class mail or electronic means
30 to the obligor notice that withholding has commenced.
31 The notice shall inform the obligor of the following:

32 (1) The amount owed;

33 (2) That a withholding from the obligor's income of
34 amounts payable as support has commenced;

35 (3) That the amount withheld will be equal to the
36 amount required under the terms of the current support
37 order, plus amounts for any outstanding arrearage;

38 (4) The definition of "gross income" as defined in
39 section nineteen, article one-a of this chapter;

40 (5) That the withholding will apply to the obligor's
41 present source of income and to any future source of
42 income and, therefore, no other notice of withholding will
43 be sent to the obligor. A copy of any new or modified
44 withholding notice will be sent to the obligor at
45 approximately the same time the original is sent to the
46 source of income;

47 (6) That any action by the obligor to purposefully
48 minimize his or her income will result in the enforcement
49 of support being based upon potential and not just actual
50 earnings;

51 (7) That payment of the arrearage after the date of the
52 notice is not a bar to such withholding;

53 (8) That the obligor may contest the withholding by
54 written request to the child support enforcement division
55 when the obligor has information showing an error in the
56 current or overdue support amount or a mistake as to the
57 identity of the obligor;

58 (9) That a mistake of fact exists only when there is an
59 error in the amount of current or overdue support claimed
60 in the notice, or there is a mistake as to the identity of the
61 obligor;

62 (10) That matters such as lack of visitation,
63 inappropriateness of the support award, or changed
64 financial circumstances of the obligee or the obligor will
65 not be considered at any hearing held pursuant to the
66 withholding, but may be raised by the filing of a separate
67 petition in circuit court;

68 (11) That if the obligor contests the withholding, in
69 writing, a meeting with the child support enforcement

70 division will be held at an arranged time and place for the
71 purpose of attempting to settle the contested issues;

72 (12) That if the meeting with the child support
73 enforcement division fails to resolve the contested issues,
74 the obligor may petition the circuit court for a resolution;
75 and

76 (13) That while the withholding is being contested
77 through either the child support enforcement division or
78 the court, the income withholding may not be stayed.

79 (d) Withholding shall occur and the notice to withhold
80 shall be sent to the source of income when the support
81 order provides for immediate income withholding, or if
82 immediate income withholding is not so provided, when
83 the support payments are in arrears in the amount
84 specified in subsection (b) of this section. The source of
85 income shall withhold so much of the obligor's income as
86 is necessary to comply with the order authorizing such
87 withholding, up to the maximum amount permitted under
88 applicable law. Such withholding, unless otherwise
89 terminated under the provisions of this section, shall apply
90 to any subsequent source of income or any subsequent
91 period of time during which income is received by the
92 obligor.

93 (e) Notwithstanding any other provision of this code
94 to the contrary which provides for a limitation upon the
95 amount which may be withheld from earnings through
96 legal process, the amount of an obligor's aggregate
97 disposable earnings for any given workweek which may
98 be withheld as support payments is to be determined in
99 accordance with the provisions of this subsection, as
100 follows:

101 (1) After ascertaining the status of the payment record
102 of the obligor under the terms of the support order, the
103 payment record shall be examined to determine whether
104 any arrearage is due for amounts which should have been
105 paid prior to a twelve-week period which ends with the
106 workweek for which withholding is sought to be enforced.

107 (2) When none of the withholding is for amounts
108 which came due prior to such twelve-week period, then:

109 (A) When the obligor is supporting another spouse or
110 dependent child other than the spouse or child for whom
111 the proposed withholding is being sought, the amount
112 withheld may not exceed fifty percent of the obligor's
113 disposable earnings for that week; and

114 (B) When the obligor is not supporting another spouse
115 or dependent child as described in paragraph (A) of this
116 subdivision, the amount withheld may not exceed sixty
117 percent of the obligor's disposable earnings for that week.

118 (3) When a part of the withholding is for amounts
119 which came due prior to such twelve-week period, then:

120 (A) Where the obligor is supporting another spouse or
121 dependent child other than the spouse or child for whom
122 the proposed withholding is being sought, the amount
123 withheld may not exceed fifty-five percent of the obligor's
124 disposable earnings for that week; and

125 (B) Where the obligor is not supporting another
126 spouse or dependent child as described in paragraph (A)
127 of this subdivision, the amount withheld may not exceed
128 sixty-five percent of the obligor's disposable earnings for
129 that week.

130 (4) In addition to the percentage limitations set forth
131 in subdivisions (2) and (3) of this subsection, it shall be a
132 further limitation that when the current month's obligation
133 plus arrearages are being withheld from salaries or wages
134 in no case shall the total amounts withheld for the current
135 month's obligation plus arrearage exceed the amounts
136 withheld for the current obligation by an amount greater
137 than twenty-five percent of the current monthly support
138 obligation.

139 (5) The provisions of this subsection shall apply
140 directly to the withholding of disposable earnings of an
141 obligor regardless of whether the obligor is paid on a
142 weekly, biweekly, monthly or other basis.

143 (6) The child support enforcement division has the
144 authority to prorate the current support obligation in
145 accordance with the pay cycle of the source of income.
146 This prorated current support obligation shall be known as
147 the "adjusted support obligation". The current support
148 obligation or the adjusted support obligation is the
149 amount, if unpaid, on which interest will be charged.

150 (7) When an obligor acts so as to purposefully
151 minimize his or her income and to thereby circumvent the
152 provisions of this section which provide for withholding
153 from income of amounts payable as support, the amount
154 to be withheld as support payments may be based upon
155 the obligor's potential earnings rather than his or her
156 actual earnings, and such obligor may not rely upon the
157 percentage limitations set forth in this subsection which
158 limit the amount to be withheld from disposable earnings.

159 (f) The source of income of any obligor who is
160 subject to withholding, upon being given notice of
161 withholding, shall withhold from such obligor's income
162 the amount specified by the notice and pay such amount
163 to the child support enforcement division for distribution.
164 The notice given to the source of income shall contain
165 only such information as may be necessary for the source
166 of income to comply with the withholding order. Such
167 notice to the source of income shall include, at a
168 minimum, the following:

169 (1) The amount to be withheld from the obligor's
170 disposable earnings, and a statement that the amount to be
171 withheld for support and other purposes, including the fee
172 specified under subdivision (3) of this subsection, may not
173 be in excess of the maximum amounts permitted under
174 Section 303(b) of the federal Consumer Credit Protection
175 Act or limitations imposed under the provisions of this
176 code;

177 (2) That the source of income shall send the amount
178 to be withheld from the obligor's income to the child
179 support enforcement division, along with such identifying
180 information as may be required by the division, the same
181 day that the obligor is paid;

182 (3) That, in addition to the amount withheld under the
183 provisions of subdivision (1) of this subsection, the source
184 of income may deduct a fee, not to exceed one dollar, for
185 administrative costs incurred by the source of income, for
186 each withholding;

187 (4) That withholding is binding on the source of
188 income until further notice by the child support
189 enforcement division or until the source of income
190 notifies the child support enforcement division of a
191 termination of the obligor's employment in accordance
192 with the provisions of subsection (l) of this section;

193 (5) That the source of income is subject to a fine for
194 discharging an obligor from employment, refusing to
195 employ, or taking disciplinary action against any obligor
196 because of the withholding;

197 (6) That when the source of income fails to withhold
198 income in accordance with the provisions of the notice, the
199 source of income is liable for the accumulated amount the
200 source of income should have withheld from the obligor's
201 income;

202 (7) That the withholding under the provisions of this
203 section shall have priority over any other legal process
204 under the laws of this state against the same income, and
205 shall be effective despite any exemption that might
206 otherwise be applicable to the same income;

207 (8) That when an employer has more than one
208 employee who is an obligor who is subject to wage
209 withholding from income under the provisions of this
210 code, the employer may combine all withheld payments to
211 the child support enforcement division when the employer
212 properly identifies each payment with the information
213 listed in this section. A source of income is liable to an
214 obligee, including the state of West Virginia or the
215 department of health and human resources where
216 appropriate, for any amount which the source of income
217 fails to identify with the information required by this
218 section and is therefore not received by the obligee;

219 (9) That the source of income shall implement
220 withholding no later than the first pay period or first date
221 for payment of income that occurs after fourteen days
222 following the date the notice to the source of income was
223 mailed; and

224 (10) That the source of income shall notify the child
225 support enforcement division promptly when the obligor
226 terminates his or her employment or otherwise ceases
227 receiving income from the source of income, and shall
228 provide the obligor's last known address and the name and
229 address of the obligor's new source of income, if known.

230 (g) The commission shall, by administrative rule,
231 establish procedures for promptly refunding to obligors
232 amounts which have been improperly withheld under the
233 provisions of this section.

234 (h) After implementation in accordance with the
235 provisions of subsection (k) of this section, a source of
236 income shall send the amount to be withheld from the
237 obligor's income to the child support enforcement division
238 and shall notify the child support enforcement division of
239 the date of withholding, the same date that the obligor is
240 paid.

241 (i) In addition to any amounts payable as support
242 withheld from the obligor's income, the source of income
243 may deduct a fee, not to exceed one dollar, for
244 administrative costs incurred by the source of income, for
245 each withholding.

246 (j) Withholding of amounts payable as support under
247 the provisions of this section is binding on the source of
248 income until further notice by the child support
249 enforcement division or until the source of income
250 notifies the child support enforcement division of a
251 termination of the obligor's employment in accordance
252 with the provisions of subsection (l) of this section.

253 (k) Every source of income who receives a notice of
254 withholding under the provisions of this section shall
255 implement withholding no later than the first pay period
256 or first date for the payment of income which occurs after

257 fourteen days following the date the notice to the source
258 of income was mailed.

259 (l) A source of income who employs or otherwise pays
260 income to an obligor who is subject to withholding under
261 the provisions of this section shall notify the child support
262 enforcement division promptly when the obligor
263 terminates employment or otherwise ceases receiving
264 income from the source of income, and shall provide the
265 child support enforcement division with the obligor's last
266 known address and the name and address of the obligor's
267 new source of income, if known.

268 (m) When an employer has more than one employee
269 who is an obligor who is subject to wage withholding from
270 income for amounts payable as support, the employer
271 may combine all withheld payments to the child support
272 enforcement division when the employer properly
273 identifies each payment with the information listed in this
274 section. A source of income is liable to an obligee,
275 including the state of West Virginia or the department of
276 health and human resources where appropriate, for any
277 amount which the source of income fails to identify in
278 accordance with this section and is therefore not received
279 by the obligee.

280 (n) A source of income is liable to an obligee,
281 including the state of West Virginia or the department of
282 health and human resources where appropriate, for any
283 amount which the source of income fails to withhold from
284 income due an obligor following receipt by such source
285 of income of proper notice under subsection (f) of this
286 section: *Provided*, That a source of income shall not be
287 required to vary the normal pay and disbursement cycles
288 in order to comply with the provisions of this section.

289 (o) Any source of income who knowingly and
290 willfully conceals the fact that the source of income is
291 paying income to an obligor, with the intent to avoid
292 withholding from the obligor's income of amounts
293 payable as support, is guilty of a misdemeanor and, upon
294 conviction thereof, shall be fined not more than one
295 hundred dollars.

296 (p) When the child support enforcement division
297 makes a written request to a source of income to provide
298 information as to whether the source of income has paid
299 income to a specific obligor, within the preceding
300 sixty-day period, the source of income shall, within
301 fourteen days thereafter, respond to such request,
302 itemizing all such income, if any, paid to the obligor
303 during such sixty-day period. A source of income shall
304 not be liable, civilly or criminally, for providing such
305 information in good faith.

306 (q) Support collection under the provisions of this
307 section shall have priority over any other legal process
308 under the laws of this state against the same income, and
309 shall be effective despite any exemption that might
310 otherwise be applicable to the same income.

311 (r) Any source of income who discharges from
312 employment, refuses to employ, or takes disciplinary
313 action against any obligor subject to income withholding
314 required by this section because of the existence of such
315 withholding and the obligations or additional obligations
316 which it imposes on the source of income, shall be guilty
317 of a misdemeanor and, upon conviction thereof, shall be
318 fined not less than five hundred dollars nor more than one
319 thousand dollars.

§48A-5-4. Liens against real property for overdue support.

1 (a) An order for support entered by a court of
2 competent jurisdiction will give rise, by operation of law,
3 to a lien against real property of an obligor who resides or
4 owns property within this state for overdue support upon
5 the filing by the obligee, or, when appropriate, the child
6 support enforcement division, an abstract of the order
7 giving rise to the support obligation and an "Affidavit of
8 Accrued Support" setting forth the particulars of the
9 arrearage.

10 (b) The affidavit and abstract shall be filed with the
11 clerk of the county commission in which the real property
12 is located. The affidavit shall:

13 (1) Identify the obligee and obligor by name and
14 address, and shall list the obligor's social security number
15 or numbers, if known;

16 (2) Name the court which entered the support order
17 and set forth the date of such entry;

18 (3) Allege that the support obligor is at least thirty
19 days in arrears in the payment of child support;

20 (4) State the total amount of accrued support which
21 has not been paid by the obligor; and

22 (5) List the date or dates when support payments
23 should have been paid but were not, and the amount of
24 each such delinquent payment.

25 (c) If the duty of support is based upon a foreign
26 order the obligee shall first register the order in
27 accordance with the provisions of chapter forty-eight-b of
28 this code: *Provided*, That nothing in this subsection shall
29 prevent the child support enforcement division from
30 enforcing foreign orders for support without registration
31 of the order in accordance with the provisions of section
32 five hundred seven, article five, chapter forty-eight-b of
33 this code.

34 (d) This state will accord full faith and credit to liens
35 described in subsection (a) of this section arising in
36 another state, when the out-of-state agency, party, or other
37 entity seeking to enforce such a lien complies with the
38 procedural rules relating to recording or serving liens that
39 arise within the other state.

40 (e) Upon satisfaction of the overdue support
41 obligation, the obligee shall issue a release to the obligor
42 and file a copy thereof with the clerk of the county
43 commission in the county in which the lien arose pursuant
44 to this section. The child support enforcement division
45 shall issue a release in the same manner and with the same
46 effect as liens taken by the tax commissioner pursuant to
47 section twelve, article ten, chapter eleven of this code.

48 (f) Any person who files a false affidavit shall be
49 guilty of false swearing and, upon conviction thereof, shall
50 be punished as provided by law for such offense.

51 (g) The provisions of this section shall apply to
52 support orders issued by a court or tribunal, as defined in
53 section one hundred one, article one, chapter forty-eight-b
54 of this code, of any other state.

**§48A-5-4a. Enforcement by the child support enforcement
division of lien on real property.**

1 The child support enforcement division may enforce a
2 lien upon real property pursuant to the provisions of
3 article three, chapter thirty-eight of this code.

**§48A-5-5. Enforcement of support orders by contempt
proceedings; penalties.**

1 (a) In addition to or in lieu of the other remedies
2 provided by this article for the enforcement of support
3 orders, the child support enforcement division may
4 commence a civil or criminal contempt proceeding in
5 accordance with the provisions of section twenty-two,
6 article two, chapter forty-eight of this code against an
7 obligor who is alleged to have willfully failed or refused to
8 comply with the order of a court of competent jurisdiction
9 requiring the payment of support. Such proceeding shall
10 be instituted by filing with the circuit court a petition for
11 an order to show cause why the obligor should not be held
12 in contempt.

13 (b) If the court finds that the obligor willfully failed or
14 refused to comply with an order requiring the payment of
15 support, the court shall find the obligor in contempt and
16 may do one or more of the following:

17 (1) Require additional terms and conditions consistent
18 with the court's support order.

19 (2) After notice to both parties and a hearing, if
20 requested by a party, on any proposed modification of the
21 order, modify the order in the same manner and under the
22 same requirements as an order requiring the payment of
23 support may be modified under the provisions of

24 subsection (e), section fifteen, article two, chapter forty-
25 eight of this code. A modification sought by an obligor,
26 if otherwise justified, shall not be denied solely because
27 the obligor is found to be in contempt.

28 (3) Order that all accrued support and interest thereon
29 be paid under such terms and conditions as the court, in its
30 discretion, may deem proper.

31 (4) Order the contemnor to pay support in accordance
32 with a plan approved by the child support enforcement
33 division or to participate in such work activities as the
34 court deems appropriate.

35 (5) If appropriate under the provisions of section
36 twenty-two, article two, chapter forty-eight of this code:

37 (A) Commit the contemnor to the county jail; or

38 (B) Commit the contemnor to the county jail with the
39 privilege of leaving the jail, during such hours as the court
40 determines and under such supervision as the court
41 considers necessary, for the purpose of allowing the
42 contemnor to go to and return from his or her place of
43 employment.

44 (c) A commitment under subdivision (5) of subsection
45 (b) shall not exceed forty-five days for the first
46 adjudication of contempt or ninety days for any
47 subsequent adjudication of contempt.

48 (d) An obligor committed under subdivision (5),
49 subsection (b) of this section shall be released if the court
50 has reasonable cause to believe that the obligor will
51 comply with the court's orders.

52 (e) If an obligor is committed to jail under the
53 provisions of paragraph (B), subdivision (5), subsection
54 (b) of this section and violates the conditions of the court,
55 the court may commit the person to the county jail
56 without the privilege provided under said paragraph (B)
57 for the balance of the period of commitment imposed by
58 the court.

59 (f) If a person is committed to jail under the
60 provisions of paragraph (B), subdivision (5), subsection

61 (b) of this section and willfully fails to return to the place
62 of confinement within the time prescribed, such person
63 shall be considered to have escaped from custody and
64 shall be guilty of a misdemeanor, punishable by
65 imprisonment for not more than one year.

§48A-5-7. Increase in monthly payments.

1 (a) For the purpose of securing overdue support, the
2 child support enforcement division has the authority to
3 increase the monthly support payments by as much as one
4 hundred dollars per month to satisfy the arrearage where
5 the obligor:

6 (1) Owes an arrearage of not less than eight thousand
7 dollars; or

8 (2) Has not paid support for twelve consecutive
9 months.

10 (b) This increase in monthly support will be in
11 addition to any amounts withheld pursuant to section
12 three, article five of this chapter.

13 (c) This increase in monthly support may be enforced
14 through the withholding process.

15 (d) Notice of the increase shall be sent to the obligor
16 at the time such increase is implemented. If the obligor
17 disagrees with the increase in payments, he or she may file,
18 within thirty days of the date of the notice, a motion with
19 the circuit court in which the case is situated for a
20 determination of whether there should be an increase in
21 monthly payments and the amount of that increase, if any.

22 (e) The provisions of this section apply to support
23 orders issued by a court or tribunal, as defined in section
24 one hundred one, article one, chapter forty-eight-b of this
25 code, of this or any other state.

ARTICLE 6. ESTABLISHMENT OF PATERNITY.

§48A-6-1. Paternity proceedings.

§48A-6-4. Establishment of paternity and duty of support.

§48A-6-1. Paternity proceedings.

1 (a) A civil action to establish the paternity of a child
2 and to obtain an order of support for the child may be
3 instituted, by verified complaint, in the circuit court of the
4 county where the child resides: *Provided*, That if such
5 venue creates a hardship for the parties, or either of them,
6 or if judicial economy requires, the court may transfer the
7 action to the county where either of the parties resides.

8 (b) A "paternity proceeding" is a summary
9 proceeding, equitable in nature and within the domestic
10 relations jurisdiction of the courts, wherein a circuit court
11 upon the petition of the state or another proper party may
12 intervene to determine and protect the respective personal
13 rights of a child for whom paternity has not been lawfully
14 established, of the mother of the child and of the putative
15 father of the child. The parties to a paternity proceeding
16 are not entitled to a trial by jury.

17 (c) The sufficiency of the statement of the material
18 allegations in the complaint set forth as grounds for relief
19 and the grant or denial of the relief prayed for in a
20 particular case shall rest in the sound discretion of the
21 court, to be exercised by the court according to the
22 circumstances and exigencies of the case, having due
23 regard for precedent and the provisions of the statutory
24 law of this state.

25 (d) A decree or order made and entered by a court in
26 a paternity proceeding shall include a determination of the
27 filial relationship, if any, which exists between a child and
28 his or her putative father, and, if such relationship is
29 established, shall resolve dependent claims arising from
30 family rights and obligations attendant to such filial
31 relationship.

32 (e) A paternity proceeding may be brought by any of
33 the following persons:

34 (1) An unmarried woman with physical or legal
35 custody of a child to whom she gave birth;

36 (2) A married woman with physical or legal custody
37 of a child to whom she gave birth, if the complaint alleges
38 that:

39 (A) The married woman lived separate and apart from
40 her husband preceding the birth of the child;

41 (B) The married woman did not cohabit with her
42 husband at any time during such separation and that such
43 separation has continued without interruption; and

44 (C) The defendant, rather than her husband, is the
45 father of the child.

46 (3) The state of West Virginia, including the child
47 support enforcement division defined in article two of this
48 chapter;

49 (4) Any person who is not the mother of the child, but
50 who has physical or legal custody of the child;

51 (5) The guardian or committee of the child;

52 (6) The next friend of the child when the child is a
53 minor;

54 (7) By the child in his own right at any time after the
55 child's eighteenth birthday but prior to the child's twenty-
56 first birthday; or

57 (8) A man purporting to be the father of a child born
58 out of wedlock, when there has been no prior judicial
59 determination of paternity.

60 (f) Blood or tissue samples taken pursuant to the
61 provisions of this article may be ordered to be taken in
62 such locations as may be convenient for the parties so
63 long as the integrity of the chain of custody of the
64 samples can be preserved.

65 (g) A person who has sexual intercourse in this state
66 submits to the jurisdiction of the courts of this state for a
67 proceeding brought under this article with respect to a
68 child who may have been conceived by that act of
69 intercourse. Service of process may be perfected
70 according to the rules of civil procedure.

71 (h) When the person against whom the proceeding is
72 brought has failed to plead or otherwise defend the action
73 after proper service has been obtained, judgment by
74 default shall be issued by the court as provided by the
75 rules of civil procedure.

§48A-6-4. Establishment of paternity and duty of support.

1 (a) When the defendant, by verified responsive
2 pleading, admits that the man is the father of the child and

3 owes a duty of support, or if after a hearing on the merits,
4 the court shall find, by clear and convincing evidence that
5 the man is the father of the child, the court shall order
6 support in accordance with the provisions of this section.

7 (b) Upon motion by a party, the court shall issue a
8 temporary order for child support pending a judicial
9 determination of parentage if there is clear and convincing
10 evidence of paternity on the basis of genetic tests or other
11 scientifically recognized evidence.

12 (c) The court shall give full faith and credit to a
13 determination of paternity made by any other state, based
14 on the laws of that state, whether established through
15 voluntary acknowledgment or through administrative or
16 judicial process.

17 (d) Bills for pregnancy, childbirth, and genetic testing
18 are admissible as evidence of expenses incurred. Evidence
19 so admitted shall constitute prima facie evidence of
20 amounts incurred for such services or for testing on behalf
21 of the child.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 1. LEGISLATIVE ACTS AND RESOLUTIONS; PUBLIC RECORDS.

§57-1-12. Authentication of records and proceedings of courts of United States or other states; full faith and credit.

1 The records and judicial proceedings of any court of
2 the United States, or of any state or territory, or of any
3 country subject to the jurisdiction of the United States,
4 shall be proved or admitted in any court in this state, by
5 the attestation of the clerk, and the seal of the court
6 annexed, if there be a seal, together with a certificate of the
7 judge, chief justice, or presiding magistrate, that the said
8 attestation is in due form. And the said records and
9 judicial proceedings, so authenticated, shall have such faith
10 and credit given to them in every court within this state as
11 they have by law or usage in the courts of the state or
12 jurisdiction from which they are taken. Full faith and
13 credit for child support orders shall be accorded by this
14 state in conformity with federal law.

CHAPTER 80

(S. B. 534—By Senators Bowman, Bailey, Ball, Jackson, Kessler, Plymale, Schoonover, White, Boley, Buckalew, Minear and Scott)

[Passed March 2, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article two, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the child support enforcement division.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION; CHILD SUPPORT ENFORCEMENT DIVISION; ESTABLISHMENT AND ORGANIZATION.

§48A-2-12. Establishment of the child support enforcement division; cooperation with the division of human services; continuation.

1 (a) Effective the first day of July, one thousand nine
2 hundred ninety-five, there is hereby established in the
3 department of health and human resources the child
4 support enforcement division. The division is under the
5 immediate supervision of the director, who is responsible
6 for the exercise of the duties and powers assigned to the
7 division under the provisions of this chapter. The division
8 is designated as the single and separate organizational unit
9 within this state to administer the state plan for child and
10 spousal support according to 42 U.S.C. §654(3).

11 (b) The division of human services shall cooperate
12 with the child support enforcement division. At a
13 minimum, such cooperation shall require that the division
14 of human services:

15 (1) Notify the child support enforcement division
16 when the division of human services proposes to terminate
17 or provide public assistance payable to any obligee;

18 (2) Receive support payments made on behalf of a
19 former or current recipient to the extent permitted by Title
20 IV-D, Part D of the Social Security Act; and

21 (3) Accept the assignment of the right, title or interest
22 in support payments and forward a copy of the
23 assignment to the child support enforcement division.

24 (c) Pursuant to the provisions of article ten, chapter
25 four of this code, the child support enforcement division
26 shall continue to exist until the first day of July, two
27 thousand.

CHAPTER 81

(S. B. 773—By Senators White, Wooton, Ball, Bowman, Dittmar, Fanning,
Hunter, Kessler, Oliverio, Ross, Schoonover,
Snyder, Buckalew, Kimble and Scott)

[Passed March 14, 1998; to take effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact sections one and three, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections sixteen and seventeen, article two of said chapter; to amend and reenact sections one, three, five and eight, article six of said chapter; to further amend said article by adding thereto two new sections, designated sections five-a and five-b; and to amend and reenact section three, article six-d of said chapter, all relating generally to enacting legislation to comply with mandates of the federal Adoption and Safe Families Act of 1997 regarding the permanent placement of children in foster care.

Be it enacted by the Legislature of West Virginia:

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

Article

1. Purposes; Definitions.
2. State Responsibilities for the Protection and Care of Children.
6. Procedure in Cases of Child Neglect or Abuse.
- 6D. West Virginia Child Protective Services Act.

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-1. Purpose.

§49-1-3. Definitions relating to abuse and neglect.

§49-1-1. Purpose.

- 1 (a) The purpose of this chapter is to provide a system
- 2 of child welfare for the children of this state that has goals
- 3 to:
- 4 (1) Assure each child care, safety and guidance;
- 5 (2) Serve the mental and physical welfare of the child;
- 6 (3) Preserve and strengthen the child's family ties;
- 7 (4) Recognize the fundamental rights of children and
- 8 parents;
- 9 (5) Adopt procedures and establish programs that are
- 10 family-focused rather than focused on specific family
- 11 members, except where the best interests of the child or
- 12 the safety of the community are at risk;
- 13 (6) Involve the child and his or her family or caregiver
- 14 in the planning and delivery of programs and services;

15 (7) Provide services that are community-based, in the
16 least restrictive settings that are consonant with the needs
17 and potentials of the child and his or her family;

18 (8) Provide for early identification of the problems of
19 children and their families, and respond appropriately with
20 measures and services to prevent abuse and neglect or
21 delinquency;

22 (9) Provide a system for the rehabilitation or detention
23 of juvenile delinquents; and

24 (10) Protect the welfare of the general public.

25 In pursuit of these goals it is the intention of the
26 Legislature to provide for removing the child from the
27 custody of parents only when the child's welfare or the
28 safety and protection of the public cannot be adequately
29 safeguarded without removal; and, when the child has to
30 be removed from his or her family, to secure for the child
31 custody, care and discipline consistent with the child's best
32 interests and other goals herein set out. It is further the
33 intention of the Legislature to require that any
34 reunification, permanency or preplacement preventative
35 services address the safety of the child.

36 (b) The child welfare service of the state shall be
37 administered by the state department of health and human
38 resources and the division of juvenile services of the
39 department of military affairs and public safety.

40 The state department of health and human resources is
41 designated as the agency to cooperate with the United
42 States department of health and human services and
43 United States department of justice in extending and
44 improving child welfare services, to comply with
45 regulations thereof, and to receive and expend federal
46 funds for these services. The division of juvenile services
47 of the department of military affairs and public safety is
48 designated as the agency to cooperate with the United
49 States department of health and human services and
50 United States department of justice in operating,
51 maintaining and improving juvenile correction facilities
52 and centers for the predispositional detention of children,

53 to comply with regulations thereof, and to receive and
54 expend federal funds for these services.

§49-1-3. Definitions relating to abuse and neglect.

1 (a) "Abused child" means a child whose health or
2 welfare is harmed or threatened by:

3 (1) A parent, guardian or custodian who knowingly or
4 intentionally inflicts, attempts to inflict or knowingly
5 allows another person to inflict, physical injury or mental
6 or emotional injury, upon the child or another child in the
7 home; or

8 (2) Sexual abuse or sexual exploitation; or

9 (3) The sale or attempted sale of a child by a parent,
10 guardian or custodian in violation of section sixteen,
11 article four, chapter forty-eight of this code.

12 In addition to its broader meaning, physical injury
13 may include an injury to the child as a result of excessive
14 corporal punishment.

15 (b) "Abusing parent" means a parent, guardian or
16 other custodian, regardless of his or her age, whose
17 conduct, as alleged in the petition charging child abuse or
18 neglect, has been adjudged by the court to constitute child
19 abuse or neglect.

20 (c) "Child abuse and neglect" or "child abuse or
21 neglect" means physical injury, mental or emotional
22 injury, sexual abuse, sexual exploitation, sale or attempted
23 sale or negligent treatment or maltreatment of a child by a
24 parent, guardian or custodian who is responsible for the
25 child's welfare, under circumstances which harm or
26 threaten the health and welfare of the child.

27 (d) "Child abuse and neglect services" means social
28 services which are directed toward:

29 (1) Protecting and promoting the welfare of children
30 who are abused or neglected;

31 (2) Identifying, preventing and remedying conditions
32 which cause child abuse and neglect;

33 (3) Preventing the unnecessary removal of children
34 from their families by identifying family problems and
35 assisting families in resolving problems which could lead
36 to a removal of children and a breakup of the family;

37 (4) In cases where children have been removed from
38 their families, providing services to the children and the
39 families so as to reunify such children with their families;

40 (5) Placing children in suitable adoptive homes when
41 reunifying the children with their families is not possible
42 or appropriate; and

43 (6) Assuring the adequate care of children who have
44 been placed in the custody of the department or third
45 parties.

46 (e) "Imminent danger to the physical well-being of the
47 child" means an emergency situation in which the welfare
48 or the life of the child is threatened. Such emergency
49 situation exists when there is reasonable cause to believe
50 that any child in the home is or has been sexually abused
51 or sexually exploited, or reasonable cause to believe that
52 the following conditions threaten the health or life of any
53 child in the home:

54 (1) Nonaccidental trauma inflicted by a parent,
55 guardian, custodian, sibling or a babysitter or other
56 caretaker; or

57 (2) A combination of physical and other signs
58 indicating a pattern of abuse which may be medically
59 diagnosed as battered child syndrome; or

60 (3) Nutritional deprivation; or

61 (4) Abandonment by the parent, guardian or
62 custodian; or

63 (5) Inadequate treatment of serious illness or disease;
64 or

65 (6) Substantial emotional injury inflicted by a parent,
66 guardian or custodian; or

67 (7) Sale or attempted sale of the child by the parent,
68 guardian or custodian.

69 (f) "Legal guardianship" means the relationship
70 between a child and caretaker as established pursuant to
71 the provisions of article ten, chapter forty-four of this
72 code.

73 (g) "Multidisciplinary team" means a group of
74 professionals and paraprofessionals representing a variety
75 of disciplines who interact and coordinate their efforts to
76 identify, diagnose and treat specific cases of child abuse
77 and neglect. Multidisciplinary teams may include, but are
78 not limited to, medical, educational, child care and law-
79 enforcement personnel, social workers, psychologists and
80 psychiatrists. Their goal is to pool their respective skills in
81 order to formulate accurate diagnoses and to provide
82 comprehensive coordinated treatment with continuity and
83 follow-up for both parents and children. "Community
84 team" means a multidisciplinary group which addresses
85 the general problem of child abuse and neglect in a given
86 community and may consist of several multidisciplinary
87 teams with different functions.

88 (h) (1) "Neglected child" means a child:

89 (A) Whose physical or mental health is harmed or
90 threatened by a present refusal, failure or inability of the
91 child's parent, guardian or custodian to supply the child
92 with necessary food, clothing, shelter, supervision, medical
93 care or education, when such refusal, failure or inability is
94 not due primarily to a lack of financial means on the part
95 of the parent, guardian or custodian; or

96 (B) Who is presently without necessary food, clothing,
97 shelter, medical care, education or supervision because of
98 the disappearance or absence of the child's parent or
99 custodian;

100 (2) "Neglected child" does not mean a child whose
101 education is conducted within the provisions of section
102 one, article eight, chapter eighteen of this code.

103 (i) "Parenting skills" means a parent's competencies in
104 providing physical care, protection, supervision and

105 psychological support appropriate to a child's age and
106 state of development.

107 (j) "Sexual abuse" means:

108 (A) As to a child who is less than sixteen years of age,
109 any of the following acts which a parent, guardian or
110 custodian shall engage in, attempt to engage in, or
111 knowingly procure another person to engage in, with such
112 child, notwithstanding the fact that the child may have
113 willingly participated in such conduct or the fact that the
114 child may have suffered no apparent physical injury or
115 mental or emotional injury as a result of such conduct:

116 (i) Sexual intercourse; or

117 (ii) Sexual intrusion; or

118 (iii) Sexual contact; or

119 (B) As to a child who is sixteen years of age or older,
120 any of the following acts which a parent, guardian or
121 custodian shall engage in, attempt to engage in, or
122 knowingly procure another person to engage in, with such
123 child, notwithstanding the fact that the child may have
124 consented to such conduct or the fact that the child may
125 have suffered no apparent physical injury or mental or
126 emotional injury as a result of such conduct:

127 (i) Sexual intercourse; or

128 (ii) Sexual intrusion; or

129 (iii) Sexual contact; or

130 (C) Any conduct whereby a parent, guardian or
131 custodian displays his or her sex organs to a child, or
132 procures another person to display his or her sex organs
133 to a child, for the purpose of gratifying the sexual desire
134 of the parent, guardian or custodian, of the person making
135 such display, or of the child, or for the purpose of
136 affronting or alarming the child.

137 (k) "Sexual contact" means sexual contact as that term
138 is defined in section one, article eight-b, chapter sixty-one
139 of this code.

140 (l) "Sexual exploitation" means an act whereby:

141 (1) A parent, custodian or guardian, whether for
142 financial gain or not, persuades, induces, entices or coerces
143 a child to engage in sexually explicit conduct as that term
144 is defined in section one, article eight-c, chapter sixty-one
145 of this code;

146 (2) A parent, guardian or custodian persuades,
147 induces, entices or coerces a child to display his or her sex
148 organs for the sexual gratification of the parent, guardian,
149 custodian or a third person, or to display his or her sex
150 organs under circumstances in which the parent, guardian
151 or custodian knows such display is likely to be observed
152 by others who would be affronted or alarmed.

153 (m) "Sexual intercourse" means sexual intercourse as
154 that term is defined in section one, article eight-b, chapter
155 sixty-one of this code.

156 (n) "Sexual intrusion" means sexual intrusion as that
157 term is defined in section one, article eight-b, chapter
158 sixty-one of this code.

159 (o) "Parental rights" means any and all rights and
160 duties regarding a parent to a minor child, including, but
161 not limited to, custodial rights and visitational rights and
162 rights to participate in the decisions affecting a minor
163 child.

164 (p) "Placement" means any temporary or permanent
165 placement of a child who is in the custody of the state in
166 any foster home, group home or other facility or
167 residence.

168 (q) "Serious physical abuse" means bodily injury
169 which creates a substantial risk of death, which causes
170 serious or prolonged disfigurement, prolonged
171 impairment of health or prolonged loss or impairment of
172 the function of any bodily organ.

173 (r) "Siblings" means children who have at least one
174 biological parent in common or who have been legally
175 adopted by the same parents or parent.

176 (s) "Time-limited reunification services" means
177 individual, group, and family counseling, inpatient,
178 residential or outpatient substance abuse treatment
179 services, mental health services, assistance to address
180 domestic violence, services designed to provide temporary
181 child care and therapeutic services for families, including
182 crisis nurseries and transportation to or from any such
183 services, provided during fifteen of the most recent
184 twenty-two months a child has been in foster care, as
185 determined by the earlier date of the first judicial finding
186 that the child is subjected to abuse or neglect, or the date
187 which is sixty days after the child is removed from home.

**ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION
AND CARE OF CHILDREN.**

§49-2-16. State responsibility for child care.

§49-2-17. Subsidized adoption and legal guardianship.

§49-2-16. State responsibility for child care.

1 The division of juvenile services of the department of
2 military affairs and public safety is hereby authorized and
3 empowered to operate and maintain centers for juveniles
4 needing detention pending disposition by a court having
5 juvenile jurisdiction or temporary care following such
6 court action.

7 The department of health and human resources is
8 hereby authorized and empowered to provide care,
9 support and protective services for children who are
10 handicapped by dependency, neglect, single parent status,
11 mental or physical disability, or who for other reasons are
12 in need of public service. Such department is also hereby
13 authorized and empowered in its discretion to accept
14 children for care from their parent or parents, guardian,
15 custodian or relatives and to accept the custody of
16 children committed to its care by courts. The department
17 of health and human resources or any county office of
18 such department is also hereby authorized and empowered
19 in its discretion to accept temporary custody of children
20 for care from any law-enforcement officer in an
21 emergency situation.

22 Within ninety days of the date of the signatures to a
23 voluntary placement agreement, after receipt of physical
24 custody, the state department of health and human
25 resources shall file with the court a petition for review of
26 the placement, stating the child's situation and the
27 circumstance that gives rise to the voluntary placement. If
28 the department intends to extend the voluntary placement
29 agreement, the department shall file with the court a copy
30 of the child's case plan. The court shall appoint an
31 attorney for the child, who shall also receive a copy of the
32 case plan. The court shall schedule a hearing and shall
33 give notice of the time and place and right to be present at
34 such hearing to: The child's attorney; the child, if twelve
35 years of age or older; the child's parents or guardians; the
36 child's foster parents; any preadoptive parent or relative
37 providing care for the child; and any other such persons
38 as the court may in its discretion direct. The child's
39 presence at such hearing may be waived by the child's
40 attorney at the request of the child or if the child would
41 suffer emotional harm. At the conclusion of the
42 proceedings, but no later than ninety days after the date of
43 the signatures to the voluntary placement agreement, the
44 court shall enter an order determining whether or not
45 continuation of the voluntary placement is in the best
46 interests of the child; specifying under what conditions the
47 child's placement shall continue; and specifying whether
48 or not the department is required to and has made
49 reasonable efforts to preserve and to reunify the family, as
50 set forth in subsection (d), section three, article six of this
51 chapter and/or provide a plan for the permanent
52 placement of the child.

§49-2-17. Subsidized adoption and legal guardianship.

1 From funds appropriated to the department of health
2 and human resources, the secretary shall establish a system
3 of assistance for facilitating the adoption or legal
4 guardianship of children who are dependents of the
5 department or a child welfare agency licensed to place
6 children for adoption, legally free for adoption and in
7 special circumstances either because they:

8 (a) Have established emotional ties with prospective
9 adoptive parents or prospective legal guardians while in
10 their care; or

11 (b) Are not likely to be adopted or become a ward of
12 a legal guardian by reason of one or more of the
13 following conditions:

14 (1) They have a physical or mental disability;

15 (2) They are emotionally disturbed; or

16 (3) They are older children; or

17 (4) They are a part of a sibling group; or

18 (5) They are a member of a racial or ethnic minority;
19 or

20 (6) They have any combination of these conditions.

21 The department shall provide assistance in the form of
22 subsidies or other services to parents who are found and
23 approved for adoption or legal guardianship of a child
24 certified as eligible for subsidy by the department, but
25 before the final decree of adoption or order of legal
26 guardianship is entered, there must be a written agreement
27 between the family entering into the subsidized adoption
28 or legal guardianship and the department. Adoption or
29 legal guardianship subsidies in individual cases may
30 commence with the adoption or legal guardianship
31 placement, and will vary with the needs of the child as well
32 as the availability of other resources to meet the child's
33 needs. The subsidy may be for special services only, or
34 for money payments, and either for a limited period, or
35 for a long term, or for any combination of the foregoing.
36 The specific financial terms of the subsidy shall be
37 included in the agreement between the department and the
38 adoptive parents or legal guardians. The amount of the
39 time-limited or long-term subsidy may in no case exceed
40 that which would be allowable from time to time for such
41 child under foster family care, or, in the case of a special
42 service, the reasonable fee for the service rendered. In
43 addition, the department shall provide either medicaid or
44 other health insurance coverage for any special needs

45 child for whom there is an adoption or legal guardianship
46 assistance agreement between the department and the
47 adoptive parent or legal guardian and who the department
48 determines cannot be placed with an adoptive parent or
49 legal guardian without medical assistance because the
50 child has special needs for medical, mental health or
51 rehabilitative care.

52 Whenever significant emotional ties have been
53 established between a child and his foster parents, and the
54 foster parents seek to adopt the child or to become legal
55 guardians, the child shall be certified as eligible for a
56 subsidy conditioned upon his adoption or his becoming a
57 ward of a legal guardian under applicable procedures by
58 the foster parents.

59 In all other cases, after reasonable efforts have been
60 made without the use of subsidy and no appropriate
61 adoptive family or legal guardian has been found for the
62 child, the department shall certify the child as eligible for
63 a subsidy in the event of adoption or a legal guardianship.

64 If the child is the dependent of a voluntary licensed
65 child-placing agency, that agency shall present to the
66 department evidence of significant emotional ties between
67 the child and his foster parents or evidence of inability to
68 place the child for adoption. In no event shall the value of
69 the services and assistance provided by the department
70 under an agreement pursuant to this section exceed the
71 value of assistance available to foster families in similar
72 circumstances. All records regarding subsidized
73 adoptions or legal guardianships shall be held in
74 confidence, however, records regarding the payment of
75 public funds for subsidized adoptions or legal
76 guardianships shall be available for public inspection
77 provided they do not directly or indirectly identify any
78 child or persons receiving funds for such child.

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-6-1. Petition to court when child believed neglected or abused; notice.

§49-6-3. Petition to court when child believed neglected or abused —
Temporary custody.

§49-6-5. Disposition of neglected or abused children.

§49-6-5a. Permanency hearing when court determines reasonable efforts to preserve families not required.

§49-6-5b. When efforts to terminate parental rights required.

§49-6-8. Foster care review; annual reports to the court.

§49-6-1. Petition to court when child believed neglected or abused; notice.

1 (a) If the department or a reputable person believes
2 that a child is neglected or abused, the department or the
3 person may present a petition setting forth the facts to the
4 circuit court in the county in which the child resides, or to
5 the judge of such court in vacation. The petition shall be
6 verified by the oath of some credible person having
7 knowledge of the facts. The petition shall allege specific
8 conduct including time and place, how such conduct
9 comes within the statutory definition of neglect or abuse
10 with references thereto, any supportive services provided
11 by the department to remedy the alleged circumstances
12 and the relief sought. Upon filing of the petition, the
13 court shall set a time and place for a hearing and shall
14 appoint counsel for the child. When there is an order for
15 temporary custody pursuant to section three of this article,
16 such hearing shall be held within thirty days of such order,
17 unless a continuance for a reasonable time is granted to a
18 date certain, for good cause shown.

19 (b) The petition and notice of the hearing shall be
20 served upon both parents and any other custodian, giving
21 to such parents or custodian at least ten days' notice.
22 Notice shall also be given to the department, any foster or
23 preadoptive parent, and any relative providing care for the
24 child. In cases wherein personal service within West
25 Virginia cannot be obtained after due diligence upon any
26 parent or other custodian, a copy of the petition and
27 notice of the hearing shall be mailed to such person by
28 certified mail, addressee only, return receipt requested, to
29 the last known address of such person. If said person
30 signs the certificate, service shall be complete and said
31 certificate shall be filed as proof of said service with the
32 clerk of the circuit court. If service cannot be obtained by
33 personal service or by certified mail, notice shall be by

34 publication as a Class II legal advertisement in compliance
35 with the provisions of article three, chapter fifty-nine of
36 this code. A notice of hearing shall specify the time and
37 place of the hearing, the right to counsel of the child and
38 parents or other custodians at every stage of the
39 proceedings and the fact that such proceedings can result
40 in the permanent termination of the parental rights.
41 Failure to object to defects in the petition and notice shall
42 not be construed as a waiver.

43 (c) At the time of the institution of any proceeding
44 under this article, the department shall provide supportive
45 services in an effort to remedy circumstances detrimental
46 to a child.

**§49-6-3. Petition to court when child believed neglected or
abused — Temporary custody.**

1 (a) Upon the filing of a petition, the court may order
2 that the child alleged to be an abused or neglected child
3 be delivered for not more than ten days into the custody
4 of the state department or a responsible person found by
5 the court to be a fit and proper person for the temporary
6 care of the child pending a preliminary hearing, if it finds
7 that: (1) There exists imminent danger to the physical
8 well-being of the child; and (2) there are no reasonably
9 available alternatives to removal of the child, including,
10 but not limited to, the provision of medical, psychiatric,
11 psychological or homemaking services in the child's
12 present custody: *Provided*, That where the alleged
13 abusing person, if known, is a member of a household, the
14 court shall not allow placement pursuant to this section of
15 the child or children in said home unless the alleged
16 abusing person is or has been precluded from visiting or
17 residing in said home by judicial order. In a case where
18 there is more than one child in the home, or in the
19 temporary care, custody or control of the alleged
20 offending parent, the petition shall so state, and
21 notwithstanding the fact that the allegations of abuse or
22 neglect may pertain to less than all of such children, each
23 child in the home for whom relief is sought shall be made
24 a party to the proceeding. Even though the acts of abuse
25 or neglect alleged in the petition were not directed against

26 a specific child who is named in the petition, the court
27 shall order the removal of such child, pending final
28 disposition, if it finds that there exists imminent danger to
29 the physical well-being of the child and a lack of
30 reasonable available alternatives to removal. The initial
31 order directing such custody shall contain an order
32 appointing counsel and scheduling the preliminary
33 hearing, and upon its service shall require the immediate
34 transfer of custody of such child or children to the
35 department or a responsible relative which may include
36 any parent, guardian, or other custodian. The court order
37 shall state: (1) That continuation in the home is contrary
38 to the best interests of the child and why; and (2) whether
39 or not the department made reasonable efforts to preserve
40 the family and prevent the placement or that the
41 emergency situation made such efforts unreasonable or
42 impossible. The order may also direct any party or the
43 department to initiate or become involved in services to
44 facilitate reunification of the family.

45 (b) Whether or not the court orders immediate transfer
46 of custody as provided in subsection (a) of this section, if
47 the facts alleged in the petition demonstrate to the court
48 that there exists imminent danger to the child, the court
49 may schedule a preliminary hearing giving the
50 respondents at least five days' actual notice. If the court
51 finds at the preliminary hearing that there are no
52 alternatives less drastic than removal of the child and that a
53 hearing on the petition cannot be scheduled in the interim
54 period, the court may order that the child be delivered into
55 the temporary custody of the department or a responsible
56 person or agency found by the court to be a fit and
57 proper person for the temporary care of the child for a
58 period not exceeding sixty days: *Provided*, That the court
59 order shall state: (1) That continuation in the home is
60 contrary to the best interests of the child and set forth the
61 reasons therefor; (2) whether or not the department made
62 reasonable efforts to preserve the family and to prevent
63 the child's removal from his or her home; (3) whether or
64 not the department made reasonable efforts to preserve the
65 family and to prevent the placement or that the emergency
66 situation made such efforts unreasonable or impossible;

67 and (4) what efforts should be made by the department, if
68 any, to facilitate the child's return home: *Provided,*
69 *however,* That if the court grants an improvement period
70 as provided in section twelve of this article, the sixty-day
71 limit upon temporary custody is waived.

72 (c) If a child or children shall, in the presence of a
73 child protective service worker, be in an emergency
74 situation which constitutes an imminent danger to the
75 physical well-being of the child or children, as that phrase
76 is defined in section three, article one of this chapter, and
77 if such worker has probable cause to believe that the child
78 or children will suffer additional child abuse or neglect or
79 will be removed from the county before a petition can be
80 filed and temporary custody can be ordered, the worker
81 may, prior to the filing of a petition, take the child or
82 children into his or her custody without a court order:
83 *Provided,* That after taking custody of such child or
84 children prior to the filing of a petition, the worker shall
85 forthwith appear before a circuit judge or a juvenile
86 referee of the county wherein custody was taken, or if no
87 such judge or referee be available, before a circuit judge
88 or a juvenile referee of an adjoining county, and shall
89 immediately apply for an order ratifying the emergency
90 custody of the child pending the filing of a petition. The
91 circuit court of every county in the state shall appoint at
92 least one of the magistrates of the county to act as a
93 juvenile referee, who shall serve at the will and pleasure of
94 the appointing court, and who shall perform the functions
95 prescribed for such position by the provisions of this
96 subsection. The parents, guardians or custodians of the
97 child or children may be present at the time and place of
98 application for an order ratifying custody, and if at the
99 time the child or children are taken into custody by the
100 worker, the worker knows which judge or referee is to
101 receive the application, the worker shall so inform the
102 parents, guardians or custodians. The application for
103 emergency custody may be on forms prescribed by the
104 supreme court of appeals or prepared by the prosecuting
105 attorney or the applicant, and shall set forth facts from
106 which it may be determined that the probable cause
107 described above in this subsection exists. Upon such

108 sworn testimony or other evidence as the judge or referee
109 deems sufficient, the judge or referee may order the
110 emergency taking by the worker to be ratified. If
111 appropriate under the circumstances, the order may
112 include authorization for an examination as provided for
113 in subsection (b), section four of this article. If a referee
114 issues such an order, the referee shall by telephonic
115 communication have such order orally confirmed by a
116 circuit judge of the circuit or an adjoining circuit who
117 shall on the next judicial day enter an order of
118 confirmation. If the emergency taking is ratified by the
119 judge or referee, emergency custody of the child or
120 children shall be vested in the department until the
121 expiration of the next two judicial days, at which time any
122 such child taken into emergency custody shall be returned
123 to the custody of his or her parent or guardian or
124 custodian unless a petition has been filed and custody of
125 the child has been transferred under the provisions of
126 section three of this article.

127 (d) For purposes of the court's consideration of
128 temporary custody pursuant to the provisions of
129 subsection (a) or (b) of this section, the department is not
130 required to make reasonable efforts to preserve the family
131 if the court determines:

132 (1) The parent has subjected the child to aggravated
133 circumstances which include, but are not limited to,
134 abandonment, torture, chronic abuse and sexual abuse;

135 (2) The parent has:

136 (A) Committed murder of another child of the parent;

137 (B) Committed voluntary manslaughter of another
138 child of the parent;

139 (C) Attempted or conspired to commit such a murder
140 or voluntary manslaughter or been an accessory before or
141 after the fact to either such crime; or

142 (D) Committed unlawful or malicious wounding that
143 results in serious bodily injury to the child or to another
144 child of the parent; or

145 (3) The parental rights of the parent to a sibling have
146 been terminated involuntarily.

§49-6-5. Disposition of neglected or abused children.

1 (a) Following a determination pursuant to section two
2 of this article wherein the court finds a child to be abused
3 or neglected, the department shall file with the court a
4 copy of the child's case plan, including the permanency
5 plan for the child. The term case plan means a written
6 document that includes, where applicable, the
7 requirements of the family case plan as provided for in
8 section three, article six-d of this chapter and that also
9 includes at least the following: A description of the type
10 of home or institution in which the child is to be placed,
11 including a discussion of the appropriateness of the
12 placement and how the agency which is responsible for
13 the child plans to assure that the child receives proper care
14 and that services are provided to the parents, child and
15 foster parents in order to improve the conditions in the
16 parent(s) home, facilitate return of the child to his or her
17 own home or the permanent placement of the child, and
18 address the needs of the child while in foster care,
19 including a discussion of the appropriateness of the
20 services that have been provided to the child. The term
21 permanency plan refers to that part of the case plan which
22 is designed to achieve a permanent home for the child in
23 the least restrictive setting available. The plan must
24 document efforts to ensure that the child is returned home
25 within approximate time lines for reunification as set out
26 in the plan. Reasonable efforts to place a child for
27 adoption or with a legal guardian may be made at the
28 same time reasonable efforts are made to prevent removal
29 or to make it possible for a child to safely return home. If
30 reunification is not the permanency plan for the child, the
31 plan must state why reunification is not appropriate and
32 detail the alternative placement for the child to include
33 approximate time lines for when such placement is
34 expected to become a permanent placement. This case
35 plan shall serve as the family case plan for parents of
36 abused or neglected children. Copies of the child's case
37 plan shall be sent to the child's attorney and parent,
38 guardian or custodian or their counsel at least five days

39 prior to the dispositional hearing. The court shall
40 forthwith proceed to disposition giving both the petitioner
41 and respondents an opportunity to be heard. The court
42 shall give precedence to dispositions in the following
43 sequence:

44 (1) Dismiss the petition;

45 (2) Refer the child, the abusing parent, or other family
46 members to a community agency for needed assistance
47 and dismiss the petition;

48 (3) Return the child to his or her own home under
49 supervision of the department;

50 (4) Order terms of supervision calculated to assist the
51 child and any abusing parent or parents or custodian
52 which prescribe the manner of supervision and care of the
53 child and which are within the ability of any parent or
54 parents or custodian to perform;

55 (5) Upon a finding that the abusing parent or parents
56 are presently unwilling or unable to provide adequately
57 for the child's needs, commit the child temporarily to the
58 custody of the state department, a licensed private child
59 welfare agency or a suitable person who may be appointed
60 guardian by the court. The court order shall state: (1)
61 That continuation in the home is contrary to the best
62 interests of the child and why; (2) whether or not the
63 department has made reasonable efforts, with the child's
64 health and safety being the paramount concern, to
65 preserve the family and to prevent or eliminate the need
66 for; removing the child from the child's home and to
67 make it possible for the child to safely return home; what
68 efforts were made or that the emergency situation made
69 such efforts unreasonable or impossible; and (3) the
70 specific circumstances of the situation which made such
71 efforts unreasonable if services were not offered by the
72 department. The court order shall also determine under
73 what circumstances the child's commitment to the
74 department shall continue. Considerations pertinent to the
75 determination include whether the child should: (1) Be
76 continued in foster care for a specified period; (2) be
77 considered for adoption; (3) because of a child's special

78 needs or circumstances, be continued in foster care on a
79 permanent or long-term basis; or (4) be continued in
80 foster care until reunification is achieved. The court may
81 order services to meet the special needs of the child.
82 Whenever the court transfers custody of a youth to the
83 department, an appropriate order of financial support by
84 the parents or guardians shall be entered in accordance
85 with section five, article seven of this chapter; or

86 (6) Upon a finding that there is no reasonable
87 likelihood that the conditions of neglect or abuse can be
88 substantially corrected in the near future, and when
89 necessary for the welfare of the child, terminate the
90 parental, custodial or guardianship rights and/or
91 responsibilities of the abusing parent and commit the child
92 to the permanent sole custody of the nonabusing parent, if
93 there be one, or, if not, to either the permanent
94 guardianship of the department or a licensed child welfare
95 agency. If the court shall so find, then in fixing its
96 dispositional order, the court shall consider the following
97 factors: (1) The child's need for continuity of care and
98 caretakers; (2) the amount of time required for the child
99 to be integrated into a stable and permanent home
100 environment; and (3) other factors as the court considers
101 necessary and proper. Notwithstanding any other
102 provision of this article, the court shall give consideration
103 to the wishes of a child fourteen years of age or older or
104 otherwise of an age of discretion as determined by the
105 court, regarding the permanent termination of parental
106 rights. No adoption of a child shall take place until all
107 proceedings for termination of parental rights under this
108 article and appeals thereof are final. In determining
109 whether or not parental rights should be terminated, the
110 court shall consider the efforts made by the department to
111 provide remedial and reunification services to the parent.
112 The court order shall state: (1) That continuation in the
113 home is not in the best interest of the child and why; (2)
114 why reunification is not in the best interests of the child;
115 (3) whether or not the department made reasonable
116 efforts, with the child's health and safety being the
117 paramount concern, to preserve the family and to prevent
118 the placement or to eliminate the need for removing the

119 child from the child's home and to make it possible for the
120 child to safely return home, or that the emergency
121 situation made such efforts unreasonable or impossible;
122 and (4) whether or not the department made reasonable
123 efforts to preserve and reunify the family including a
124 description of what efforts were made or that such efforts
125 were unreasonable due to specific circumstances.

126 -(7) For purposes of the court's consideration of the
127 disposition custody of a child pursuant to the provisions
128 of this subsection the department is not required to make
129 reasonable efforts to preserve the family if the court
130 determines:

131 (A) The parent has subjected the child to aggravated
132 circumstances which include, but are not limited to,
133 abandonment, torture, chronic abuse and sexual abuse;

134 (B) The parent has:

135 (i) Committed murder of another child of the parent;

136 (ii) Committed voluntary manslaughter of another
137 child of the parent;

138 (iii) Attempted or conspired to commit such a murder
139 or voluntary manslaughter or been an accessory before or
140 after the fact to either such crime; or

141 (iv) Committed a felonious assault that results in
142 serious bodily injury to the child or to another child of the
143 parent; or

144 (C) The parental rights of the parent to a sibling have
145 been terminated involuntarily.

146 (b) As used in this section, "no reasonable likelihood
147 that conditions of neglect or abuse can be substantially
148 corrected" shall mean that, based upon the evidence before
149 the court, the abusing adult or adults have demonstrated
150 an inadequate capacity to solve the problems of abuse or
151 neglect, on their own or with help. Such conditions shall
152 be deemed to exist in the following circumstances, which
153 shall not be exclusive:

154 (1) The abusing parent or parents have habitually
155 abused or are addicted to alcohol, controlled substances or
156 drugs, to the extent that proper parenting skills have been
157 seriously impaired and such person or persons have not
158 responded to or followed through the recommended and
159 appropriate treatment which could have improved the
160 capacity for adequate parental functioning;

161 (2) The abusing parent or parents have willfully
162 refused or are presently unwilling to cooperate in the
163 development of a reasonable family case plan designed to
164 lead to the child's return to their care, custody and control;

165 (3) The abusing parent or parents have not responded
166 to or followed through with a reasonable family case plan
167 or other rehabilitative efforts of social, medical, mental
168 health or other rehabilitative agencies designed to reduce
169 or prevent the abuse or neglect of the child, as evidenced
170 by the continuation or insubstantial diminution of
171 conditions which threatened the health, welfare or life of
172 the child;

173 (4) The abusing parent or parents have abandoned the
174 child;

175 (5) The abusing parent or parents have repeatedly or
176 seriously injured the child physically or emotionally, or
177 have sexually abused or sexually exploited the child, and
178 the degree of family stress and the potential for further
179 abuse and neglect are so great as to preclude the use of
180 resources to mitigate or resolve family problems or assist
181 the abusing parent or parents in fulfilling their
182 responsibilities to the child; or

183 (6) The abusing parent or parents have incurred
184 emotional illness, mental illness or mental deficiency of
185 such duration or nature as to render such parent or parents
186 incapable of exercising proper parenting skills or
187 sufficiently improving the adequacy of such skills.

188 (c) The court may as an alternative disposition allow
189 the parents or custodians an improvement period not to
190 exceed six months. During this period the court shall
191 require the parent to rectify the conditions upon which the

192 determination was based. The court may order the child
193 to be placed with the parents, or any person found to be a
194 fit and proper person for the temporary care of the child
195 during the period. At the end of the period the court shall
196 hold a hearing to determine whether the conditions have
197 been adequately improved, and at the conclusion of such
198 hearing, shall make a further dispositional order in
199 accordance with this section.

**§49-6-5a. Permanency hearing when court determines
- reasonable efforts to preserve families not
required.**

1 (a) If the court finds, pursuant to the provisions of
2 subdivision (7), subsection (a), section five of this article
3 that the department is not required to make reasonable
4 efforts to preserve the family, then notwithstanding any
5 other provision, a permanency hearing must be held
6 within thirty days following the entry of the court order so
7 finding.

8 (b) The purpose of the permanency hearing is to
9 determine the permanency plan for the child that includes:
10 (1) When the child will be returned to the parent; (2) when
11 the child will be placed for adoption, in which event the
12 state will file a petition for termination of parental rights;
13 or (3) when the child will be referred for legal
14 guardianship. In cases where the department has
15 demonstrated a compelling reason for determining it
16 would not be in the best interests of the child to return
17 home, the court shall determine whether the child should
18 be referred for termination of parental rights, be placed
19 for adoption, be placed with a fit and willing relative, be
20 placed with a legal guardian or placed in another planned
21 permanent living arrangement.

22 (c) Any foster parent, preadoptive parent or relative
23 providing care for the child shall be given notice of and
24 the opportunity to be heard at the permanency hearing
25 provided for in this section.

§49-6-5b. When efforts to terminate parental rights required.

1 (a) Except as provided in subsection (b) of this
2 section, the department shall file or join in a petition or
3 otherwise seek a ruling in any pending proceeding to
4 terminate parental rights:

5 (1) If a child has been in foster care for fifteen of the
6 most recent twenty-two months as determined by the
7 earlier of the date of the first judicial finding that the child
8 is subjected to abuse or neglect or the date which is sixty
9 days after the child is removed from the home;

10 (2) If a court has determined the child is abandoned;
11 or

12 (3) If a court has determined the parent has committed
13 murder or voluntary manslaughter of another of his or her
14 children; has attempted or conspired to commit such
15 murder or voluntary manslaughter or has been an
16 accessory before or after the fact of either crime; has
17 committed unlawful or malicious wounding resulting in
18 serious bodily injury to the child or to another of his or
19 her children; or the parental rights of the parent to a
20 sibling have been terminated involuntarily.

21 (b) The department may determine not to file a
22 petition to terminate parental rights when:

23 (1) At the option of the department, the child has been
24 placed with a relative;

25 (2) The department has documented in the case plan
26 made available for court review a compelling reason,
27 including, but not limited to, the child's age and
28 preference regarding termination or the child's placement
29 in custody of the department based on any proceedings
30 initiated under article five of this chapter, that filing the
31 petition would not be in the best interests of the child; or

32 (3) The department has not provided, when reasonable
33 efforts to return a child to the family are required, the
34 services to the child's family as the department deems
35 necessary for the safe return of the child to the home.

§49-6-8. Foster care review; annual reports to the court.

1 (a) If, twelve months after receipt by the department or
2 its authorized agent of physical custody of a child either
3 by a court ordered placement or by a voluntary
4 agreement, the department has not placed a child in
5 permanent foster care or an adoptive home or placed the
6 child with a natural parent, the department shall file with
7 the court a petition for review of the case. The department
8 shall also file with the court a report detailing the efforts
9 that have been made to place the child in a permanent
10 home and copies of the child's case plan including the
11 permanency plan as defined in section five, article six of
12 this chapter. Copies of the report shall be sent to the
13 child's attorney and be made available to the child's
14 parent(s) or guardian. "Permanent foster care" shall mean
15 a written arrangement with an adult or adults following a
16 six-month trial period whereby the state department places
17 the care, custody and control of a child until the child's
18 emancipation with such adult or adults. The court shall
19 schedule a hearing in chambers, giving notice and the
20 right to be present to: The child's attorney; the child, if
21 twelve years of age or older; the child's parents; the
22 child's guardians; the child's foster parents; any
23 preadoptive parent or any relative providing care for the
24 child; and such other persons as the court may in its
25 discretion direct. The child's presence may be waived by
26 the child's attorney at the request of the child or if the
27 child would suffer emotional harm. The purpose of the
28 hearing is to review the child's case, to determine whether
29 and under what conditions the child's commitment to the
30 department shall continue, and to determine what efforts
31 are necessary to provide the child with a permanent home.
32 At the conclusion of the hearing the court shall in
33 accordance with the best interests of the child enter an
34 appropriate order of disposition. The court order shall
35 state: (1) Whether or not the department made reasonable
36 efforts to preserve the family and to prevent out-of-home
37 placement or that the specific situation made such effort
38 unreasonable; (2) the permanency plan for the child; and
39 (3) services required to meet the child's needs: *Provided,*
40 That the department is not required to make reasonable
41 efforts to preserve the family if the court determines any
42 of the conditions set forth in subdivision (7), subsection

43 (a), section five of this article exist. The court shall
44 possess continuing jurisdiction over cases reviewed under
45 this section for so long as a child remains in temporary
46 foster care, or, when a child is returned to his or her
47 natural parents subject to conditions imposed by the court,
48 for so long as the conditions are effective.

49 (b) The state department shall file a supplementary
50 petition for review with the court within twelve months and
51 every twelve months thereafter for every child that remains
52 in the physical or legal custody of the state department
53 until the child is placed in an adoptive home or permanent
54 foster care or returned to his or her parents.

55 (c) The state department shall annually report to the
56 court the current status of the placements of children in
57 permanent care and custody of the state department who
58 have not been adopted.

59 (d) The state department shall file a report with the
60 court in any case where any child in the temporary or
61 permanent custody of the state receives more than three
62 placements in one year no later than thirty days after the
63 third placement. This report shall be provided to all
64 parties and their counsel. Upon motion by any party, the
65 court shall review these placements and determine what
66 efforts are necessary to provide the child with a stable
67 foster or temporary home: *Provided*, That no report shall
68 be provided to any parent or parent's attorney whose
69 parental rights have been terminated pursuant to this
70 article.

71 (e) The state department shall notify, in writing, the
72 court, the child, if over the age of twelve, the child's
73 attorney, the parents and the parents' attorney forty-eight
74 hours prior to the move if this is a planned move, or within
75 forty-eight hours of the next business day after the move
76 if this is an emergency move, except where such
77 notification would endanger the child or the foster family.
78 This notice shall not be required in any case where the
79 child is in imminent danger in the child's current
80 placement. The location of the child need not be
81 disclosed, but the purpose of the move should be. This
82 requirement is not waived by placement of the child in a

83 home or other residence maintained by a private provider.
84 No notice shall be provided pursuant to this provision to
85 any parent or parent's attorney whose parental rights have
86 been terminated pursuant to this article.

87 (f) Nothing in this article precludes any party from
88 petitioning the court for review of the child's case at any
89 time. The court shall grant such petition upon a showing
90 that there is a change in circumstance or needs of the child
91 that warrants court review.

**ARTICLE 6D. WEST VIRGINIA CHILD PROTECTIVE SERVICES
ACT.**

**§49-6D-3. Family case plans for parents of abused or
neglected children.**

1 (a) The department shall develop a family case plan
2 for every family wherein a person has been referred to the
3 department after being allowed an improvement period
4 under the provisions of section twelve, article six of this
5 chapter. The department may also prepare a family case
6 plan for any person who voluntarily seeks child abuse and
7 neglect services from the department, or who is referred to
8 the department by another public agency or private
9 organization. The family case plan is to clearly set forth
10 an organized, realistic method of identifying family
11 problems and the logical steps to be used in resolving or
12 lessening those problems. Every family case plan prepared
13 by the department shall contain the following:

14 (1) A listing of specific, measurable, realistic goals to
15 be achieved;

16 (2) An arrangement of goals into an order of priority;

17 (3) A listing of the problems that will be addressed by
18 each goal;

19 (4) A specific description of how the assigned
20 caseworker or caseworkers and the abusing parent,
21 guardian or custodian will achieve each goal;

22 (5) A description of the departmental and community
23 resources to be used in implementing the proposed actions
24 and services;

25 (6) A list of the services, including time-limited
26 reunification services as defined in section three, article
27 one of this chapter, which will be provided;

28 (7) Time targets for the achievement of goals or
29 portions of goals;

30 (8) An assignment of tasks to the abusing or
31 neglecting parent, guardian or custodian, to the
32 caseworker or caseworkers and to other participants in the
33 planning process;

34 (9) A designation of when and how often tasks will be
35 performed; and

36 (10) The safety of the placement of the child and
37 plans for returning the child safely home.

38 (b) In cases where the family has been referred to the
39 department by a court under the provisions of this chapter,
40 and further action before the court is pending, the family
41 case plan described in subsection (a) of this section shall
42 be furnished to the court within thirty days after the entry
43 of the order referring the case to the department, and shall
44 be available to counsel for the parent, guardian or
45 custodian and counsel for the child or children. The
46 department shall encourage participation in the
47 development of the family case plan by the parent,
48 guardian or custodian, and, if the child is above the age of
49 twelve years and the child's participation is otherwise
50 appropriate, by the child. It shall be the duty of counsel
51 for the participants to participate in the development of
52 the family case plan. The family case plan may be
53 modified from time to time by the department to allow for
54 flexibility in goal development, and in each such case the
55 modifications shall be submitted to the court in writing.
56 Reasonable efforts to place a child for adoption or with a
57 legal guardian may be made at the same time as
58 reasonable efforts are being made to prevent removal or to
59 make it possible for a child to return safely home. The
60 court shall examine the proposed family case plan or any
61 modification thereof, and upon a finding by the court that
62 the plan or modified plan can be easily communicated,
63 explained and discussed so as to make the participants

64 accountable and able to understand the reasons for any
65 success or failure under the plan, the court shall inform
66 the participants of the probable action of the court if goals
67 are met or not met.

68 (c) (1) In addition to the family case plan provided for
69 under the provisions of subsection (b) of this section, the
70 department shall prepare, as an appendix to the family
71 case plan, an expanded "worker's case plan". As utilized
72 by the department under the provisions of this section, the
73 worker's case plan shall consist of the following:

74 (A) All of the information contained in the family case
75 plan described in subsection (c) of this section;

76 (B) A prognosis for each of the goals projected in the
77 family case plan, assessing the capacity of the parent,
78 guardian or custodian to achieve the goal and whether
79 available treatment services are likely to have the desired
80 outcome;

81 (C) A listing of the criteria to be used to assess the
82 degree to which each goal is attained;

83 (D) A description of when and how the department
84 will decide when and how well each goal has been
85 attained;

86 (E) If possible, a listing of alternative methods and
87 specific services which the caseworker or caseworkers may
88 consider using if the original plan does not work; and

89 (F) A listing of criteria to be used in determining when
90 the family case plan should be terminated.

91 (2) Because the nature of the information contained in
92 the worker's case plan described in subdivision (1) of this
93 subsection may, in some cases, be construed to be negative
94 with respect to the probability of change, or may be
95 viewed as a caseworker's attempt to impose personal values
96 into the situation, or may raise barriers of hostility and
97 resistance between the caseworker and the family
98 members, the worker's case plan shall not be made
99 available to the court or to persons outside of the
100 department, but shall be used by the department for the

101 purpose of confirming the effectiveness of the family case
102 plan or for determining that changes in the family case
103 plan need to be made.

104 (d) In furtherance of the provisions of this article, the
105 department shall, within the limits of available funds,
106 establish programs and services for the following
107 purposes:

108 (1) For the development and establishment of training
109 programs for professional and paraprofessional personnel
110 in the fields of medicine, law, education, social work and
111 other relevant fields who are engaged in, or intend to work
112 in, the field of the prevention, identification and treatment
113 of child abuse and neglect; and training programs for
114 children, and for persons responsible for the welfare of
115 children, in methods of protecting children from child
116 abuse and neglect;

117 (2) For the establishment and maintenance of centers,
118 serving defined geographic areas, staffed by
119 multidisciplinary teams and community teams of
120 personnel trained in the prevention, identification, and
121 treatment of child abuse and neglect cases, to provide a
122 broad range of services related to child abuse and neglect,
123 including direct support and supervision of satellite
124 centers and attention homes, as well as providing advice
125 and consultation to individuals, agencies and organizations
126 which request such services;

127 (3) For furnishing services of multidisciplinary teams
128 and community teams, trained in the prevention,
129 identification and treatment of child abuse and neglect
130 cases, on a consulting basis to small communities where
131 such services are not available;

132 (4) For other innovative programs and projects that
133 show promise of successfully identifying, preventing or
134 remedying the causes of child abuse and neglect,
135 including, but not limited to, programs and services
136 designed to improve and maintain parenting skills,
137 programs and projects for parent self-help, and for
138 prevention and treatment of drug-related child abuse and
139 neglect; and

140 (5) Assisting public agencies or nonprofit private
141 organizations or combinations thereof in making
142 applications for grants from, or in entering into contracts
143 with, the secretary of the federal department of health and
144 human services for demonstration programs and projects
145 designed to identify, prevent and treat child abuse and
146 neglect.

147 (e) Agencies, organizations and programs funded to
148 carry out the purposes of this section shall be structured so
149 as to comply with any applicable federal law, any
150 regulation of the federal department of health and human
151 services or the secretary thereof, and any final
152 comprehensive plan of the federal advisory board on child
153 abuse and neglect. In funding organizations, the
154 department shall, to the extent feasible, ensure that
155 parental organizations combating child abuse and neglect
156 receive preferential treatment.

CHAPTER 82

(H. B. 4560—By Delegates Givens, Douglas, Fleischauer,
Mezzatesta, Staton, Facemyer and Trump)

[Passed March 14, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact section four, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article two of said chapter, relating to reinserting homes for unmarried mothers into the definition of “child welfare agency” and providing that the department of health and human resources is responsible for the infant child of an unmarried juvenile who is in the department’s custody without requiring that parent to relinquish custody of the infant to the department.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **Purposes; Definitions.**
2. **State Responsibilities for the Protection and Care of Children.**

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-4. Other definitions.

- 1 As used in this chapter:
 - 2 (1) "Child welfare agency" means any agency or
3 facility maintained by the state or any county or
4 municipality thereof, or any agency or facility maintained
5 by an individual, firm, corporation, association or
6 organization, public or private, to receive children for care
7 and maintenance or for placement in residential care
8 facilities, or any facility that provides care for unmarried
9 mothers and their children;
 - 10 (2) "Community based," when referring to a facility,
11 program, or service, means located near the juvenile's
12 home or family and involving community participation in
13 planning, operation, and evaluation, and which may
14 include, but is not limited to, medical, educational,
15 vocational, social and psychological guidance, training,
16 special education, counseling, alcoholism and any
17 treatment, and other rehabilitation services;
 - 18 (3) "Court" means the circuit court of the county with
19 jurisdiction of the case or the judge thereof in vacation
20 unless otherwise specifically provided;
 - 21 (4) "Custodian" means a person who has or shares
22 actual physical possession or care and custody of a child,
23 regardless of whether such person has been granted
24 custody of the child by any contract, agreement or legal
25 proceedings;
 - 26 (5) "Department" or "state department" means the state
27 department of health and human resources;

28 (6) "Division of juvenile services" means the division
29 within the department of military affairs and public safety
30 pursuant to article five-e of this chapter;

31 (7) "Guardian" means a person who has care and
32 custody of a child as a result of any contract, agreement or
33 legal proceeding;

34 (8) "Juvenile delinquent" means a juvenile who has
35 been adjudicated as one who commits an act which would
36 be a crime under state law or a municipal ordinance if
37 committed by an adult;

38 (9) "Nonsecure facility" means any public or private
39 residential facility not characterized by construction
40 fixtures designed to physically restrict the movements and
41 activities of individuals held in lawful custody in such
42 facility and which provides its residents access to the
43 surrounding community with supervision;

44 (10) "Referee" means a juvenile referee appointed
45 pursuant to section one, article five-a of this chapter,
46 except that in any county which does not have a juvenile
47 referee the judge or judges of the circuit court may
48 designate one or more magistrates of the county to
49 perform the functions and duties which may be performed
50 by a referee under this chapter;

51 (11) "Secretary" means the secretary of health and
52 human resources;

53 (12) "Secure facility" means any public or private
54 residential facility which includes construction fixtures
55 designed to physically restrict the movements and
56 activities of juveniles or other individuals held in lawful
57 custody in such facility;

58 (13) "Staff-secure facility" means any public or private
59 residential facility characterized by staff restrictions of the
60 movements and activities of individuals held in lawful
61 custody in such facility and which limits its residents'
62 access to the surrounding community, but is not
63 characterized by construction fixtures designed to
64 physically restrict the movements and activities of
65 residents;

66 (14) "Status offender" means a juvenile who has been
67 adjudicated as one;

68 (A) Who habitually and continually refuses to respond
69 to the lawful supervision by his or her parents, guardian or
70 legal custodian such that the child's behavior substantially
71 endangers the health, safety, or welfare of the juvenile or
72 any other person;

73 (B) Who has left the care of his or her parents,
74 guardian or custodian without the consent of such person
75 or without good cause;

76 (C) Who is habitually absent from school without
77 good cause; or

78 (D) Who violates any West Virginia municipal, county,
79 or state law regarding use of alcoholic beverages by
80 minors;

81 (15) "Valid court order" means a court order given to
82 a juvenile who was brought before the court and made
83 subject to such order, and who received, before the
84 issuance of such order, the full due process rights
85 guaranteed to such juvenile by the constitutions of the
86 United States and the state of West Virginia.

ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION AND CARE OF CHILDREN.

§49-2-1. Care for children committed to the state department.

1 It shall be the responsibility of the state department to
2 provide care for neglected children who are committed to
3 its care for custody or guardianship. For purposes of this
4 chapter, the department of health and human resources is
5 responsible for the care of the infant child of an
6 unmarried mother who has been committed to the custody
7 of the department while the infant is placed in the same
8 licensed child welfare agency as his or her mother. The
9 state department may provide care for such children in
10 family homes meeting required standards, at board or
11 otherwise, through a licensed child welfare agency, or in a
12 state institution providing care for dependent or neglected
13 children. The department in placing any child in the care
14 of a family or a child welfare agency shall select as far as
15 practicable a family holding the same religious belief as
16 the parents or relatives of the child or a child welfare
17 agency conducted under religious auspices of the same
18 belief as the parents or relatives.

CHAPTER 83

(H. B. 4238—By Delegates Seacrist, Beane, Evans,
Clements and Compton)

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims for compensation of innocent victims of crimes occurring in West Virginia to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§1. Finding and declaring certain crime victims claims for compensation to be moral obligations of the state and directing payment thereof.

1 The Legislature has duly considered the findings of
2 fact and recommendations for awards reported to it by the
3 court of claims in respect to the following named
4 claimants who were innocent victims of crime within this
5 state and entitled to compensation; and in respect to each
6 of such named claimants the Legislature adopts those
7 findings of fact as its own, hereby declares it to be the
8 moral obligation of the state to pay each such claimant in
9 the amount specified below, and directs the auditor to
10 issue warrants for the payment thereof out of any fund
11 appropriated and available for the purpose.

Claims for crime victims compensation awards:

12 (To be paid from Crime Victims Compensation Fund)

13 (1) Brad A. Fallecker \$ 5,000.00

14 (2) Chad A. Fallecker \$ 5,000.00

15 (3) Deborajean Hudson, as guardian of
16 John W. Fallecker, III \$ 5,000.00

17 TOTAL \$ 15,000.00

18
19 The Legislature finds that the above moral obligations
20 and the appropriations made in satisfaction thereof shall
21 be the full compensation for all claimants herein.

CHAPTER 84

(Com. Sub. for H. B. 4252—By Delegates Seacrist, Beane,
Evans, Clements and Compton)

[Passed March 12, 1998; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the department of administration; division of corrections; and supreme court of appeals; to be moral obligations of the state and directing payments thereof.

1 The Legislature has heretofore made findings of fact
2 that the state has received the benefit of the commodities
3 received and/or services rendered by certain claimants
4 herein and has considered these claims against the state,
5 and agencies thereof, which have arisen due to
6 overexpenditures of the departmental appropriations by
7 officers of such state spending units, such claims having
8 been previously considered by the court of claims which
9 also found that the state has received the benefit of the
10 commodities received and/or services rendered by the
11 claimants, but were denied by the court of claims on the
12 purely statutory grounds that to allow such claims would
13 be condoning illegal acts contrary to the laws of the state.
14 The Legislature pursuant to its findings of fact and also by
15 the adoption of the findings of fact by the court of claims
16 as its own, and, while not condoning such illegal acts,
17 hereby declares it to be the moral obligation of the state to
18 pay these claims in the amounts specified below, and
19 directs the auditor to issue warrants upon receipt of
20 properly executed requisitions supported by itemized
21 invoices, statements or other satisfactory documents as

22 required by section ten, article three, chapter twelve of the
 23 code of West Virginia, one thousand nine hundred thirty-
 24 one as amended, for the payments thereof out of any fund
 25 appropriated and available for the purpose.

26 (a) *Claim against the Department of Administration:*

27 (TO BE PAID FROM SPECIAL REVENUE FUND)

28 (1) Division of Highways \$ 337.09

29 (b) *Claims against the Division of Corrections:*

30 (TO BE PAID FROM GENERAL REVENUE FUND)

31 (1) Braxton County Memorial Hospital . . \$ 254.25

32 (2) Charleston Area Medical Center . . . \$ 9,833.63

33 (3) Correctional Medical Services, Inc. . . \$117,930.10

34 (4) Robert J. Crisalli, M.D. \$ 2,500.00

35 (5) Davis Memorial Hospital \$ 92.00

36 (6) Greenbrier Anesthesia Services, Inc. . \$ 528.00

37 (7) Greenbrier Valley Urology Associates \$ 311.00

38 (8) Guardian Angel Ambulance Service . \$ 503.00

39 (9) John Henderson, M.D. \$ 1,626.00

40 (10) Henshaw Orthopedics, Inc. \$ 6,188.00

41 (11) Horizon Mobile Health Services \$ 5,630.67

42 (12) Ray L. Jones, D.O. \$ 960.00

43 (13) Kanawha County Emer. Ambulance
 44 Authority \$ 273.00

45 (14) Stanley S. Masilamani, M.D. \$ 92.00

46 (15) Mercer County Commission \$ 493.68

47 (16) Joseph A. Noronha, M.D. \$ 2,640.00

48 (17) Parkersburg Anesthesia, Inc. \$ 676.00

49 (18) Preston Memorial Hospital \$ 438.50

1	(19) Randolph County Emergency Squad	\$ 826.66
2	(20) Samuel K. Roberts, M.D.	\$ 843.00
3	(21) Rose Associated Radiologists, Inc.	\$ 74.00
4	(22) Robert Rose, M.D.	\$ 345.00
5	(23) UHA Dental Practice	\$ 5,560.00
6	(24) United Hospital Center	\$ 1,642.10
7	(25) University Health Associates	\$ 46,725.55
8	(26) West Virginia University	
9	Hospitals, Inc.	\$ 1,630.32
10	(27) Wexford Health Sources, Inc.	\$110,265.42
11	(28) C. Stephen High, M.D.	\$ 236.00
12	<i>(c) Claim against the Supreme Court of Appeals:</i>	
13	(TO BE PAID FROM GENERAL REVENUE FUND)	
14	(1) James M. Casey.	\$ 297.00

CHAPTER 85

(S. B. 426—By Senators Love, Helmick, Sharpe,
Sprouse and McKenzie)

[Passed March 11, 1998; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the alcohol beverage control administration; board of directors of

the state college system; board of respiratory care; board of trustees of the university system of West Virginia; bureau of senior services; department of administration; department of tax and revenue; division of corrections; division of culture and history; division of environmental protection; division of forestry; division of health; division of highways; division of human services; division of labor; division of motor vehicles; division of natural resources; division of rehabilitation services; education and state employees grievance board; governor's office; human rights commission; public service commission; regional jail and correctional facility authority; state rail authority; state of West Virginia; and supreme court of appeals; to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact and
 2 recommendations reported to it by the court of claims
 3 concerning various claims against the state and agencies
 4 thereof, and in respect to each of the following claims the
 5 Legislature adopts those findings of fact as its own, and in
 6 respect of certain claims herein, the Legislature has
 7 independently made findings of fact and determinations
 8 of award and hereby declares it to be the moral obligation
 9 of the state to pay each such claim in the amount specified
 10 below, and directs the auditor to issue warrants for the
 11 payment thereof out of any fund appropriated and
 12 available for the purpose.

13 (a) *Claim against the Alcohol Beverage Control*
 14 *Administration:*

15 (TO BE PAID FROM SPECIAL REVENUE FUND)

16 (1) Global Petroleum Corporation \$ 3,955.29

17 (b) *Claim against the Board of Directors of the State*
 18 *College System:*

19 (TO BE PAID FROM SPECIAL REVENUE FUND)

20 (1) George L. Heider, Inc., t/a
 21 Sportsmans \$ 2,930.04

22	(c) <i>Claim against the Board of Respiratory Care:</i>	
23	(TO BE PAID FROM SPECIAL REVENUE FUND)	
24	(1) Anna Parkman	\$ 1,171.85
25	(d) <i>Claim against the Board of Trustees of the University</i>	
26	<i>System of WV:</i>	
27	(TO BE PAID FROM SPECIAL REVENUE FUND)	
28	(1) Matthew W. Wilson	\$ 740.00
29	(e) <i>Claim against the Bureau of Senior Services:</i>	
30	(TO BE PAID FROM GENERAL REVENUE FUND)	
31	(1) WV Graduate College	\$ 228.00
32	(f) <i>Claims against the Department of Administration:</i>	
33	(TO BE PAID FROM SPECIAL REVENUE FUND —	
34	ACCOUNT NO. 2031)	
35	(1) Archives Security, Inc.	\$ 179.31
36	(TO BE PAID FROM SPECIAL REVENUE FUND —	
37	ACCOUNT NO. 2241)	
38	(2) Archives Security, Inc.	\$ 63.72
39	(TO BE PAID FROM SPECIAL REVENUE FUND —	
40	ACCOUNT NO. 2320)	
41	(3) Bell Atlantic-West Virginia, Inc.	\$ 2,865.62
42	(TO BE PAID FROM SPECIAL REVENUE FUND —	
43	ACCOUNT NO. 2241)	
44	(4) Tyler Mountain Water Company, Inc. \$	289.70
45	(5) West Virginia Association of	
46	Rehabilitation Facilities	\$ 303,595.91
47	(g) <i>Claim against the Department of Tax and Revenue:</i>	
48	(TO BE PAID FROM GENERAL REVENUE FUND)	
49	(1) American Decal &	
50	Manufacturing Company	\$ 22,657.50

51 (h) *Claims against the Division of Corrections:*

52 (TO BE PAID FROM GENERAL REVENUE FUND)

53	(1) Barbara S. Bohrer	\$ 100,000.00
54	(2) Lane S. Bohrer	\$ 25,496.33
55	(3) Charleston Cash Register Company . .	\$ 315.00
56	(4) Marion County Commission	\$ 44,700.00
57	(5) Janice B. Morgan	\$ 700.00
58	(6) Regional Jail and Correctional	
59	Facility Authority	\$ 543,900.80

60 (i) *Claim against the Division of Culture and History:*

61 (TO BE PAID FROM GENERAL REVENUE FUND)

62	(1) E & M Products, Inc.	\$ 120.00
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63 (j) *Claim against the Division of Environmental*
64 *Protection:*

65 (TO BE PAID FROM SPECIAL REVENUE FUND)

66	(1) Division of Natural Resources	\$ 1,064.49
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67 (k) *Claim against the Division of Forestry:*

68 (TO BE PAID FROM GENERAL REVENUE FUND)

69	(1) Division of Natural Resources	\$ 1,900.80
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70 (l) *Claim against the Division of Health:*

71 (TO BE PAID FROM GENERAL REVENUE FUND)

72	(1) Owen Healthcare, Inc.	\$ 25,298.42
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73 (m) *Claims against the Division of Highways:*

74 (TO BE PAID FROM STATE ROAD FUND)

75	(1) Cornice and Charlene Adkins	\$ 100.00
76	(2) Richard W. Armstrong, Jr.	\$ 451.29
77	(3) Loretta L. Baldwin	\$ 194.03

78	(4)	Michael F. Bennett	\$	438.30
79	(5)	Larry Blevins	\$	250.00
80	(6)	Linda Bolyard	\$	319.36
81	(7)	Jason Shawn Bowers	\$	123.00
82	(8)	Roy E. Brewster	\$	94.05
83	(9)	Timothy and Darla Brown	\$	425.00
84	(10)	Bucky's Limited Auto Body, Inc. . .	\$	600.00
85	(11)	Jackie and Connie Coleman	\$	250.00
86	(12)	Carolyn Ann Cook	\$	101.74
87	(13)	Oscar J. Corbin	\$	100.00
88	(14)	Beverly Black Davis	\$	104.97
89	(15)	James Dillow	\$	3,300.00
90	(16)	Marie A. Dodd	\$	405.63
91	(17)	Kenneth Alvah East	\$	1,722.29
92	(18)	Anson J. Fanary	\$	73.14
93	(19)	Charles Fitzwater	\$	180.25
94	(20)	Ruby S. Foltz	\$	163.24
95	(21)	Tina Fulks	\$	140.54
96	(22)	Dorraine Gibson	\$	158.50
97	(23)	Andrew and Laura Gilman	\$	250.00
98	(24)	Paula Givens	\$	701.12
99	(25)	Harold M. and Sherry Gosnell	\$	410.67
100	(26)	David and Marsha Gresham	\$	250.00
101	(27)	Michael A. Holben	\$	115.00
102	(28)	Richard L. James	\$	100.00
103	(29)	Kenneth Wayne Lacy, II	\$	452.06
104	(30)	Kimberly Lewis	\$	541.54

105	(31) Terry L. Mano	\$	226.31
106	(32) John W. Marshall and		
107	Jessica A. Haden	\$	1,612.00
108	(33) Linda McCord	\$	250.00
109	(34) Gilbert R. McDaniel	\$	100.00
110	(35) John F. Mele, Jr.	\$	268.58
111	(36) Stormie D. Meloy	\$	720.00
112	(37) Jennifer Myers	\$	26,590.25
113	(38) North Hill Coal Company	\$	408.78
114	(39) Linda O'Connor	\$	158.71
115	(40) Robert Palumbo	\$	351.79
116	(41) Leonard Wayne Riggs	\$	200.00
117	(42) Tina Roberts	\$	655.56
118	(43) John and Glenda Robinson	\$	250.00
119	(44) Goldie Rogers	\$	100.00
120	(45) Cathy B. Rorrer	\$	102.81
121	(46) Bradley A. and Earl D. Sandy	\$	106.00
122	(47) Lonnie M. Skeens	\$	452.61
123	(48) Linda L. Stanley	\$	89.31
124	(49) David S. Stevens	\$	377.77
125	(50) Arthur M. and Carol L. Stewart	\$	500.00
126	(51) Teddy and Linda Stull	\$	100.00
127	(52) Linda Syslo	\$	69.94
128	(53) Helen E. Tolley	\$	26.18
129	(54) Shirley Trent	\$	141.92
130	(55) Steven S. Voytek	\$	204.42
131	(56) Dawn Widmeyer	\$	114.36

132	(57) Rose Marie Wirtz	\$	132.48
133	(n) <i>Claims against Division of Human Services:</i>		
134	(TO BE PAID FROM GENERAL REVENUE FUND)		
135	(1) Burke Funeral Home	\$	325.00
136	(2) Frey Home for Funerals, Inc.	\$	400.00
137	(3) Lambert-Tatman Funeral Home	\$	400.00
138	(4) Robert M. Vincent Funeral Home . . .	\$	400.00
139	(5) Shanklin Funeral Home, Inc.	\$	400.00
140	(o) <i>Claims against the Division of Labor:</i>		
141	(TO BE PAID FROM GENERAL REVENUE FUND)		
142	(1) Archives Security, Inc.	\$	176.53
143	(2) Bell Atlantic-West Virginia, Inc.	\$	696.72
144	(3) WV American Water Company	\$	108.69
145	(p) <i>Claims against Division of Motor Vehicles:</i>		
146	(TO BE PAID FROM STATE ROAD FUND)		
147	(1) Patricia Goeddel	\$	599.75
148	(2) James and Jane Hepner	\$	975.00
149	(q) <i>Claims against the Division of Natural Resources:</i>		
150	(TO BE PAID FROM GENERAL REVENUE FUND)		
151	(1) Jim Canada	\$	400.00
152	(2) Rebecca and David Jones	\$	1,992.80
153	(r) <i>Claims against the Division of Rehabilitation Services:</i>		
154	(TO BE PAID FROM FEDERAL REVENUE FUND)		
155	(1) M. Amrik Chattha, M.D.	\$	150.00
156	(2) West Virginia Association of		
157	Rehabilitation Facilities	\$	19,197.41
158	(s) <i>Claim against the Education and State Employees</i>		
159	<i>Grievance Board:</i>		
160	(TO BE PAID FROM GENERAL REVENUE FUND)		

486		CLAIMS	[Ch. 85
161	(1)	Officemax, Inc.	\$ 155.83
162	(t)	<i>Claim against the Governor's Office:</i>	
163		(TO BE PAID FROM GENERAL REVENUE FUND)	
164	(1)	Kroger Company	\$ 124.12
165	(u)	<i>Claim against the Human Rights Commission:</i>	
166		(TO BE PAID FROM GENERAL REVENUE FUND)	
167	(1)	Tel-Tex Communications, Inc.	\$ 779.00
168	(v)	<i>Claims against the Public Service Commission:</i>	
169		(TO BE PAID FROM SPECIAL REVENUE FUND)	
170	(1)	Division of Highways	\$ 159.91
171	(2)	Elco Mechanical Contractors	\$ 464.24
172	(3)	Goodyear Tire and Rubber	
173		Company, Inc.	\$ 253.72
174	(4)	U.S. Dairy Company	\$ 102.02
175	(w)	<i>Claims against the Regional Jail and Correctional</i>	
176		<i>Facility Authority:</i>	
177		(TO BE PAID FROM SPECIAL REVENUE FUND)	
178	(1)	Leroy Buzzard	\$ 210.00
179	(2)	Kenhill Construction Company, Inc. .	\$ 489,519.39
180	(x)	<i>Claim against the State Rail Authority:</i>	
181		(TO BE PAID FROM GENERAL REVENUE FUND)	
182	(1)	Charles E. Williams, Jr.	\$ 425.00
183	(y)	<i>Claim against the State of West Virginia:</i>	
184		(TO BE PAID FROM GENERAL REVENUE FUND)	
185	(1)	AT & T	\$ 179,892.93
186	(z)	<i>Claims against the Supreme Court of Appeals:</i>	
187		(TO BE PAID FROM GENERAL REVENUE FUND)	
188	(1)	James M. Casey	\$ 341.00
189	(2)	Randolph County Commission	\$ 1,463.31

190	(3) Spectrum Reporting Services	\$ 2,675.48
191	(4) Patricia Williams, M.D.	\$ 1,319.00
192	(5) Shirley Adkins	\$ 514.06
193	(6) William D. Anderson	\$ 100.00
194	(7) Ernest F. Backus	\$ 1,743.75
195	(8) Marjorie L. Baker	\$ 514.06
196	(9) Linda L. Bixby	\$ 514.06
197	(10) Teresa Bruno	\$ 522.32
198	(11) David M. Buzzard	\$ 1,506.05
199	(12) Philip G. Conley	\$ 1,536.30
200	(13) John L. Daniels	\$ 4,500.00
201	(14) Marian A. Darby	\$ 3,304.43
202	(15) J.V. DeMarco	\$ 1,506.05
203	(16) Kimberly J. Roach Farmer	\$ 1,538.06
204	(17) Norman D. Ferrari	\$ 1,530.25
205	(18) Judith P. Goontz	\$ 1,506.05
206	(19) Lorie L. Green	\$ 524.39
207	(20) Jeanette Grimes	\$ 514.06
208	(21) Sonja L. Johns Hackney	\$ 514.06
209	(22) Anita Hager	\$ 1,104.43
210	(23) Tammy J. Halsey	\$ 1,538.06
211	(24) Edward Harless, Jr.	\$ 4,500.00
212	(25) Sue Hedstrom	\$ 595.21
213	(26) Edward S. Hicks	\$ 1,743.75
214	(27) Beverly C. Booth Justice	\$ 514.06
215	(28) Mark A. Kerwood	\$ 1,506.05
216	(29) Teresa E. King	\$ 1,278.76
217	(30) Wilma L. Kocher	\$ 514.06
218	(31) Shirley Laxton	\$ 223.80
219	(32) Ruth D. Lemon	\$ 1,104.43
220	(33) Robert Lightner	\$ 1,282.30
221	(34) Louis E. Longanacre	\$ 1,743.75

222	(35) Mary E. Loucas	\$	1,045.03
223	(36) Mickey M. Mallas	\$	1,530.25
224	(37) Franchesia McClung	\$	595.21
225	(38) Helen McCormick	\$	1,506.05
226	(39) Tamela D. Bailey McCurdy	\$	1,538.06
227	(40) Mary S. McCutcheon	\$	524.39
228	(41) D.L. McKnight as Executor of the		
229	Estate of Nina L. McKnight	\$	595.21
230	(42) Barbara Minor	\$	514.06
231	(43) John D. Morton	\$	1,536.30
232	(44) John Moses	\$	1,506.05
233	(45) Pamela Newsome	\$	514.06
234	(46) Walter Nogay	\$	1,530.25
235	(47) Agnes D. Riffel	\$	1,126.61
236	(48) Deloris Sidebottom	\$	514.06
237	(49) Jerry P. Turner	\$	595.21
238	(50) Bill Webb	\$	1,506.05
239	(51) Tamera Webster	\$	522.32
240	(52) Connie White	\$	1,538.06
241	(53) Mary F. Wiedebusch	\$	1,104.43
242	(54) Doris Zagula	\$	522.32

243 The Legislature finds that the above moral obligations
244 and the appropriations made in satisfaction thereof shall
245 be the full compensation for all claimants, and that prior
246 to the payments to any claimant provided for in this bill,
247 the court of claims shall receive a release from said
248 claimant releasing any and all claims for moral obligations
249 arising from the matters considered by the Legislature in
250 the finding of the moral obligations and the making of the
251 appropriations for said claimant. The court of claims shall
252 deliver all releases obtained from claimants to the
253 department against which the claim was allowed.

CHAPTER 86

(S. B. 185—By Senators Wooton, Snyder, Ball, Kessler,
Hunter, Oliverio, Ross, White, Dittmar, Scott and Kimble)

[Passed February 9, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and seven, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the court of claims; providing for the position of chief deputy clerk; expanding the locations in which the court of claims is authorized to meet; and making certain technical revisions.

Be it enacted by the Legislature of West Virginia:

That sections five and seven, article two, chapter fourteen 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. CLAIMS AGAINST THE STATE.

§14-2-5. Court clerk and other personnel.

§14-2-7. Meeting place of the court.

§14-2-5. Court clerk and other personnel.

1 The court may appoint a clerk, chief deputy clerk and
2 deputy clerks. The salaries of the clerk, the chief deputy
3 clerk and the deputy clerks shall be fixed by the joint
4 committee on government and finance, and shall be paid
5 out of the regular appropriation for the court. The clerk
6 shall have custody of and maintain all records and
7 proceedings of the court, shall attend meetings and
8 hearings of the court, shall administer oaths and
9 affirmations and shall issue all official summonses,
10 subpoenas, orders, statements and awards. The chief
11 deputy clerk or another deputy clerk shall act in the place
12 and stead of the clerk in the clerk's absence.

13 The joint committee on government and finance may
14 employ other persons whose services are necessary to the
15 orderly transaction of the business of the court and fix
16 their compensation.

§14-2-7. Meeting place of the court.

1 The regular meeting place of the court shall be at the
2 state capitol, and the joint committee on government and
3 finance shall provide adequate quarters therefor. When
4 deemed advisable, in order to facilitate the full hearing of
5 claims arising elsewhere in the state, the court may
6 convene at any county seat or other location in the state,
7 including a correctional institution: *Provided*, That the
8 court will make reasonable efforts to meet in appropriate
9 public or private buildings in keeping with the dignity and
10 decorum of the state.

CHAPTER 87

(Com. Sub. for H. B. 4564—By Mr. Speaker, Mr. Kiss, and
Delegates Michael, Martin and Varner)

[Passed March 14, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact section nine-a, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to abolishing and recreating the coal and energy research bureau; abolishing the bureau's advisory committee; designating members of the bureau; and eliminating the expense reimbursement provision.

Be it enacted by the Legislature of West Virginia:

That section nine-a, article eleven, 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 11. WEST VIRGINIA UNIVERSITY.**§18-11-9a. Coal and energy research bureau.**

1 The coal and energy research bureau, heretofore
2 established at West Virginia university shall be abolished
3 and a new coal and energy research bureau is hereby

4 created. Subject to such rules as may be prescribed by
5 the university of West Virginia board of trustees and West
6 Virginia university, the bureau shall conduct investigations
7 and research into the development of new, safer and more
8 economical ways to mine, transport and use coal, consider
9 environmental problems created through the use and
10 production of coal, develop new uses and markets for coal,
11 other energy fuels and allied minerals, develop new
12 methods of combustion of coal and new uses of coal in
13 the chemical industry, develop greater efficiency and
14 conservation in the mining and mineral industries, and
15 make such tests and investigations as may be required by
16 the office of miner's health, safety and training in the
17 prosecution of its work. The bureau shall conduct such
18 experiments, tests and activities as will promote the
19 development of the mineral industries in the state, and
20 shall cooperate with the office of miner's health, safety
21 and training and other state and federal agencies dealing
22 with issues related to coal and its uses, in the investigation
23 of the causes of mine disasters and common mine
24 accidents. It shall also initiate and carry on a program of
25 research designed to discover and develop new uses and
26 new processes for the utilization of West Virginia coal and
27 other mineral resources.

28 The costs of financing the research program shall be
29 paid from any funds appropriated by the Legislature for
30 the bureau, from any grants or gifts received by the
31 university or the bureau, and from any income received
32 for research carried on under contract with any federal or
33 state agency, or with any private corporation, association
34 or individual. Within the limits of available funds,
35 research activities may be conducted by the bureau, or
36 under contract with some other research group,
37 corporation or individual.

38 In order to avoid wasteful duplication, the research
39 program shall be carried on in close cooperation with the
40 federal departments of energy and the interior, the federal
41 environmental protection agency, the federal energy
42 technology center, the national institute for occupational
43 safety and health, other appropriate federal agencies,
44 research organizations and establishments, the West

45 Virginia geological and economic survey, the West
46 Virginia development office, the West Virginia division of
47 environmental protection, and other appropriate state
48 agencies, research organizations and establishments and
49 industry and academic institutions. The university shall
50 from time to time, but at least annually, publish and
51 distribute to the governor, the Legislature, and to
52 interested persons and agencies reports of the bureau's
53 activities, findings and recommendations.

54 The "advisory committee on coal and energy
55 research," heretofore existing, is abolished. The bureau
56 shall advise and counsel with West Virginia university
57 concerning the programs of the coal and energy research
58 bureau and make recommendations to the university of
59 West Virginia board of trustees, the governor and the
60 Legislature concerning the support of the programs of the
61 coal and energy research bureau.

62 The bureau shall consist of nine appointed members.
63 The chairperson of the bureau shall be the chairperson of
64 the department of mining engineering in the college of
65 engineering and mineral resources at West Virginia
66 university. The remaining members of the bureau shall
67 include the director of the national research center for
68 coal and energy; the director of the national mine land
69 reclamation center; the president of West Virginia
70 university or his or her designee; one member
71 representing union labor and one member representing
72 the coal industry, each to be appointed jointly by the
73 president of the Senate and the speaker of the House of
74 Delegates; one member appointed by the president of the
75 Senate; one member appointed by the speaker of the
76 House of Delegates; and one member appointed by the
77 governor. For the purpose of the original appointments,
78 the member appointed by the president of the Senate shall
79 serve for a term of one year and until his or her successor
80 has been appointed and qualified, the member appointed
81 by the speaker of the House of Delegates shall serve for a
82 term of two years and until his or her successor has been
83 appointed and qualified, and the member appointed by
84 the governor shall serve for a term of three years and until
85 his or her successor has been appointed and qualified.

86 Except for the original appointments, those members who
87 are appointees shall serve for a term of three years and
88 until such members' respective successors have been
89 appointed and qualified. Members may be reappointed
90 for any number of terms. Vacancies shall be filled by
91 appointment for the unexpired term by the official who
92 appointed such member for the term vacated. To these
93 members may be added specialists as deemed desirable
94 and appropriate by a majority vote of the bureau.

CHAPTER 88

(H. B. 4330—By Delegates Johnson, Amores, Rowe,
Underwood, Mahan and Thomas)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twelve, article four, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to examination of the clerk's office of the supreme court of appeals and all circuit and county courts.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of section requiring examination of offices of court clerks.

1 Section twelve, article four, chapter fifty-one of the
2 code of West Virginia, one thousand nine hundred thirty-
3 one, as amended, is hereby repealed.

CHAPTER 89

(S. B. 734—By Senator Plymale)

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to redefining the consolidated pension plan to include the wildlife endowment fund.

Be it enacted by the Legislature of West Virginia:

That section two, 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 INVESTMENT MANAGEMENT BOARD.

§12-6-2. Definitions.

1 As used in this article unless a different meaning
2 clearly appears from the context:

3 (1) "Beneficiaries" means those individuals entitled to
4 benefits from the consolidated pension plan;

5 (2) "Board" means the governing body for the West
6 Virginia investment management board, and any reference
7 elsewhere in this code to board of investments or West
8 Virginia trust fund means the board as defined herein;

9 (3) "Consolidated fund" means the investment fund
10 managed by the board and established pursuant to
11 subsection (a), section eight of this article;

12 (4) "Consolidated pension plan" means the public
13 employees retirement system established in article ten,
14 chapter five of this code, the teachers retirement system
15 established in article seven-a, chapter eighteen of this code,
16 the West Virginia state police retirement system established

17 in article two-a, chapter fifteen of this code, the death,
18 disability and retirement fund of the state police
19 established in article two, chapter fifteen of this code, the
20 judges' retirement system established in article nine,
21 chapter fifty-one of this code, the workers' compensation
22 fund established in article three, chapter twenty-three of
23 this code, the wildlife endowment fund established in
24 article two-b, chapter twenty of this code, and the
25 coal-workers' pneumoconiosis plan established in article
26 four-b, chapter twenty-three of this code;

27 (5) "Local government funds" means the moneys of a
28 political subdivision, including policemen's pension and
29 relief funds, firemen's pension and relief funds and
30 volunteer fire departments, transferred to the board for
31 deposit;

32 (6) "Participant plan" means any component system,
33 plan or fund of the consolidated pension plan within the
34 definition set forth in subdivision (4) of this section;

35 (7) "Political subdivision" means and includes a
36 county, municipality or any agency, authority, board,
37 county board of education, commission or instrumentality
38 of a county or municipality and regional councils created
39 pursuant to the provisions of section five, article twenty-
40 five, chapter eight of this code;

41 (8) "Trustee" means any member serving on the West
42 Virginia investment management board: *Provided*, That
43 in section nine-a of this article wherein the terms of the
44 trust indenture are set forth, "trustee" means the West
45 Virginia investment management board;

46 (9) "Securities" means all bonds, notes, debentures or
47 other evidences of indebtedness, and other lawful
48 investment instruments; and

49 (10) "State funds" means all moneys of the state which
50 may be lawfully invested except the "school fund"
51 established by section four, article XII of the state
52 constitution.

CHAPTER 90

(Com. Sub. for H. B. 4529—By Delegates Rowe, Hutchins, Thompson,
Kominar, Trump, Spencer and Miller)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred six, article two, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to notice of a consumer's right to cure default in a consumer credit sale; and requiring notice from creditors to cosigners of consumer's default.

Be it enacted by the Legislature of West Virginia:

That section one hundred six, article two, chapter forty-six-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. CONSUMER CREDIT PROTECTION.

§46A-2-106. Notice of consumer's right to cure default; cure; acceleration.

1 After a consumer has been in default on any
 2 installment obligation or any other secured obligation for
 3 five days for failure to make a scheduled payment or
 4 otherwise perform pursuant to such a consumer credit sale,
 5 consumer lease or consumer loan other than with respect
 6 to a covenant to provide insurance for or otherwise to
 7 protect and preserve the property covered by a security
 8 interest, the creditor may give him or her notice of such
 9 fact in the manner provided for herein. Actual delivery of
 10 such notice to a consumer or delivery or mailing of same
 11 to the last known address of the consumer is sufficient for
 12 the purpose of this section. If given by mail, notice is
 13 given when it is deposited in a mailbox properly addressed
 14 and postage prepaid. Notice shall be in writing and shall
 15 conspicuously state the name, address and telephone
 16 number of the creditor to whom payment or other
 17 performance is owed, a brief description of the transaction,
 18 the consumer's right to cure such default and the amount
 19 of payment and other required performance and date by
 20 which it must be paid or accomplished in order to cure the
 21 default. A copy of the notice required by this section

22 shall be: (i) Delivered or mailed to the last known address
23 of any cosigner of the obligation in the manner set forth
24 in this section unless the cosigner has waived in writing his
25 or her right to receive copies of the notice: *Provided*, That
26 a waiver of notice contained in the consumer credit sales
27 agreement or consumer loan agreement does not
28 constitute effective waiver of notice of the cosigner's right
29 to receive notice of the consumer's default for purposes
30 of this section; (ii) retained by the creditor; (iii) certified
31 in the manner prescribed by this section by an officer or
32 other authorized representative of such creditor; and (iv)
33 notarized by a person licensed as a notary under the laws
34 of the state of West Virginia or any other state or territory
35 of the United States. The certification required by this
36 section shall substantially conform to the following
37 language:

38 "I, _____ (name of person certifying),
39 the _____ (title of person certifying)
40 of _____ (creditor's name),
41 hereby certify that the notice of the consumer's right to
42 cure default on which this certification appears (or to
43 which this certification is attached) was on this _____
44 day of _____, 19_____, mailed to the
45 person(s) whose name(s) appear herein (therein) at the
46 address(es) set forth herein (therein).

47 _____"
48 (Signature)

49 Failure to send notice to a cosigner as required by this
50 section does not, in and of itself, give rise to a cause of
51 action against the creditor.

52 Except as hereinafter provided in this section, after a
53 default on any installment obligation or any other secured
54 obligation other than with respect to a covenant to provide
55 insurance for or otherwise to protect and preserve the
56 property covered by a security interest or lease, a creditor
57 may not accelerate maturity of the unpaid balance of any
58 such installment obligation or any other such secured
59 obligation, commence any action or demand or take
60 possession of collateral on account of default until ten
61 days after notice has been given to the consumer of his or
62 her right to cure such default. Until such period expires,
63 the consumer shall have the right to cure any default by
64 tendering the amount of all unpaid sums due at the time

65 of the tender, without acceleration, plus any unpaid
66 delinquency or deferral charges and by tendering any
67 other performance necessary to cure such default. Any
68 such cure shall restore a consumer to all his or her rights
69 under the agreement the same as if there had been no
70 default. A consumer who has been in default three or
71 more times on the same obligation and who has been
72 given notice of such fact three or more times shall not
73 have the right to cure a default under this section even
74 though previous defaults have been cured and his or her
75 creditor's right to proceed against him or her and his or
76 her collateral shall not be impaired or limited in any way
77 by this section. There shall be no acceleration of the
78 maturity of all or part of any amount owing in such a
79 consumer credit sale, consumer lease or consumer loan,
80 except where nonperformance specified in the agreement
81 as constituting default has occurred.

CHAPTER 91

(H. B. 4285—By Delegates Azinger, Thompson, H. White,
L. White, Beane and Gillespie)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred nine, article three, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section one hundred nine-a, all relating to allowing a secured lender to procure insurance covering collateral, under the consumer protection act; and providing related conditions and procedures.

Be it enacted by the Legislature of West Virginia:

That section one hundred nine, article three, chapter forty-six-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 a new section, designated section one hundred nine-a, all to read as follows:

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-109. Additional charges; credit life or health insurance; notice of cancellation; when refund required; obligations of creditor and insurer; civil penalty; rules relating to insurance.

§46A-3-109a. Collateral protection insurance.

§46A-3-109. Additional charges; credit life or health insurance; notice of cancellation; when refund required; obligations of creditor and insurer; civil penalty; rules relating to insurance.

1 (a) In addition to the sales finance charge or loan
2 finance charge permitted by this chapter, a creditor may
3 contract for and receive the following additional charges
4 in connection with a consumer credit sale or a consumer
5 loan:

6 (1) Official fees and taxes;

7 (2) Charges for insurance as described in subsection
8 (b) of this section: *Provided*, That nothing contained in
9 this section with respect to insurance in any way limits the
10 power and jurisdiction of the insurance commissioner of
11 this state in the premises;

12 (3) Annual charges, payable in advance, for the
13 privilege of using a lender credit card or similar
14 arrangement which entitles the user to purchase goods or
15 services from at least one hundred persons not related to
16 the issuer of the lender credit card or similar arrangement,
17 under an arrangement pursuant to which the debts
18 resulting from the purchases are payable to the issuer;

19 (4) Charges for other benefits, including insurance,
20 conferred on the consumer, if the benefits are of value to
21 him or her and if the charges are reasonable in relation to
22 the benefits, are of a type which is not for credit, and are
23 excluded as permissible additional charges from the sales
24 finance charge or loan finance charge by rule adopted by
25 the commissioner: *Provided*, That as to insurance, the
26 policy as distinguished from a certificate of coverage

27 thereunder may only be issued by an individual licensed
28 under the laws of this state to sell the insurance and the
29 determination of whether the charges therefor are
30 reasonable in relation to the benefits shall be determined
31 by the insurance commissioner of this state;

32 (5) Reasonable closing costs with respect to a debt
33 secured by an interest in land; and

34 (6) Documentary charge or any other similar charge
35 for documentary services in relation to securing a title, so
36 long as said charge is applied equally to cash customers
37 and credit customers alike and so long as such
38 documentary charge does not exceed fifty dollars.

39 (b) A creditor may take, obtain or provide reasonable
40 insurance on the life and earning capacity of any
41 consumer obligated on the consumer credit sale or
42 consumer loan, reasonable insurance on any real or
43 personal property offered as security subject to the
44 provisions of this subsection and section one hundred
45 nine-a of this article, and vendor's or creditor's single
46 interest insurance with respect to which the insurer has no
47 right of subrogation. Only one policy of life insurance
48 and/or one policy of health and accident insurance and/or
49 one policy of accident insurance and/or one policy of loss
50 of income insurance on any one consumer may be in
51 force with respect to any one contract or agreement at any
52 one time, but one policy may cover both a consumer and
53 his or her spouse:

54 (1) The amount, terms and conditions of property
55 insurance shall have a reasonable relation to the existing
56 hazards or risk of loss, damage or destruction and be
57 reasonable in relation to the character and value of the
58 property insured or to be insured; and the term of the
59 insurance shall be reasonable in relation to the terms of
60 credit: *Provided*, That nothing may prohibit the
61 consumer from obtaining, at his or her option, greater
62 coverages for longer periods of time if he or she so
63 desires;

64 (2) Life insurance shall be in an initial amount not to
65 exceed the total amount repayable under the consumer

66 credit agreement, and where a consumer credit sale or
67 consumer loan is repayable in installments, such insurance
68 may at no time exceed the scheduled or actual amount of
69 unpaid indebtedness, whichever is greater. Life insurance
70 authorized by this subdivision shall provide that the
71 benefits be paid to the creditor to reduce or extinguish the
72 unpaid indebtedness: *Provided*, That if a separate charge
73 is made for the insurance and the amount of insurance
74 exceeds the unpaid indebtedness, where not prohibited,
75 then the excess is payable to the estate of the consumer.
76 The initial term of the life insurance in connection with a
77 consumer credit sale, other than a sale pursuant to a
78 revolving charge account, or in connection with a
79 consumer loan, other than a loan pursuant to a revolving
80 loan account, may not exceed the scheduled term of the
81 consumer credit agreement by more than fifteen days.
82 The aggregate amount of periodic benefits payable by
83 credit accident and health insurance in the event of
84 disability, as defined in the policy, and loss of income
85 insurance in the event of involuntary loss of employment,
86 as defined in the policy, may not exceed the unpaid
87 amount of such indebtedness; periodic benefits payable in
88 connection with a consumer credit sale pursuant to a
89 revolving charge account or of a consumer loan pursuant
90 to a revolving loan account may be based upon the
91 authorized credit limit;

92 (3) When the insurance is obtained or provided by or
93 through a creditor, the creditor may collect from the
94 consumer or include as part of the cash price of a
95 consumer credit sale or as part of the principal of a
96 consumer loan, or deduct from the proceeds of any
97 consumer loan the premium, or in the case of group
98 insurance, the identifiable charge. The premium or
99 identifiable charge for the insurance required or obtained
100 by a creditor may equal, but may not exceed the premium
101 rate filed by the insurer with the insurance commissioner.
102 In any case, when the creditor collects the entire premium
103 for such insurance in advance, the premium shall be
104 remitted by the creditor to the insurer or the insurance
105 agent, as specified by the insurer, within ten days from or

106 after the end of the month in which the collection was
107 made;

108 (4) With respect to insurance against loss of or damage
109 to property, or against liability, the creditor shall furnish a
110 clear and specific statement in writing to the debtor, setting
111 forth the cost of the insurance if obtained from or through
112 the creditor, and stating that the debtor may choose the
113 person through whom the insurance is to be obtained;

114 (5) With respect to consumer credit insurance
115 providing life, accident, health or loss of income coverage,
116 no creditor may require a consumer to purchase the
117 insurance or to purchase the insurance from the creditor
118 or any particular agent, broker or insurance company as a
119 condition precedent to extending credit to or on behalf of
120 such consumer;

121 (6) When a consumer credit sale or consumer loan,
122 refinancing or consolidation is paid in full, the creditor
123 receiving the payment shall inform the debtor of the
124 cancellation of any consumer credit insurance providing
125 life, accident, health or loss of income coverage and advise
126 the debtor of the application of any unearned premiums
127 to the loan balance. Notices required by this subdivision
128 shall be made in the following manner:

129 (A) If the insurance was not sold or provided by the
130 creditor, the creditor receiving the payment shall notify
131 the debtor that he or she may have the right to receive a
132 refund of unearned premiums from any other seller or
133 provider of the insurance, and advise the debtor of his or
134 her obligation to notify any other insurer of the payment
135 of the loan balance and the cancellation of the consumer
136 credit insurance, and request a refund or credit of
137 unearned premiums, if applicable. Such notice shall be
138 sent on a form as prescribed by the insurance
139 commissioner as provided in chapter twenty-nine-a of this
140 code and shall contain the name and address of the seller
141 and the insurer; or

142 (B) If the creditor was the seller or provider of the
143 consumer credit insurance, the creditor shall:

144 (i) Notify the insurer or shall cause the insurer to be
145 notified of the cancellation of such insurance; and

146 (ii) Notify the debtor of the cancellation of the
147 insurance and of the application of any unearned
148 premiums to the loan balance, which notice may be on a
149 form consistent with the general course of business of the
150 creditor;

151 (7) Upon receipt by the insurer of notification of the
152 cancellation of consumer credit insurance, the insurer shall
153 cancel the insurance effective no later than thirty days
154 from the date of receipt of the notice. Within forty-five
155 days following the date of notification of cancellation of
156 the insurance, the insurer shall pay any refund of
157 unearned premiums to the debtor-insurer or such other
158 person as directed by the debtor-insurer; and

159 (8) An insurer, seller or creditor who fails to refund
160 any unused insurance premium or provide the proper
161 notification of payoff is liable for civil damages up to
162 three times the amount of the unused premium as well as
163 other remedies as provided by section one hundred nine,
164 article seven of this chapter.

165 (c) The insurance commissioner of this state shall
166 promulgate legislative rules in accordance with the
167 provisions of chapter twenty-nine-a of this code to
168 implement the provisions of this article relating to
169 insurance, and the authority of the insurance
170 commissioner to promulgate the rules is exclusive
171 notwithstanding any other provisions of this code to the
172 contrary.

§46A-3-109a. Collateral protection insurance.

1 (a) As used in this section:

2 (1) "Collateral" means any or all property pledged to
3 secure payment, repayment or performance under a credit
4 agreement, whether personal property, real property,
5 fixtures, inventory, receivables, rights, privileges or
6 otherwise.

7 (2) (A) "Collateral protection insurance" means
8 insurance coverage that: (i) Is purchased unilaterally by a
9 creditor subsequent to the date of a consumer credit
10 agreement; (ii) provides monetary protection against loss
11 of or damage to the collateral or against liability arising
12 out of the ownership or use of the collateral; and (iii) is
13 purchased according to the terms of a credit agreement as
14 a result of a consumer's failure to provide evidence of
15 insurance or failure to maintain adequate insurance
16 covering the collateral, with the costs of the collateral
17 protection insurance, including interest and any other
18 charges imposed by the creditor in connection with the
19 placement of the collateral protection insurance, payable
20 by the consumer. Collateral protection insurance includes
21 insurance coverage that is purchased to protect only the
22 interest of the creditor and insurance coverage that is
23 purchased to protect both the interest of the creditor and
24 some or all of the interest of the consumer. The term of a
25 collateral protection insurance policy may, but need not,
26 extend to the full term of the credit transaction.

27 (B) Collateral protection insurance does not include
28 insurance coverage that is: (i) Purchased by the creditor
29 for which the consumer is not charged; (ii) purchased at
30 the inception of a credit transaction to which the consumer
31 is a party or agrees, whether or not the costs are included
32 in any payment plan under the credit transaction; (iii)
33 purchased by the creditor following foreclosure,
34 repossession, or a similar event wherein the creditor gains
35 possession or control over the collateral; (iv) maintained
36 by the creditor for the protection of any or all collateral
37 which may come into the possession or control of the
38 creditor through foreclosure, repossession or a similar
39 event; (v) credit insurance, mortgage protection insurance,
40 insurance issued to cover the life or health of the
41 consumer or any other insurance maintained to cover the
42 inability or failure of the consumer to make payment
43 under the credit agreement; (vi) title insurance; or (vii)
44 flood insurance required to be placed by creditors by 42
45 U.S.C. §4012(a), as amended, pursuant to the National
46 Flood Insurance Reform Act of 1994.

47 (3) "Credit agreement" means the written document or
48 documents that set forth the terms of the credit
49 transaction.

50 (4) "Credit transaction" means any consumer credit
51 transaction, the terms of which require the payment or
52 repayment of money, goods, services, property, rights or
53 privileges, which is to be made on one or more future
54 dates, where the obligation is secured by collateral.

55 (5) "Creditor" shall mean, for purposes of this
56 section only, an institution, the deposits of which are
57 insured by the federal deposit insurance agency, the
58 national credit union share insurance fund, or a subsidiary
59 of such an institution, or a subsidiary of a holding
60 company owning such an institution, and this section
61 applies and is available only to such creditors.

62 (b) A creditor may place collateral protection
63 insurance if the following conditions are met:

64 (1) The consumer has entered into a credit transaction
65 with the creditor;

66 (2) The credit transaction has been reduced to a credit
67 agreement and the credit agreement requires the consumer
68 to maintain insurance on the collateral; and

69 (3) A notice substantially similar to the following has
70 been included in the credit agreement or on a separate
71 document provided to the consumer and to any cosigner,
72 guarantor or other person liable with the consumer for the
73 obligation, at the time the credit agreement is entered:

74 "Unless you provide us with evidence of the insurance
75 coverage required by your agreement with us, we may
76 purchase insurance at your expense to protect our interests
77 in your collateral. This insurance may, but need not,
78 protect your interests. The coverage that we purchase may
79 not pay any claim that you make or any claim that is
80 made against you in connection with the collateral. You
81 may later cancel any insurance purchased by us, but only
82 after providing us with evidence that you have obtained
83 insurance as required by our agreement. If we purchase
84 insurance for the collateral, you will be responsible for the

85 costs of that insurance, including interest and any other
86 charges we may impose in connection with the placement
87 of the insurance, until the effective date of the cancellation
88 or expiration of the insurance. The costs of the insurance
89 may be added to your total outstanding balance or
90 obligation. The costs of the insurance may be more than
91 the cost of insurance you may be able to obtain on your
92 own."

93 (c) (1) Within thirty calendar days following the
94 placement of collateral protection insurance, the creditor
95 shall mail to the consumer and to any cosigner, guarantor
96 or other person liable with the consumer for the
97 obligation, at the last known address of the person, a
98 notice entitled "Notice of Placement of Insurance" in a
99 form substantially similar to the following:

'00 **"NOTICE OF PLACEMENT OF INSURANCE**

01 Your credit agreement with us requires you to
02 maintain adequate insurance on your collateral until you
103 pay off your loan. You have not given us proof that you
104 have adequate insurance on your collateral. Under the
105 terms of your credit agreement, we have purchased
106 insurance at your expense to protect our interests in your
107 collateral.

108 The insurance we purchased will pay claims made by
109 us as the creditor. The insurance we purchased may not
110 pay any claims made by you or against you in connection
111 with your collateral.

112 You are responsible for the costs of this insurance,
113 including interest and any other charges we may impose
114 in connection with the purchase of this insurance. The
115 costs of this insurance may be more than insurance you
116 can buy on your own.

117 You still may obtain insurance on your own choosing
118 on the collateral. If you provide us with proof that you
119 have obtained adequate insurance on your collateral, we
120 will cancel the insurance that we purchased and refund or
121 credit any unearned premiums to you.

122 If, within thirty days after the date this notice was sent
123 to you, you provide us with proof that you had adequate
124 insurance on your collateral as of the date we also
125 purchased insurance and that you continue to have the
126 insurance that you purchased yourself, we will cancel the
127 insurance that we purchased without charging you any
128 costs, interest or other charges in connection with the
129 insurance that we purchased."

130 (2) The terms for repayment of the costs of the
131 collateral protection insurance, which include interest and
132 any other charges imposed by the creditor in connection
133 with the placement of the collateral protection insurance,
134 shall include one or more of the following:

135 (A) Full payment within thirty days after the date of
136 the notice of placement of insurance;

137 (B) A final balloon payment within thirty days after
138 the last scheduled payment required by the credit
139 agreement; or

140 (C) Full amortization over the term of the credit
141 transaction, the term of the collateral protection insurance
142 policy, or the term for which amortization is used by the
143 creditor.

144 (d) If any form of amortization is used by the creditor
145 for the costs of collateral protection insurance and a
146 coupon book was sent to the consumer at the inception of
147 the credit transaction, the creditor shall send to the
148 consumer either:

149 (1) Reprinted coupon book with revised calculations
150 of the consumer's payments that includes the amortized
151 costs of the collateral protection insurance; or

152 (2) Supplemental coupon book with calculations of
153 the consumer's additional payments based upon the
154 amortized costs of the collateral protection insurance, for
155 use by the consumer in addition to the original coupon
156 book.

157 (e) A consumer may at any time cancel the collateral
158 protection insurance by providing proper evidence to the
159 creditor that the consumer has obtained insurance as
160 required by the credit agreement. If, within thirty days
161 after notice is sent pursuant to subdivision (1), subsection
162 (c) of this section, a consumer provides the creditor with
163 proper evidence that the consumer had insurance on the
164 collateral as required by the credit agreement on the date
165 the creditor purchased insurance and that the consumer
166 continues to have insurance on the collateral as required
167 by the credit agreement, the creditor shall cancel the
168 insurance that it purchased and may not charge the
169 consumer any costs, interest or other charges in
170 connection with the insurance.

171 (f) Upon cancellation or expiration of collateral
172 protection insurance, the amount of unearned premiums,
173 if any, as calculated in accordance with the policy, shall be
174 refunded to the consumer. A refund of unearned
175 premiums may be credited to the consumer's obligation
176 under the credit agreement or distributed directly to the
177 consumer by check or other means.

178 (g) Collateral protection insurance may be placed with
179 any insurance carrier selected by the creditor that is
180 licensed to underwrite the insurance by the division of
181 insurance. The insurance shall be evidenced by an
182 individual policy or a certificate of insurance.

183 (h) A creditor that places collateral protection
184 insurance in substantial compliance with the terms of this
185 section is not directly or indirectly liable in any manner to
186 a consumer, cosignor, guarantor or any other person, in
187 connection with the placement of the collateral protection
188 insurance. Notices and coupon books required to be
189 mailed to a consumer under this section are not required
190 to be mailed to any person other than to the consumer and
191 shall be mailed by United States mail, first class, postage
192 prepaid, to the consumer's last known address on file with
193 the creditor.

194 (i) This section does not impose a fiduciary
195 relationship between the creditor and the consumer.
196 Placement of collateral protection insurance is for the sole
197 purpose of protecting the interest of the creditor when the
198 consumer fails to insure collateral as required by the credit
199 agreement.

200 (j) A creditor is not, by virtue of this section, required
201 to purchase collateral protection insurance or to otherwise
202 insure collateral. A creditor is not, by virtue of this
203 section, liable to a consumer or to any other person for
204 not purchasing collateral protection insurance, as a result
205 of the amount or level of coverage of collateral protection
206 insurance purchased by the creditor, or because the
207 creditor purchased collateral protection insurance that
208 protects only the interests of the creditor or less than all of
209 the interests of the consumer. This section does not create
210 a cause of action for damages on behalf of the consumer
211 or any other person in connection with the placement of
212 collateral protection insurance.

213 (k) The obligations and rights of the creditor and the
214 consumer with respect to the collateral, as provided by the
215 uniform commercial code, chapter forty-six of this code,
216 are not affected by this section.

217 (l) Substantial compliance with the provisions of this
218 section is mandatory for the placement of collateral
219 protection insurance in this state by a creditor pursuant to
220 a credit agreement entered into on or after the first day of
221 July, one thousand nine hundred ninety-nine. No
222 provision of this section may be held or applied against a
223 creditor in connection with collateral protection insurance
224 placed prior to the first day of July, one thousand nine
225 hundred ninety-eight. A creditor that places collateral
226 protection insurance pursuant to a credit agreement
227 entered into prior to the first day of July, one thousand
228 nine hundred ninety-eight, has available to it all of the
229 rights provided by this section if the creditor is in
230 substantial compliance with the provisions of this section,
231 other than subdivision (3) of subsection (b).

CHAPTER 92

(Com. Sub. for H. B. 4429—By Delegates Miller, Compton, Underwood,
Leach, Douglas, Capito and Thompson)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-e, relating to providing consumer protection regarding assistive devices; definitions; warranty requirements and remedies; lease enforcement; required disclosures; arbitration; and actions for damages.

Be it enacted by the Legislature of West Virginia:

That chapter forty-six-a 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-e, to read as follows:

ARTICLE 6E. CONSUMER PROTECTION—ASSISTIVE DEVICES.

§46A-6E-1. Definitions.

§46A-6E-2. Express warranty requirement; express warranty duration; implied warranty.

§46A-6E-3. Warranty remedies; procedures for obtaining remedies.

§46A-6E-4. Lease enforcement.

§46A-6E-5. Disclosure upon further sale or lease.

§46A-6E-6. Arbitration.

§46A-6E-7. Limitations; waiver of rights; action for damages; punitive damages.

§46A-6E-1. Definitions.

- 1 (a) "Assistive device" means any device enabling a
- 2 person with a disability to communicate, see, hear or
- 3 maneuver, which a consumer purchases or accepts transfer
- 4 of in this state. This definition includes a demonstrator.
- 5 Examples of assistive devices include, but are not limited
- 6 to, manual and motorized wheelchairs, motorized scooters,
- 7 hearing aids, telephone communication devices for the

8 deaf (TTY), assistive listening devices, voice synthesized
9 computer modules, optical scanners, talking software and
10 braille printers.

11 (b) "Assistive device dealer" means a person who is in
12 the business of selling assistive devices.

13 (c) "Assistive device lessor" means a person who leases
14 an assistive device to a consumer, or who holds the lessor's
15 rights, under a written lease.

16 (d) "Collateral costs" means expenses incurred by a
17 consumer in connection with the repair of a
18 nonconformity, including the costs of obtaining an
19 alternative assistive device.

20 (e) "Consumer" means any of the following:

21 (1) The purchaser of an assistive device, if the assistive
22 device was purchased from an assistive device dealer or
23 manufacturer for purposes other than resale;

24 (2) A person to whom the assistive device is
25 transferred for purposes other than resale, if the transfer
26 occurs before the expiration of an express warranty
27 applicable to the assistive device;

28 (3) A person who may enforce the warranty; and

29 (4) A person who leases an assistive device from an
30 assistive device lessor under a written lease.

31 (f) "Current value of the written lease" means the total
32 amount for which that lease obligates the consumer during
33 the period of the lease remaining after its early
34 termination, plus the assistive device dealer's early
35 termination costs and the value of the assistive device at
36 the lease expiration date if the lease sets forth that value,
37 less the assistive device lessor's early termination savings.

38 (g) "Demonstrator" means an assistive device used
39 primarily for the purpose of demonstration to the public.

40 (h) "Early termination cost" means any expense or
41 obligation that an assistive device lessor incurs as a result
42 of both the termination of a written lease before the

43 termination date set forth in that lease and the return of an
44 assistive device to a manufacturer pursuant to this section.
45 Early termination cost includes a penalty for prepayment
46 under finance arrangement.

47 (i) "Early termination saving" means any expense or
48 obligation that an assistive device lessor avoids as a result
49 of both the termination of a written lease before that
50 termination date set forth in that lease and the return of an
51 assistive device to a manufacturer pursuant to this section.
52 Early termination saving includes an interest charge that
53 the assistive device lessor would have paid to finance the
54 assistive device or, if the assistive device lessor does not
55 finance the assistive device, the difference between the
56 total amount for which the lease obligates the consumer
57 during the period of the lease term remaining after the
58 early termination and the present value of that amount at
59 the date of the early termination.

60 (j) "Manufacturer" means a person who manufactures
61 or assembles assistive devices and agents of that person,
62 including an importer, a distributor, factory branch,
63 distributor branch and any warrantor of the
64 manufacturer's assistive device, but does not include an
65 assistive device dealer.

66 (k) "Nonconformity" means a condition or defect that
67 substantially impairs the use, value or safety of an assistive
68 device and is covered by a warranty applicable to the
69 assistive device or to a component of the assistive device.

70 (l) "Reasonable allowance for use" means an amount
71 obtained by multiplying the total amount for which the
72 lease obligates the consumer by a fraction, the
73 denominator of which is one thousand eight hundred
74 twenty-five and the numerator of which is the number of
75 days that the consumer used the assistive device before
76 first reporting the nonconformity to the manufacturer,
77 assistive device lessor or assistive device dealer.

78 (m) "Reasonable attempt to repair" means within the
79 terms of a warranty applicable to a new assistive device:

80 (1) A nonconformity within the manufacturer's
81 warranty continues after three attempts at repair by the
82 manufacturer, assistive device lessor, or any of the
83 manufacturer's authorized assistive device dealers; or

84 (2) The assistive device is out of service for thirty
85 cumulative days because of warranty nonconformity.

§46A-6E-2. Express warranty requirement; express warranty duration; implied warranty.

1 (a) A manufacturer who sells an assistive device to a
2 consumer, either directly or through an assistive device
3 dealer, shall furnish the consumer with an express
4 warranty for the assistive device. The duration of the
5 express warranty shall be not less than one year after first
6 delivery of the assistive device to the consumer. In the
7 absence of an express warranty from the manufacturer, the
8 manufacturer shall be deemed to have expressly warranted
9 to the consumer of an assistive device that, for a period of
10 one year from the date of first delivery to the consumer,
11 the assistive device will be free from any condition or
12 defect which substantially impairs the value of the assistive
13 device to the consumer.

14 (b) Notwithstanding any other provision of law to the
15 contrary with respect to assistive devices subject to the
16 provisions of this article, no manufacturer, assistive device
17 dealer or assistive device lessor shall:

18 (1) Exclude, modify or otherwise attempt to limit any
19 warranty, express or implied, including the warranties of
20 merchantability and fitness for a particular purpose; or

21 (2) Exclude, modify or attempt to limit any remedy
22 provided by law, including the measure of damages
23 available, for a breach of warranty, express or implied.

24 Any such exclusion, modification or attempted
25 limitation shall be void.

§46A-6E-3. Warranty remedies; procedures for obtaining remedies.

1 (a) *Repair.* — If a new assistive device does not
2 conform to an express or implied warranty and the

3 consumer reports the nonconformity to the manufacturer,
4 the assistive device lessor, or a manufacturer's authorized
5 assistive device dealer and makes the assistive device
6 available for repair on or before one year after return
7 delivery of the assistive device to a consumer, the
8 nonconformity shall be repaired at no charge to the
9 consumer.

10 (b) *Return, refund, reimbursement, replacement.* —
11 After a reasonable attempt to repair, if the nonconformity
12 in an assistive device is not repaired, the consumer may
13 request remedies within this section by offering to transfer
14 possession of the assistive device to the manufacturer. No
15 later than thirty days after the consumer's offer, the
16 manufacturer shall provide to the consumer as many of
17 the following remedies as are applicable and elected by
18 the consumer, whereupon the consumer shall return to the
19 manufacturer the assistive device and any endorsements
20 necessary to transfer its possession to the manufacturer:

21 (1) Accept return of the assistive device;

22 (2) Replace the assistive device with a comparable new
23 assistive device;

24 (3) Refund collateral costs to the consumer;

25 (4) Refund to the consumer and to any holder of a
26 perfected security interest in the assistive device the full
27 purchase price, plus any finance charge paid by the
28 consumer, plus collateral costs, less a reasonable allowance
29 for use; or

30 (5) Refund to the lessor and to any holder of a
31 perfected security interest in the assistive device the
32 current value of the written lease, and refund to the
33 consumer the amount paid by the consumer pursuant to
34 the written lease, plus collateral costs, less a reasonable
35 allowance for use.

§46A-6E-4. Lease enforcement.

1 No person may enforce the lease of an assistive device
2 against the consumer after the consumer receives a refund
3 pursuant to section three of this article.

§46A-6E-5. Disclosure upon further sale or lease.

1 No assistive device returned by a consumer or assistive
2 device lessor in this state, or by a consumer or assistive
3 device lessor in another state under a similar law of that
4 state, may be sold or leased again in this state unless full
5 disclosure of the reasons for return is made to any
6 prospective buyer or lessee.

§46A-6E-6. Arbitration.

1 (a) Each consumer shall have the option of submitting
2 any dispute arising under this section upon the payment
3 of a prescribed filing fee to an alternate arbitration
4 mechanism established by the attorney general. Upon
5 application of the consumer and payment of the filing fee,
6 all manufacturers shall submit to such alternate arbitration.

7 (b) Such alternate arbitration shall be conducted by a
8 professional arbitrator or arbitration firm appointed by the
9 attorney general. The arbitration process shall ensure that
10 personal objectivity of its arbitrators and the right of each
11 party to present its case, to be in attendance during any
12 presentation made by the other party and to rebut or
13 refute such presentation.

14 (c) The attorney general shall propose a legislative
15 rule or rules for promulgation in accordance with the
16 provisions of chapter twenty-nine-a of this code to
17 establish the arbitration mechanism provided for in this
18 section.

**§46A-6E-7. Limitations; waiver of rights; action for damages;
punitive damages.**

1 (a) This section does not limit rights or remedies
2 available to a consumer under any other law.

3 (b) Any waiver by a consumer of rights under this
4 article is void.

5 (c) In addition to pursuing any other remedy, a
6 consumer may bring an action to recover for any damages
7 caused by a violation of this section. The court shall
8 award a consumer who prevails in such an action twice the
9 amount of any pecuniary loss, together with costs,
10 disbursements and reasonable attorney fees, and any
11 equitable relief that the court determines appropriate.

CHAPTER 93

(Com. Sub. for H. B. 2168—By Delegate Border)

[Passed February 10, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two hundred four, two hundred six, two hundred eight, two hundred ten and two hundred twelve, article two, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to schedules of controlled substances; adding certain drugs thereto.

Be it enacted by the Legislature of West Virginia:

That section two hundred four, two hundred six, two hundred eight, two hundred ten and two hundred twelve, article two, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-204. Schedule I.

§60A-2-206. Schedule II.

§60A-2-208. Schedule III.

§60A-2-210. Schedule IV.

§60A-2-212. Schedule V.

§60A-2-204. Schedule I.

1 (a) Schedule I shall consist of the drugs and other
2 substances, by whatever official name, common or usual
3 name, chemical name, or brand name designated, listed in
4 this section.

5 (b) *Opiates*. Unless specifically excepted or unless
6 listed in another schedule, any of the following opiates,
7 including their isomers, esters, ethers, salts and salts of
8 isomers, esters and ethers, whenever the existence of such
9 isomers, esters, ethers and salts is possible within the
10 specific chemical designation (for purposes of subdivision

11 (34) of this subsection only, the term isomer includes the
12 optical and geometric isomers):

13 (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-
14 phenethyl) -4-piperidiny]-N-phenylacetamide);

15 (2) Acetylmethadol;

16 (3) Allylprodine;

17 (4) Alphacetylmethadol (except levoalphacetyl-
18 methadol also known as levo-alpha-acetylmethadol,
19 levomethadyl acetate, or LAAM);

20 (5) Alphameprodine;

21 (6) Alphamethadol;

22 (7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-
23 phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-
24 phenylethyl)-4-(N-propanilido) piperidine);

25 (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-
26 thienyl) ethyl-4-piperidiny]-N-phenylpropanamide);

27 (9) Benzethidine;

28 (10) Betacetylmethadol;

29 (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-
30 phenethyl) -4-piperidiny]-N-phenylpropanamide);

31 (12) Beta-hydroxy-3-methylfentanyl (other name: N-
32 [1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidiny]-N-
33 phenylpropanamide);

34 (13) Betameprodine;

35 (14) Betamethadol;

36 (15) Betaprodine;

37 (16) Clonitazene;

38 (17) Dextromoramide;

39 (18) Diampromide;

40 (19) Diethylthiambutene;

- 41 (20) Difenoxin;
- 42 (21) Dimenoxadol;
- 43 (22) Dimepheptanol;
- 44 (23) Dimethylthiambutene;
- 45 (24) ·Dioxaphetyl butyrate;
- 46 (25) Dipipanone;
- 47 (26) Ethylmethylthiambutene;
- 48 (27) Etonitazene;
- 49 (28) Etoxidine;
- 50 (29) Furethidine;
- 51 (30) Hydroxypethidine;
- 52 (31) Ketobemidone;
- 53 (32) Levomoramide;
- 54 (33) Levophenacilmorphan;
- 55 (34) 3-Methylfentanyl (N-[3-methyl-1-(2-
56 phenylethyl)-4-piperidyl]-N-phenylpropanamide);
- 57 (35) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)-
58 ethyl-4-piperidiny]-N-phenylpropanamide);
- 59 (36) Morpheridine;
- 60 (37) MPPP (1-methyl-4-phenyl-4-propionoxypiper-
61 idine);
- 62 (38) Noracymethadol;
- 63 (39) Norlevorphanol;
- 64 (40) Normethadone;
- 65 (41) Norpipanone;
- 66 (42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-
67 (2-phenethyl)-4-piperidiny] propanamide);

- 68 (43) PEPAP(1-(2-phenethyl)-4-phenyl-4-
69 acetoxypiperidine);
- 70 (44) Phenadoxone;
- 71 (45) Phenampromide;
- 72 (46) Phenomorphan;
- 73 (47) Phenoperidine;
- 74 (48) Piritramide;
- 75 (49) Proheptazine;
- 76 (50) Properidine;
- 77 (51) Propiram;
- 78 (52) Racemoramide;
- 79 (53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-
80 piperidinyl]-propanamide);
- 81 (54) Tilidine;
- 82 (55) Trimeperidine.

83 (c) *Opium derivatives*. — Unless specifically excepted
84 or unless listed in another schedule, any of the following
85 opium derivatives, its salts, isomers and salts of isomers
86 whenever the existence of such salts, isomers and salts of
87 isomers is possible within the specific chemical
88 designation:

- 89 (1) Acetorphine;
- 90 (2) Acetyldihydrocodeine;
- 91 (3) Benzylmorphine;
- 92 (4) Codeine methylbromide;
- 93 (5) Codeine-N-Oxide;
- 94 (6) Cyprenorphine;
- 95 (7) Desomorphine;
- 96 (8) Dihydromorphine;

- 97 (9) Drotebanol;
98 (10) Etorphine (except HCl Salt);
99 (11) Heroin;
100 (12) Hydromorphenol;
101 (13) Methyldesorphine;
102 (14) Methyldihydromorphine;
103 (15) Morphine methylbromide;
104 (16) Morphine methylsulfonate;
105 (17) Morphine-N-Oxide;
106 (18) Myrophine;
107 (19) Nicocodeine;
108 (20) Nicomorphine;
109 (21) Normorphine;
110 (22) Pholcodine;
111 (23) Thebacon.

112 (d) *Hallucinogenic substances.* — Unless specifically
113 excepted or unless listed in another schedule, any material,
114 compound, mixture or preparation, which contains any
115 quantity of the following hallucinogenic substances, or
116 which contains any of its salts, isomers and salts of
117 isomers, whenever the existence of such salts, isomers, and
118 salts of isomers is possible within the specific chemical
119 designation (for purposes of this subsection only, the term
120 "isomer" includes the optical, position and geometric
121 isomers):

122 (1) Alpha-ethyltryptamine; some trade or other
123 names: etryptamine; Monase; alpha-ethyl-1H-indole-3-
124 ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and
125 AET;

126 (2) 4-bromo-2, 5-dimethoxy-amphetamine; some
127 trade or other names: 4-bromo-2, 5-dimethoxy-alpha-
128 methylphenethylamine; 4-bromo-2,5-DMA;

- 129 (3) 4-Bromo-2,5-dimethoxyphenethylamine; some
130 trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-
131 1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus;
- 132 (4) 2,5-dimethoxyamphetamine; some trade or other
133 names: 2,5-dimethoxy-alpha-methylphenethylamine;
134 2,5-DMA;
- 135 (5) 2,5-dimethoxy-4-ethylamphetamine; some trade
136 or other names: DOET;
- 137 (6) 4-methoxyamphetamine; some trade or other
138 names: 4-methoxy-alpha-methylphenethylamine; para-
139 methoxyamphetamine; PMA;
- 140 (7) 5-methoxy-3, 4-methylenedioxy- amphetamine;
- 141 (8) 4-methyl-2,5-dimethoxy-amphetamine; some
142 trade and other names: 4-methyl-2,5-dimethoxy-alpha-
143 methylphenethylamine; "DOM"; and "STP";
- 144 (9) 3,4-methylenedioxy amphetamine;
- 145 (10) 3,4-methylenedioxymethamphetamine (MDMA);
- 146 (11) 3,4-methylenedioxy-N-ethylamphetamine (also
147 known as N-ethyl-alpha-methyl-3,4 (methylenedioxy)
148 phenethylamine, N-ethyl MDA, MDE, MDEA);
- 149 (12) N-hydroxy-3,4-methylenedioxyamphetamine
150 (also known as N-hydroxy-alpha-methyl-3,4
151 (methylenedioxy) phenethylamine, and N-hydroxy
152 MDA);
- 153 (13) 3,4,5-trimethoxy amphetamine;
- 154 (14) Bufotenine; some trade and other names:
155 3-(beta-Dimethylaminoethyl)-5-hydroxyindole;3-(2-
156 dimethylaminoethyl) -5-indolol; N, N-dimethylserotonin;
157 5-hydroxy-N,N-dimethyltryptamine; mappine;
- 158 (15) Diethyltryptamine; some trade and other
159 names: N, N-Diethyltryptamine; DET;
- 160 (16) Dimethyltryptamine; some trade or other names:
161 DMT;

- 162 (17) Ibogaine; some trade and other names: 7-
163 Ethyl-6, 6 Beta, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-
164 6, 9-methano-5H-pyrido [1', 2': 1, 2] azepino [5,4-b]
165 indole; Tabernanthe iboga;
- 166 (18) Lysergic acid diethylamide;
- 167 (19) Marihuana;
- 168 (20) Mescaline;
- 169 (21) Parahexyl-7374; some trade or other names:
170 3-Hexyl -1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-
171 trimethyl-6H-dibenzo [b,d] pyran; Synhexyl;
- 172 (22) Peyote; meaning all parts of the plant presently
173 classified botanically as *Lophophora williamsii* Lemaire,
174 whether growing or not, the seeds thereof, any extract
175 from any part of such plant, and every compound,
176 manufacture, salts, derivative, mixture or preparation of
177 such plant, its seeds or extracts;
- 178 (23) N-ethyl-3-piperidyl benzilate;
- 179 (24) N-methyl-3-piperidyl benzilate;
- 180 (25) Psilocybin;
- 181 (26) Psilocyn;
- 182 (27) Tetrahydrocannabinols; synthetic equivalents of
183 the substances contained in the plant, or in the resinous
184 extractives of *Cannabis*, sp. and/or synthetic substances,
185 derivatives and their isomers with similar chemical
186 structure and pharmacological activity such as the
187 following:
- 188 delta-1 Cis or trans tetrahydrocannabinol, and their
189 optical isomers;
- 190 delta-6 Cis or trans tetrahydrocannabinol, and their
191 optical isomers;
- 192 delta-3,4 Cis or trans tetrahydrocannabinol, and its
193 optical isomers;
- 194 (Since nomenclature of these substances is not
195 internationally standardized, compounds of these

196 structures, regardless of numerical designation of atomic
197 positions covered.)

198 (28) Ethylamine analog of phencyclidine; some trade
199 or other names: N-ethyl-1-phenylcyclohexylamine, (1-
200 phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl)
201 ethylamine, cyclohexamine, PCE;

202 (29) Pyrrolidine analog of phencyclidine; some trade
203 or other names: 1-(1-phenylcyclohexyl)-pyrrolidine,
204 PCPy, PHP;

205 (30) Thiophene analog of phencyclidine; some trade
206 or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine,
207 2-thienylanalog of phencyclidine; TPCP, TCP;

208 (31) 1[1-(2-thienyl)cyclohexyl]pyrrolidine; some
209 other names: TCPy.

210 (e) *Depressants*. Unless specifically excepted or
211 unless listed in another schedule, any material, compound,
212 mixture, or preparation which contains any quantity of the
213 following substances having a depressant effect on the
214 central nervous system, including its salts, isomers and salts
215 of isomers whenever the existence of such salts, isomers
216 and salts of isomers is possible within the specific chemical
217 designation:

218 (1) Mecloqualone;

219 (2) Methaqualone.

220 (f) *Stimulants*. Unless specifically excepted or unless
221 listed in another schedule, any material, compound,
222 mixture, or preparation which contains any quantity of the
223 following substances having a stimulant effect on the
224 central nervous system, including its salts, isomers, and
225 salts of isomers:

226 (1) Aminorex; some other names: aminoxaphen; 2-
227 amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-
228 oxazolamine;

229 (2) Cathinone; some trade or other names: 2-amino-1-
230 phenyl-1-propanone, alpha-aminopropiophenone, 2-
231 aminopropiophenone, and norephedrone;

232 (3) Fenethylline;

233 (4) Methcathinone, its salts, optical isomers and salts of
234 optical isomers; some other names: (2-(methylamino)-
235 propiophenone; alpha-(methylamino)propiophenone; 2-
236 (methylamino)-1-phenylpropan-1-one; alpha-N-methyla
237 minopropiophenone; monomethylpropion; ephedrone; N-
238 methylcathinone; methylcathinone; AL-464; AL-422;
239 AL-463 and UR1432;

240 (5) (+-) cis-4-methylaminorex; ((+)-cis-4,5-dihydro-
241 4-methyl-5-phenyl-2-oxazolamine);

242 (6) N-ethylamphetamine;

243 (7) N,N-dimethylamphetamine; also known as N,N-
244 alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethyl
245 phenethylamine.

246 (g) *Temporary listing of substances subject to*
247 *emergency scheduling.* Any material, compound, mixture
248 or preparation which contains any quantity of the
249 following substances:

250 (1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide
251 (benzylfentanyl), its optical isomers, salts, and salts of
252 isomers.

253 (2) N-[1-(2-thienyl)methyl-4-piperidyl]-N-
254 phenylpropanamide (thenylfentanyl), its optical isomers,
255 salts and salts of isomers.

§60A-2-206. Schedule II.

1 (a) Schedule II shall consist of the drugs and other
2 substances, by whatever official name, common or usual
3 name, chemical name, or brand name designated, listed in
4 this section.

5 (b) *Substances, vegetable origin or chemical synthesis.*
6 Unless specifically excepted or unless listed in another
7 schedule, any of the following substances whether
8 produced directly or indirectly by extraction from
9 substances of vegetable origin, or independently by means
10 of chemical synthesis, or by a combination of extraction
11 and chemical synthesis:

12 (1) Opium and opiate, and any salt, compound,
13 derivative or preparation of opium or opiate excluding
14 apomorphine, thebaine-derived butorphanol, dextrorphan,
15 nalbuphine, nalmefene, naloxone and naltrexone, and
16 their respective salts, but including the following:

- 17 (A) Raw opium;
- 18 (B) Opium extracts;
- 19 (C) Opium fluid;
- 20 (D) Powdered opium;
- 21 (E) Granulated opium;
- 22 (F) Tincture of opium;
- 23 (G) Codeine;
- 24 (H) Ethylmorphine;
- 25 (I) Etorphine hydrochloride;
- 26 (J) Hydrocodone;
- 27 (K) Hydromorphone;
- 28 (L) Metopon;
- 29 (M) Morphine;
- 30 (N) Oxycodone;
- 31 (O) Oxymorphone;
- 32 (P) Thebaine;

33 (2) Any salt, compound, derivative or preparation
34 thereof which is chemically equivalent or identical with
35 any of the substances referred to in subdivision (1) of this
36 subsection, except that these substances shall not include
37 the isoquinoline alkaloids of opium;

38 (3) Opium poppy and poppy straw;

39 (4) Coca leaves and any salt, compound, derivative or
40 preparation of coca leaves (including cocaine and
41 ecgonine and their salts, isomers, derivatives and salts of
42 isomers and derivatives), and any salt, compound,

43 derivative, or preparation thereof which is chemically
44 equivalent or identical with any of these substances, except
45 that the substances shall not include decocainized coca
46 leaves or extractions of coca leaves, which extractions do
47 not contain cocaine or ecgonine;

48 (5) Concentrate of poppy straw (the crude extract of
49 poppy straw in either liquid, solid or powder form which
50 contains the phenanthrene alkaloids of the opium poppy).

51 (c) *Opiates*. — Unless specifically excepted or unless
52 in another schedule, any of the following opiates,
53 including its isomers, esters, ethers, salts and salts of
54 isomers, esters and ethers whenever the existence of such
55 isomers, esters, ethers and salts is possible within the
56 specific chemical designation, dextrorphan and
57 levopropoxyphene excepted:

58 (1) Alfentanil;

59 (2) Alphaprodine;

60 (3) Anileridine;

61 (4) Bezitramide;

62 (5) Bulk dextropropoxyphene (nondosage forms);

63 (6) Carfentanil;

64 (7) Dihydrocodeine;

65 (8) Diphenoxylate;

66 (9) Fentanyl;

67 (10) Isomethadone;

68 (11) Levo-alpha-acetylmethadol; some other names:
69 levo-alpha-acetylmethadol, levomethadyl acetate, LAAM;

70 (12) Levomethorphan;

71 (13) Levorphanol;

72 (14) Metazocine;

73 (15) Methadone;

- 74 (16) Methadone-Intermediate,
75 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- 76 (17) Moramide-Intermediate, 2-methyl-3-
77 morpholino-1, 1-diphenylpropane-carboxylic acid;
- 78 (18) Pethidine; (meperidine);
- 79 (19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-
80 phenylpiperidine;
- 81 (20) Pethidine-Intermediate-B, ethyl-4-
82 phenylpiperidine 4-carboxylate;
- 83 (21) Pethidine-Intermediate-C, 1-methyl-4-
84 phenylpiperidine-4-carboxylic acid;
- 85 (22) Phenazocine;
- 86 (23) Piminodine;
- 87 (24) Racemethorphan;
- 88 (25) Racemorphan;
- 89 (26) Remifentanil;
- 90 (27) Sufentanil.
- 91 (d) *Stimulants*. — Unless specifically excepted or
92 unless listed in another schedule, any material, compound,
93 mixture or preparation which contains any quantity of the
94 following substances having a stimulant effect on the
95 central nervous system:
- 96 (1) Amphetamine, its salts, optical isomers and salts of
97 its optical isomers;
- 98 (2) Methamphetamine, its salts, isomers and salts of its
99 isomers;
- 100 (3) Methylphenidate;
- 101 (4) Phenmetrazine and its salts.
- 102 (e) *Depressants*. — Unless specifically excepted or
103 unless listed in another schedule, any material, compound,
104 mixture or preparation which contains any quantity of the

105 following substances having a depressant effect on the
106 central nervous system, including its salts, isomers and salts
107 of isomers whenever the existence of such salts, isomers
108 and salts of isomers is possible within the specific chemical
109 designation:

110 (1) Amobarbital;

111 (2) Glutethimide;

112 (3) Pentobarbital;

113 (4) Phencyclidine;

114 (5) Secobarbital.

115 (f) *Hallucinogenic substances:*

116 (1) Dronabinol (synthetic) in sesame oil and encap-
117 sulated in a soft gelatin capsule in a United States food
118 and drug administration approved drug product. (Some
119 other names for dronabinol: (6aR-trans)-6a, 7, 8, 10a-
120 tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo [b,d]
121 pyran-1-ol or (-) -delta-9-(trans)-tetrahydrocannabinol);

122 (2) Nabilone: [Another name for nabilone: (+-)-trans-
123 3-(1,1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-
124 hydroxy-6, 6-dimethyl-9H-dibenzo [b,d] pyran-9-one].

125 (g) *Immediate precursors.* Unless specifically
126 excepted or unless listed in another schedule, any material,
127 compound, mixture, or preparation which contains any
128 quantity of the following substances:

129 (1) Immediate precursor to amphetamine and
130 methamphetamine:

131 (A) Phenylacetone;

132 Some trade or other names: phenyl-2-propanone;

133 P2P; benzyl methyl ketone; methyl benzyl ketone;

134 (2) Immediate precursors to phencyclidine (PCP):

135 (A) 1-phenylcyclohexylamine;

136 (B) 1-piperidinocyclohexanecarbonitrile (PCC).

§60A-2-208. Schedule III.

1 (a) Schedule III shall consist of the drugs and other
2 substances, by whatever official name, common or usual
3 name, chemical name or brand name designated, listed in
4 this section.

5 (b) *Stimulants*. — Unless specifically excepted or
6 unless listed in another schedule, any material, compound,
7 mixture or preparation which contains any quantity of the
8 following substances having a stimulant effect on the
9 central nervous system, including its salts, isomers
10 (whether optical, position or geometric), and salts of such
11 isomers whenever the existence of such salts, isomers and
12 salts of isomers is possible within the specific chemical
13 designation:

14 (1) Those compounds, mixtures or preparations in
15 dosage unit form containing any stimulant substances
16 listed in Schedule II which compounds, mixtures or
17 preparations were listed on the twenty-fifth day of August,
18 one thousand nine hundred seventy-one, as excepted
19 compounds under §1308.32, and any other drug of the
20 quantitative composition shown in that list for those drugs
21 or which is the same except that it contains a lesser
22 quantity of controlled substances;

23 (2) Benzphetamine;

24 (3) Chlorphentermine;

25 (4) Clortermine;

26 (5) Phendimetrazine;

27 (6) Hydrocodone.

28 (c) *Depressants*. — Unless specifically excepted or
29 unless listed in another schedule, any material, compound,
30 mixture or preparation which contains any quantity of the
31 following substances having a depressant effect on the
32 central nervous system:

33 (1) Any compound, mixture or preparation
34 containing:

- 35 (A) Amobarbital;
- 36 (B) Secobarbital;
- 37 (C) Pentobarbital; or any salt thereof and one or more
38 other active medicinal ingredients which are not listed in
39 any schedule;
- 40 (2) Any suppository dosage form containing:
- 41 (A) Amobarbital;
- 42 (B) Secobarbital;
- 43 (C) Pentobarbital; or any salt of any of these drugs
44 and approved by the food and drug administration for
45 marketing only as a suppository;
- 46 (3) Any substance which contains any quantity of a
47 derivative of barbituric acid or any salt thereof;
- 48 (4) Chlorhexadol;
- 49 (5) Lysergic acid;
- 50 (6) Lysergic acid amide;
- 51 (7) Methyprylon;
- 52 (8) Sulfondiethylmethane;
- 53 (9) Sulfonethylmethane;
- 54 (10) Sulfonmethane;
- 55 (11) Tiletamine and zolazepam or any salt thereof;
56 some trade or other names for a tiletamine-zolazepam
57 combination product: Telazol; some trade or other names
58 for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohex-
59 anone; some trade or other names for zolazepam: 4-
60 (2-fluorophenyl)-6, 8-dihydro-1, 3, 8-trimethylpyrazolo-
61 [3,4-e] [1,4]-diazepin-7(1H)-one, flupyrazapon;
- 62 (12) Human growth hormones or anabolic steroids.
- 63 (d) *Nalorphine*.
- 64 (e) *Narcotic drugs*. — Unless specifically excepted or
65 unless listed in another schedule, any material, compound,

66 mixture or preparation containing any of the following
67 narcotic drugs, or their salts calculated as the free
68 anhydrous base or alkaloid, in limited quantities as set
69 forth below:

70 (1) Not more than 1.8 grams of codeine per 100
71 milliliters and not more than 90 milligrams per dosage
72 unit, with an equal or greater quantity of an isoquinoline
73 alkaloid of opium;

74 (2) Not more than 1.8 grams of codeine per 100
75 milliliters or not more than 90 milligrams per dosage unit,
76 with one or more active, nonnarcotic ingredients in
77 recognized therapeutic amounts;

78 (3) Not more than 300 milligrams of
79 dihydrocodeinone (hydrocodone) per 100 milliliters or
80 not more than 15 milligrams per dosage unit, with a
81 fourfold or greater quantity of an isoquinoline alkaloid of
82 opium;

83 (4) Not more than 300 milligrams of
84 dihydrocodeinone (hydrocodone) per 100 milliliters or
85 not more than 15 milligrams per dosage unit, with one or
86 more active, nonnarcotic ingredients in recognized
87 therapeutic amounts;

88 (5) Not more than 1.8 grams of dihydrocodeine per
89 100 milliliters and not more than 90 milligrams per
90 dosage unit, with one or more active, nonnarcotic
91 ingredients in recognized therapeutic amounts;

92 (6) Not more than 300 milligrams of ethylmorphine
93 per 100 milliliters or not more than 15 milligrams per
94 dosage unit, with one or more active, nonnarcotic
95 ingredients in recognized therapeutic amounts;

96 (7) Not more than 500 milligrams of opium per 100
97 milliliters or per 100 grams or not more than 25
98 milligrams per dosage unit, with one or more active,
99 nonnarcotic ingredients in recognized therapeutic
100 amounts;

101 (8) Not more than 50 milligrams of morphine per 100
102 milliliters or per 100 grams with one or more active,

103 nonnarcotic ingredients in recognized therapeutic
104 amounts.

105 (f) *Anabolic steroids*. Unless specifically excepted or
106 unless listed in another schedule, any material, compound,
107 mixture, or preparation containing any quantity of the
108 following substances, including its salts, isomers, and salts
109 of isomers whenever the existence of such salts of isomers
110 is possible within the specific chemical designation:

111 (1) Anabolic Steroids.

§60A-2-210. Schedule IV.

1 (a) Schedule IV shall consist of the drugs and other
2 substances, by whatever official name, common or usual
3 name, chemical name, or brand name designated, listed in
4 this section.

5 (b) *Narcotic drugs*. Unless specifically excepted or
6 unless listed in another schedule, any material, compound,
7 mixture, or preparation containing any of the following
8 narcotic drugs, or their salts calculated as the free
9 anhydrous base or alkaloid, in limited quantities as set
10 forth below:

11 (1) Not more than 1 milligram of difenoxin and not
12 less than 25 micrograms of atropine sulfate per dosage
13 unit;

14 (2) Dextropropoxyphene (alpha-(+)-4-dimethylamino
15 -1,2-diphenyl-3-methyl-2-propionoxybutane).

16 (c) *Depressants*. Unless specifically excepted or unless
17 listed in another schedule, any material, compound,
18 mixture or preparation which contains any quantity of the
19 following substances, including its salts, isomers and salts
20 of isomers whenever the existence of such salts, isomers
21 and salts of isomers is possible within the specific chemical
22 designation:

23 (1) Alprazolam;

24 (2) Barbital;

25 (3) Bromazepam;

- 26 (4) Camazepam;
- 27 (5) Carisoprodol;
- 28 (6) Chloral betaine;
- 29 (7) Chloral hydrate;
- 30 (8) Chlordiazepoxide;
- 31 (9) Clobazam;
- 32 (10) Clonazepam;
- 33 (11) Clorazepate;
- 34 (12) Clotiazepam;
- 35 (13) Cloxazolam;
- 36 (14) Delorazepam;
- 37 (15) Diazepam;
- 38 (16) Estazolam;
- 39 (17) Ethchlorvynol;
- 40 (18) Ethinamate;
- 41 (19) Ethyl loflazepate;
- 42 (20) Fludiazepam;
- 43 (21) Flunitrazepam;
- 44 (22) Flurazepam;
- 45 (23) Halazepam;
- 46 (24) Haloxazolam;
- 47 (25) Ketazolam;
- 48 (26) Loprazolam;
- 49 (27) Lorazepam;
- 50 (28) Lormetazepam;
- 51 (29) Mebutamate;
- 52 (30) Medazepam;

- 53 (31) Meprobamate;
- 54 (32) Methohexital;
- 55 (33) Methyphenobarbital (mephobarbital);
- 56 (34) Midazolam;
- 57 (35) Nimetazepam;
- 58 (36) Nitrazepam;
- 59 (37) Nordiazepam;
- 60 (38) Oxazepam;
- 61 (39) Oxazolam;
- 62 (40) Paraldehyde;
- 63 (41) Petrichloral;
- 64 (42) Phenobarbital;
- 65 (43) Pinazepam;
- 66 (44) Prazepam;
- 67 (45) Quazepam;
- 68 (46) Temazepam;
- 69 (47) Tetrazepam;
- 70 (48) Triazolam;
- 71 (49) Zolpidem.

72 (d) *Fenfluramine*. Any material, compound, mixture
73 or preparation which contains any quantity of the
74 following substance, including its salts, isomers (whether
75 optical, position or geometric) and salts of such isomers
76 whenever the existence of such salts, isomers and salts of
77 isomers is possible: Fenfluramine.

78 (e) *Stimulants*. Unless specifically excepted or unless
79 listed in another schedule, any material, compound,
80 mixture or preparation which contains any quantity of the
81 following substances having a stimulant effect on the

82 central nervous system, including its salts, isomers and salts
83 of isomers:

84 (1) Cathine ((+)- norpseudoephedrine);

85 (2) Diethylpropion;

86 (3) Fencamfamin;

87 (4) Fenproporex;

88 (5) Mazindol;

89 (6) Mefenorex;

90 (7) Pemoline (including organometallic complexes
91 and chelates thereof);

92 (8) Phentermine;

93 (9) Pipradrol;

94 (10) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

95 (f) *Other substances.* — Unless specifically excepted
96 or unless listed in another schedule, any material,
97 compound, mixture or preparation which contains any
98 quantity of the following substances, including its salts:

99 (1) Pentazocine;

100 (2) Butorphanol.

101 Amyl nitrite, butyl nitrite, isobutyl nitrite and the other
102 organic nitrites are controlled substances and no product
103 containing these compounds as a significant component
104 shall be possessed, bought or sold other than pursuant to a
105 bona fide prescription or for industrial or manufacturing
106 purposes.

§60A-2-212. Schedule V.

1 (a) Schedule V shall consist of the drugs and other
2 substances, by whatever official name, common or usual
3 name, chemical name, or brand name designated, listed in
4 this section.

5 (b) *Narcotic drugs*. Unless specifically excepted or
6 unless listed in another schedule, any material, compound,
7 mixture or preparation containing any of the following
8 narcotic drugs and their salts, as set forth below:

9 (1) Buprenorphine.

10 (c) Narcotic drugs containing nonnarcotic active
11 medicinal ingredients. Any compound, mixture or
12 preparation containing any of the following narcotic
13 drugs or their salts calculated as the free anhydrous base
14 or alkaloid in limited quantities as set forth below, which
15 shall include one or more nonnarcotic active medicinal
16 ingredients in sufficient proportion to confer upon the
17 compound, mixture or preparation valuable medicinal
18 qualities other than those possessed by the narcotic drug
19 alone:

20 (1) Not more than 200 milligrams of codeine per 100
21 milliliters or per 100 grams;

22 (2) Not more than 100 milligrams of dihydrocodeine
23 per 100 milliliters or per 100 grams;

24 (3) Not more than 100 milligrams of ethylmorphine
25 per 100 milliliters or per 100 grams;

26 (4) Not more than 2.5 milligrams of diphenoxylate
27 and not less than 25 micrograms of atropine sulfate per
28 dosage unit;

29 (5) Not more than 100 milligrams of opium per 100
30 milliliters or per 100 grams;

31 (6) Not more than 0.5 milligrams of difenoxin and
32 not less than 25 micrograms of atropine sulfate per dosage
33 unit.

34 (d) *Stimulants*. Unless specifically exempted or
35 excluded or unless listed in another schedule, any material,
36 compound, mixture, or preparation which contains any
37 quantity of the following substances having a stimulant
38 effect on the central nervous system, including its salts,
39 isomers and salts of isomers:

40 (1) Pyrovalerone.

CHAPTER 94

(Com. Sub. for H. B. 4119—By Delegates Caputo, Staton, Prunty,
Claypole, Seacrist, Fleischauer and Fragale)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-one 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 the safety of convenience food store employees; providing definitions; safety procedures to be followed by certain convenience food stores; civil penalties; and tax credit for owners of certain convenience food stores.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. CONVENIENCE FOOD STORES SAFETY ACT.

§21-13-1. Purpose.

§21-13-2. Definitions.

§21-13-3. Convenience food store regulations.

§21-13-4. Penalties and enforcement.

§21-13-5. Tax credit.

§21-13-1. Purpose.

- 1 The Legislature finds that it is necessary to the safety,
- 2 health, public interest and general welfare of the people of
- 3 the state of West Virginia that convenience food stores
- 4 operating in the state be regulated to prevent the ever-
- 5 present danger to the safety, health, life and general
- 6 welfare of its citizens and the employees of these stores.

§21-13-2. Definitions.

- 1 As used in this article, except where a different
- 2 meaning is provided in section five of this article:

3 (1) "Convenience food store" means a business
4 establishment that:

5 (A) Derives fifty percent or more of its gross income
6 from the sale of goods, merchandise or other articles of
7 value in their original containers or gasoline and other
8 petroleum products with gross annual sales of one million
9 dollars or more; and

10 (B) Offers a limited quantity and variety of food,
11 household and sundry items; and

12 (C) Operates at any time between the hours of twelve
13 o'clock a.m. and five o'clock a.m.; and

14 (D) Does not sell or offer for sale prescription drug
15 items.

16 (2) "Owner" means the person, corporation,
17 partnership, joint venture or other group enterprise having
18 an ownership or proprietary interest in a convenience food
19 store.

20 (3) "Employee" means any person permitted to work
21 by a person, corporation, partnership, joint venture or
22 group enterprise legally responsible for the operation of
23 the convenience food store.

§21-13-3. Convenience food store regulations.

1 All convenience food stores shall comply with the
2 following provisions:

3 (1) If open for business after twelve o'clock a.m., the
4 convenience food store must employ two persons who are
5 continuously on duty on the premises from twelve o'clock
6 a.m. until closing or five o'clock a.m., whichever occurs
7 first, or employ one person during these hours and install
8 the security camera system provided for in subdivision (3)
9 of this section, or install a security booth for one person to
10 occupy during these hours or lock their doors and allow
11 customers to be served through a pass-through device.

12 (2) The entire area of the parking area used by
13 customers of convenience food stores must be lighted
14 during all hours of darkness when employees or

15 customers, or both employees and customers are on the
16 premises. Minimum average maintained illuminance must
17 be two footcandles or greater with a uniformity ratio
18 (average to minimum) of no more than five to one unless
19 such lighting violates applicable municipal lighting code
20 requirements or creates a public or private nuisance.

21 (3) If only one person is employed on duty on the
22 premises from twelve o'clock a.m. until closing or five
23 o'clock a.m., the store shall install, by the first day of
24 January, one thousand nine hundred ninety-nine, a
25 security camera capable of producing a retrievable image
26 on film or tape that can be enlarged through projection or
27 other means. The cameras shall be maintained in proper
28 working order at all times.

29 (4) Any owner or employee who works between the
30 hours of twelve o'clock a.m. and five o'clock a.m. at a
31 convenience food store shall be trained in robbery
32 prevention by the owner. Owners shall develop a written
33 robbery prevention program which shall be available for
34 inspection during regular business hours at each
35 convenience food store, and shall base the training on the
36 program.

37 (5) Provide height markers at the door or doors
38 exiting the premise which display measurements from the
39 floor: *Provided*, That any owner who is in compliance with
40 this section and certifies such compliance to the
41 superintendent of state police or the superintendents
42 designee, or the county sheriff's department or the
43 municipal police department, on or before the first day of
44 January, one thousand nine hundred ninety-nine, shall be
45 exempt from the provisions of section four of this article.

§21-13-4. Penalties and enforcement.

1 Any owner who fails to comply with this article, upon
2 the first violation, shall be assessed a civil fine of not less
3 than one hundred dollars nor more than five hundred
4 dollars; and, upon a second violation shall be fined not
5 less than five hundred dollars nor more than one thousand
6 dollars. For third and subsequent violations, an owner
7 shall be fined not less than one thousand dollars nor more
8 than five thousand dollars. If noncompliance is corrected
9 within ten days after a violation, no fine may be assessed.

§21-3-5. Tax credit.

1 (a) For purposes of this section, an owner of a
2 convenience food store means an owner, as defined in
3 subdivision (2), section two of this article, of a conve-
4 nience food store that meets all the requirements
5 contained within the definition of a convenience food
6 store set forth in subdivision (1), section two of this article
7 except that the annual gross sales of the convenience food
8 store is less than one million dollars.

9 (b) An owner of a convenience food store within the
10 meaning prescribed in subsection (a) of this section is
11 entitled to receive a tax credit against the owner's tax
12 liability on taxable income earned from conducting the
13 business of the convenience food store for each conve-
14 nience food store that meets the requirements of
15 subdivision (3), section three of this article.

16 (c) The tax credit available under this section is an
17 amount equal to the cost to the owner of meeting the
18 requirements of subdivision (3), section three of this
19 article, or five hundred dollars, whichever is less.

CHAPTER 95

(H. B. 4702—By Delegates Michael, Mezzatesta, Doyle,
Clements, Leggett and Frederick)

[Passed March 21, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-one; to amend and reenact sections one-a, two, three, four, five, eight, nine, ten and twenty-six, article twenty, chapter thirty-one of said code; to further amend said article by adding thereto three new sections, designated sections five-c, eight-a and nine-a; and to amend and reenact sections fourteen, fifteen and seventeen, article three, chapter

thirty-three of said code, all relating to providing for the administrative structure and funding of juvenile and adult detention and corrections, construction, operations, maintenance and oversight; providing that the regional jail and correctional facility authority may finance certain costs through the investment management board; requiring the investment management board to invest certain funds available for investment from the public employees retirement system in the state's regional jail and correctional facility system; limiting the amount that may be transferred; loan repayment; requiring authority to certify a list of projects; rate of return on investments; creating funds; requiring lawsuit; specifying court where lawsuit shall be filed; providing that the authority may design, finance and construct or renovate and repair juvenile facilities; adding definitions; revising the composition, powers and duties of the authority; revising the composition and scope of authority of the jail and correctional facility standards commission; creating a separate standards commission for juvenile facilities and providing for the appointment of members; specifying powers and duties of the juvenile facilities standards commission; authorizing the regional jail and correctional facility authority to construct new facilities or renovate existing facilities to be used for secure predisposition detention of juveniles, for juvenile transfer facilities and for juvenile correctional facilities and allowing said facilities to be adjacent to regional jails under certain circumstance; redefining the regional jail and correctional facility development fund; including discretionary oversight of juvenile facilities under the jurisdiction of the legislative oversight committee on regional jails and correctional facilities; providing for the disposition of certain designated insurance tax revenues; eliminating obsolete and superfluous provisions; and providing a reasonable return on the investment by dedicating a portion of revenues generated from certain designated insurance taxes.

Be it enacted by the Legislature of West Virginia:

That article six, chapter twelve 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-one; that sections one-a, two, three, four, five, eight, nine, ten and

twenty-six, article twenty, chapter thirty-one of said code be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections five-c, eight-a and nine-a; and that sections fourteen, fifteen and seventeen, article three, chapter thirty-three of said code be amended and reenacted, all to read as follows:

Chapter

12. Public Moneys and Securities.

31. Corporations.

33. Insurance.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-21. Investment with regional jail and correctional facility authority.

1 (a) The Legislature finds and declares:

2 (1) That the supreme court of appeals has determined
3 and ordered that the constitution of this state imposes a
4 duty on behalf of the state to make significant improve-
5 ments in the jail and correctional facility system, including
6 the duty to make capital improvements to facilities and to
7 pay for the cost of those improvements;

8 (2) That construction of capital improvements requires
9 that the cost of the facilities be financed over time; that
10 capital improvements cannot be funding out of the current
11 year appropriations of the Legislature; and that section
12 fifty-one, article six of the constitution prohibits the
13 Legislature amending the budget bill so as to create a
14 deficit;

15 (3) That while the supreme court of appeals is
16 empowered to interpret the laws, including the constitution
17 of the state, section one, article ten of the constitution
18 grants to the Legislature the power of taxation; section
19 fifty-one, article six of the constitution grants to the
20 Legislature the power of appropriation; and section one,
21 article five of the constitution prohibits any branch of
22 government from exercising powers properly belonging
23 to another;

24 (4) That the enacting of new taxes, or the diversion of
25 revenues from other essential departments and functions
26 of government, in order to support capital improvements
27 in jails and correctional facilities, is not in the interests of
28 the people of the state represented in the Legislature, and
29 is specifically rejected by the Legislature in its exercise of
30 its legitimate constitutional powers;

31 (5) That the decision of the supreme court of appeals,
32 imposing a duty on the state to construct and pay for
33 capital improvements to jails and correctional facilities
34 arising out of the Bill of Rights of the United States
35 constitution declared ratified in the year one thousand
36 seven hundred ninety-one, and the state constitution of the
37 year one thousand eight hundred sixty-three, constitutes a
38 prior liability of the state within the meaning of section
39 four, article ten of the constitution and an exception to the
40 constitutional limitation on contracting state debt;

41 (6) That the construction of capital improvements of
42 jail and correctional facilities may be funded through
43 funds available for investment through the West Virginia
44 investment management board, invested in such a manner
45 as to be assured as high a rate of return as would be
46 earned if these funds were otherwise invested, and repaid
47 by the state as provided in this article.

48 (b) The investment management board shall upon
49 request of the regional jail and correctional facility
50 authority transfer moneys as an investment, from funds
51 available for investment from the public employees
52 retirement system, to the regional jail and correctional
53 facility authority. The amount transferred may not exceed
54 one hundred fifty million dollars in the aggregate and
55 shall be used for the purposes of financing construction of
56 regional jails, correctional facilities, juvenile detention
57 facilities, juvenile correctional facilities, or extensions,
58 renovations, improvements or additions thereto, or for the
59 replacement or renovation of existing facilities. If the
60 board has loaned money to the state building commission
61 under subsection (b), section nineteen of this article, the
62 total amount loaned shall be repaid to the board from
63 funds made available under the investment made pursuant

64 to this section. Prior to the expenditure of any of the
65 funds, the regional jail and correctional facility authority
66 shall certify to the joint committee on government and
67 finance a list of projects that are to be funded from the
68 invested funds. This certified list may not thereafter be
69 altered or amended other than by legislative enactment.
70 Funds shall be invested with the regional jail and
71 correctional facility authority as requested by the regional
72 jail and correctional facility authority. The money
73 invested shall earn a return at a rate equal to the annual-
74 ized rate of return earned by the core fixed-income
75 portfolio of the public employees retirement system over
76 the previous five years, plus one tenth of one percent:
77 *Provided*, That in all events this rate of return may not be
78 less than five percent per annum. The monthly rate of
79 return shall be calculated every quarter. The manner and
80 timing of the investment shall be determined by the board.
81 The total of the amounts invested may not exceed a total
82 of one hundred fifty million dollars during fiscal year one
83 thousand nine hundred ninety-eight, and fiscal year one
84 thousand nine hundred ninety-nine, cumulatively. The
85 authority to make the investment authorized by this
86 section expires on the thirtieth day of June, one thousand
87 nine hundred ninety-nine.

88 (c) There is created in the state treasury a regional jail
89 and correctional facility investment fund dedicated to the
90 payment of investment earnings and the return of capital
91 invested under this section. The treasurer shall administer
92 the fund. The fund is an interest-bearing account with
93 interest earned credited to and deposited back into the
94 fund. The fund consists of amounts required to be
95 deposited by section fourteen, article three, chapter
96 thirty-three of this code.

97 (d) The treasurer shall, monthly, transfer amounts
98 from the regional jail and correctional facility investment
99 fund to the board that are sufficient to allow investment
100 earnings to be paid and the capital invested returned in
101 substantially equal amounts by the thirty-first day of
102 August, two thousand twenty-three: *Provided*, That the
103 amount of investment earnings paid and the capital
104 invested returned during the fiscal year beginning the first

105 day of July, one thousand nine hundred ninety-eight, may
106 not exceed ten million dollars. Payment representing
107 investment earnings and the return of capital invested shall
108 begin six months from the date the initial funds are
109 invested, or by the tenth day of January, one thousand
110 nine hundred ninety-nine, whichever is later.

111 (e) The board shall calculate the amount of the
112 projected annual investment earnings to be paid and the
113 capital invested to be returned and certify the amount to
114 the treasurer on the first day of December of each year,
115 until all investment earnings are paid and the total capital
116 invested is returned.

117 (f) As a condition precedent to the transfer and
118 investment of moneys by the investment management
119 board pursuant to subsection (b) of this section, either the
120 investment management board or the regional jail and
121 correctional authority shall have first caused a judicial
122 determination to be made by an appropriate action
123 initiated in the West Virginia supreme court of appeals
124 regarding the transfer of moneys by the investment
125 management board to the regional jail and correctional
126 facility authority as an investment from funds available for
127 investment from the public employees retirement system,
128 and to otherwise determine the constitutionality of the
129 provisions of Enrolled House Bill 4702, as enacted by the
130 Legislature in the year one thousand nine hundred
131 ninety-eight. This judicial determination shall be brought
132 as soon as practicable, but not later than thirty days
133 following the effective date of the amendments to this
134 section made by the Legislature in the year one thousand
135 nine hundred ninety-eight.

136 (g) The Legislature recognizes the fiduciary liability
137 and responsibility imposed on the board by this article
138 and by article six, chapter forty-four of this code. The
139 board, its trustees and employees, have no liability, either
140 personally or corporately with respect to the investment
141 provided for in this section and the loans made under
142 section nineteen of this article, if the investment and loans
143 are made in accordance with the respective provisions of
144 this section and section nineteen of this article.

145 (h) The regional jail and correctional facility authority
 146 shall expend the funds invested under the provisions of
 147 this section to proceed with the projects identified
 148 pursuant to subsection (b) of this section.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-1a. Legislative findings and purposes.

§31-20-2. Definitions.

§31-20-3. West Virginia regional jail and correctional facility authority; composition; appointment; terms; compensation and expenses.

§31-20-4. Governing body; organization and meetings; quorum; administrative expenses.

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

§31-20-5c. Additional powers and duties of the authority; juvenile detention facilities.

§31-20-8. Jail facilities standards commission; appointment; compensation; vacancies; quorum.

§31-20-8a. Juvenile facilities standards commission; appointment; compensation; vacancies; quorum.

§31-20-9. Jail facilities standards commission: purpose, powers and duties.

§31-20-9a. Juvenile facilities standards commission: purpose; powers; and duties.

§31-20-10. Regional jail and correctional facility development fund.

§31-20-26. Legislative oversight committee.

§31-20-1a. Legislative findings and purposes.

1 (a) The Legislature finds as follows:

2 (1) That some existing jails, adult correctional facilities
 3 and juvenile detention and correctional facilities in this
 4 state serve neither the best interests of the incarcerated
 5 populations of the jails and facilities nor the citizens of
 6 West Virginia;

7 (2) That due to time constraints established and
 8 imposed by judicial decisions, it is imperative that the
 9 Legislature give immediate and diligent attention to the
 10 improvement of existing facilities and the construction
 11 and maintenance of new facilities, as well as to the

12 development and implementation of new, innovative and
13 effective programs dealing with incarcerated persons;

14 (3) That the physical condition of some existing jails,
15 adult correctional facilities and juvenile facilities
16 contribute to a frustration of efforts to provide
17 rehabilitation, education, vocational training, and social
18 and psychological adjustment and improvement for
19 incarcerated persons, with the result that those existing
20 facilities are utilized largely for the limited purposes of
21 confinement;

22 (4) That there is a need to examine, understand and
23 implement various new and innovative trends which are
24 being advanced in the area of correctional institution
25 design, and to explore the developing alternatives to
26 incarceration which are being experimented with in other
27 jurisdictions; and

28 (5) That the revenues of this state, insofar as they are
29 currently used to maintain a traditional penal system, are
30 not efficiently utilized to provide facilities or produce
31 programs which could direct an adult or juvenile inmate's
32 or detainee's time and effort to prepare him or her for life
33 outside of confinement; nor do the revenues provide
34 corrections officials with the resources necessary to
35 address the issues and problems with which they are
36 confronted.

37 (b) The purposes of this article are as follows:

38 (1) To provide a cost-efficient system within this state
39 for the construction, maintenance and operation of adult
40 jails and correctional facilities;

41 (2) To develop and implement plans for the
42 renovation and improvement of existing facilities and the
43 design and construction of new facilities to better serve the
44 incarcerated and detained juvenile and adult populations
45 and the citizens of this state;

46 (3) To provide an environment in which new and
47 innovative corrections programs may be considered and
48 undertaken, and in which opportunities may be offered to
49 incarcerated persons to overcome personal deficiencies

50 which are educational, vocational, social or psychological
51 in nature; and

52 (4) To investigate the feasibility of individualizing and
53 classifying adult inmates according to their psychological
54 and physical conditions at the time they are incarcerated,
55 and the feasibility of designing for each such inmate a
56 plan for self-improvement and rehabilitation.

§31-20-2. Definitions.

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

3 (a) "Adjacent regional juvenile detention facility"
4 means a facility constructed or maintained on property
5 owned or controlled by the regional jail authority and
6 designed for the short term preadjudicatory detention of
7 juveniles, for the confinement of juveniles who are
8 awaiting transportation to or placement at another juvenile
9 detention facility or juvenile correctional facility and for
10 juveniles who are awaiting trial as an adult pursuant to
11 section ten, article five, chapter forty-nine of this code.

12 (b) "Authority" or "West Virginia Regional Jail
13 Authority" means the West Virginia regional jail and
14 correctional facility authority created by this article.

15 (c) "Board" means the governing body of the
16 authority.

17 (d) "Bonds" means bonds of the authority issued
18 under this article.

19 (e) "Cost of construction or renovation of a local jail
20 facility, regional jail facility or juvenile facility" means
21 the cost of all lands, water areas, property rights and
22 easements, financing charges, interest prior to and during
23 construction and for a period not exceeding six months
24 following the completion of construction, equipment,
25 engineering and legal services, plans, specifications and
26 surveys, estimates of costs and other expenses necessary or
27 incidental to determining the feasibility or practicability of
28 any project, together with any other expenses as may be
29 necessary or incidental to the financing and the

30 construction or renovation of the facilities and the placing
31 of the facilities in operation.

32 (f) "County" means any county of this state.

33 (g) "Federal agency" means the United States of
34 America and any department, corporation, agency or
35 instrumentality created, designated or established by the
36 United States of America.

37 (h) "Fund" means the regional jail and correctional
38 facility development fund provided in section ten of this
39 article, including those accounts that may be established
40 by the authority for accurate accounting of the
41 expenditure of public funds by that agency.

42 (i) "Government" means state and federal
43 government, and any political subdivision, agency or
44 instrumentality of the state or federal government,
45 corporate or otherwise.

46 (j) "Inmate" means any adult person properly
47 committed to a local or regional jail facility or a
48 correctional facility.

49 (k) "Local jail facility" means any county facility for
50 the confinement, custody, supervision or control of adult
51 persons convicted of misdemeanors, awaiting trial or
52 awaiting transportation to a state correctional facility.

53 (l) "Municipality" means any city, town or village in
54 this state.

55 (m) "Notes" means any notes as defined in section
56 one hundred four, article three, chapter forty-six of this
57 code issued under this article by the authority.

58 (n) "Correctional facility" means any correctional
59 facility, penitentiary or other correctional institution
60 operated by the division of corrections for the
61 incarceration of adults.

62 (o) "Regional jail facility" or "regional jail" means
63 any facility operated by the authority and used jointly by
64 two or more counties for the confinement, custody,
65 supervision or control of adult persons convicted of

66 misdemeanors or awaiting trial or awaiting transportation
67 to a state correctional facility.

68 (p) "Regional jail commission" means the
69 commission established in section eight of this article.

70 (q) "Revenues" means all fees, charges, moneys,
71 profits, payments of principal of, or interest on, loans and
72 other investments, grants, contributions and all other
73 income received by the authority.

74 (r) "Security interest" means an interest in the loan
75 portfolio of the authority which is secured by an
76 underlying loan or loans and is evidenced by a note issued
77 by the authority.

78 (s) "Work farm" has the same meaning as that term is
79 used in section twelve, article eight, chapter seven of this
80 code authorizing work farms for individual counties.

81 (t) "Juvenile detention facility" or "juvenile
82 detention center" means a facility operated by the
83 division of juvenile services for the short term
84 preadjudicatory detention of juveniles, for the
85 confinement of juveniles who are awaiting transportation
86 to or placement at another juvenile detention facility or
87 juvenile correctional facility and for juveniles who are
88 awaiting trial as an adult pursuant to section ten, article
89 five, chapter forty-nine of this code.

90 (u) "Juvenile correctional facility" means a facility
91 operated by the division of juvenile services for the post-
92 dispositional confinement of juveniles adjudicated of
93 offenses that would be criminal offenses if committed by
94 an adult.

**§31-20-3. West Virginia regional jail and correctional facility
authority; composition; appointment; terms;
compensation and expenses.**

1 There is hereby created the West Virginia regional jail
2 and correctional facility authority which shall be a body
3 corporate and a government instrumentality. The
4 authority shall have and is hereby granted all of the
5 powers and authority and shall perform all of the

6 functions and services heretofore vested in and performed
7 by the West Virginia regional jail and prison authority.
8 The West Virginia regional jail and prison authority is
9 hereby abolished. Wherever in this chapter and elsewhere
10 in law reference is made to the West Virginia regional jail
11 and prison authority, such reference shall henceforth be
12 construed and understood to mean the West Virginia
13 regional jail and correctional facility authority.

14 The authority shall be governed by a board of nine
15 members, seven of whom are entitled to vote on matters
16 coming before the authority. The complete governing
17 board shall consist of the commissioner of the division of
18 corrections; the director of the division of juvenile
19 services; the secretary of the department of military affairs
20 and public safety; the secretary of the department of
21 administration, or his or her designated representative;
22 three county officials appointed by the governor, no more
23 than two of which may be of the same political party; and
24 two citizens appointed by the governor to represent the
25 areas of law and medicine. The commissioner of the
26 division of corrections and the director of the division of
27 juvenile services shall serve in an advisory capacity and are
28 not entitled to vote on matters coming before the
29 authority. Members of the Legislature are not eligible to
30 serve on the board.

31 The governor shall nominate and, by and with the
32 advice and consent of the Senate, appoint the five
33 appointed members of the authority for staggered terms
34 of four years beginning the first day of July, one thousand
35 nine hundred eighty-nine. Of the members of the board
36 first appointed, one shall be appointed for a term ending
37 the thirtieth day of June, one thousand nine hundred
38 ninety-one, two shall be appointed for terms ending the
39 thirtieth day of June, one thousand nine hundred
40 ninety-two, and two shall be appointed for terms ending
41 the thirtieth day of June, one thousand nine hundred
42 ninety-three. As these original appointments expire, each
43 subsequent appointment shall be for a full four-year term.

44 Any appointed member whose term has expired shall
45 serve until his successor has been duly appointed and

46 qualified. Any person appointed to fill a vacancy shall
47 serve only for the unexpired term. Any appointed
48 member is eligible for reappointment. Members of the
49 authority are not entitled to compensation for services
50 performed as members but are entitled to reimbursement
51 for all reasonable and necessary expenses actually
52 incurred in the performance of their duties.

53 All members of the board of the authority shall
54 execute an official bond in a penalty of ten thousand
55 dollars, conditioned as required by law. Premiums on
56 such bond shall be paid from funds accruing to the
57 authority. Such bond shall be approved as to form by the
58 attorney general and as to sufficiency by the governor
59 and, when fully executed and approved, shall be filed in
60 the office of the secretary of state.

**§31-20-4. Governing body; organization and meetings;
quorum; administrative expenses.**

1 The governing body of the authority shall consist of
2 the voting members of the board as provided for in
3 section three of this article and shall exercise all the
4 powers given to the authority in this article. On the
5 second Monday of July of each odd-numbered year, the
6 board shall meet to elect a chairman and a secretary from
7 among its own members. The secretary of the department
8 of administration or his or her designated representative
9 shall serve as treasurer of the board. The board shall
10 otherwise meet quarterly, unless a special meeting is called
11 by its chairman.

12 A majority of the members of the board constitute a
13 quorum, and a quorum must be present for the board to
14 conduct business. Unless the bylaws require a larger
15 number, action may be taken by majority vote of the
16 members present.

17 The board shall prescribe, amend and repeal bylaws
18 and rules governing the manner in which the business of
19 the authority is conducted and shall review and approve
20 the budget prepared by the executive director annually.

21 The governor shall, with the advice and consent of the
22 Senate, appoint an executive director to act as its chief
23 executive officer, to serve at the will and pleasure of the
24 governor. The executive director is empowered to employ
25 any other personnel he or she determines necessary and
26 may appoint counsel and legal staff for the authority and
27 retain such temporary engineering, financial and other
28 consultants or technicians as may be required for any
29 special study or survey consistent with the provisions of
30 this article. The executive director is further empowered
31 to engage in negotiations and carry out plans to
32 implement the provisions of this article and to exercise
33 those powers listed in section five of this article on behalf
34 of the authority. The executive director shall prepare
35 annually a budget to be submitted to the board for its
36 review and approval.

37 All costs incidental to the administration of the
38 authority, including office expense, personal services
39 expense and current expense, shall be paid from the
40 regional jail and correctional facility development fund in
41 accordance with guidelines issued by the board of the
42 authority.

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

1 Public hearings pursuant to this section shall be held
2 by the authority in convenient locations for public
3 comment on the establishment of regional jails. The
4 authority shall cause to be published at least two weeks in
5 advance of a hearing a Class II-0 legal advertisement, as
6 provided in section two, article three, chapter fifty-nine of
7 this code, setting forth the reason for the hearing and the
8 time, place and date thereof. The publication area shall be
9 each county which may be included in a region for the
10 purposes of a regional jail with the county in which the
11 public hearing is held.

12 In addition to the hearing requirements above, before
13 beginning construction of a new facility for use as a
14 regional jail or correctional facility or before beginning
15 renovation or acquisition of an existing facility for use as
16 a regional jail facility, which existing facility is not already

17 a jail, correctional facility or secure facility for the
18 detention of juveniles or persons otherwise involuntarily
19 committed or confined, the authority shall hold a hearing
20 for comment by all members of the public on all aspects
21 relating to the advisability of the use of the site for that
22 regional jail facility. The authority shall promulgate
23 legislative rules pursuant to chapter twenty-nine-a of this
24 code for the requirements for notice and other procedures
25 of said public hearings, which requirements shall be as
26 similar as practicable to those hearings conducted
27 regarding the construction of bridges by the West Virginia
28 department of highways.

29 The authority, as a public corporation and
30 governmental instrumentality exercising public powers of
31 the state, may exercise all powers necessary or appropriate
32 to carry out the purposes of this article, including, but not
33 limited to, the power:

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

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

37 (c) To mortgage or otherwise grant security interests
38 in its property.

39 (d) To conduct examinations and investigations and to
40 hear testimony and take proof, under oath or affirmation
41 at public or private hearings, on any matter relevant to this
42 article and necessary for information on the construction
43 or renovation of any adult correctional facility or juvenile
44 facility or the establishment of any correctional facility
45 industries project.

46 (e) To issue subpoenas requiring the attendance of
47 witnesses and the production of books and papers relevant
48 to any hearing before the authority or one or more
49 members appointed by it to conduct any hearing.

50 (f) To apply to the circuit court having venue of the
51 offense to have punished for contempt any witness who
52 refuses to obey a subpoena, refuses to be sworn or
53 affirmed, or refuses to testify, or who commits any
54 contempt after being summoned to appear.

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

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

58 (i) To make rules for the management and regulation
59 of its affairs pursuant to article three, chapter
60 twenty-nine-a of this code.

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

62 (k) To make contracts of every kind and nature and to
63 execute all instruments necessary or convenient for
64 carrying on its business, including contracts with any other
65 governmental agency of this state or of the federal
66 government or with any person, individual, partnership or
67 corporation to effect any or all of the purposes of this
68 article.

69 (l) Without in any way limiting any other subdivision
70 of this section, to accept grants from and enter into
71 contracts and other transactions with any federal agency.

72 (m) To borrow money and to issue its negotiable
73 bonds, security interests or notes and to provide for and
74 secure the payment thereof, and to provide for the rights
75 of the holders thereof, and to purchase, hold and dispose
76 of any of its bonds, security interests or notes: *Provided,*
77 That no bond or other obligation may be issued or
78 incurred unless and until the Legislature by concurrent
79 resolution has approved the purpose and amount of each
80 project for which proceeds from the issuance of the bond
81 or other obligation will be used.

82 (n) To sell, at public or private sale, any bond or other
83 negotiable instrument, security interest or obligation of the
84 authority in a manner and upon terms that the authority
85 considers would best serve the purposes of this article.

86 (o) To issue its bonds, security interests and notes
87 payable solely from the revenues or other funds available
88 to the authority therefor; and the authority may issue its
89 bonds, security interests or notes in such principal
90 amounts as it considers necessary to provide funds for any
91 purposes under this article, including:

92 (1) The payment, funding or refunding of the
93 principal of, interest on or redemption premiums on, any
94 bonds, security interests or notes issued by it whether the
95 bonds, security interests, notes or interest to be funded or
96 refunded have or have not become due.

97 (2) The establishment or increase of reserves to secure
98 or to pay bonds, security interests, notes or the interest
99 thereon and all other costs or expenses of the authority
100 incident to and necessary or convenient to carry out its
101 corporate purposes and powers. Any bonds, security
102 interests or notes may be additionally secured by a pledge
103 of any revenues, funds, assets or moneys of the authority
104 from any source whatsoever.

105 (p) To issue renewal notes or security interests, to issue
106 bonds to pay notes or security interests and, whenever it
107 considers refunding expedient, to refund any bonds by
108 the issuance of new bonds, whether the bonds to be
109 refunded have or have not matured except that no renewal
110 notes shall be issued to mature more than ten years from
111 date of issuance of the notes renewed and no refunding
112 bonds may be issued to mature more than twenty-five
113 years from the date of issuance.

114 (q) To apply the proceeds from the sale of renewal
115 notes, security interests or refunding bonds to the
116 purchase, redemption or payment of the notes, security
117 interests or bonds to be refunded.

118 (r) To accept gifts or grants of property, funds,
119 security interests, money, materials, labor, supplies or
120 services from the United States of America or from any
121 governmental unit or any person, firm or corporation, and
122 to carry out the terms or provisions of, or make
123 agreements with respect to, or pledge, any gifts or grants,
124 and to do any and all things necessary, useful, desirable or
125 convenient in connection with the procuring, acceptance
126 or disposition of gifts or grants.

127 (s) To the extent permitted under its contracts with the
128 holders of bonds, security interests or notes of the
129 authority, to consent to any modification of the rate of
130 interest, time of payment of any installment of principal or

131 interest, security or any other term of any bond, security
132 interest, note or contract or agreement of any kind to
133 which the authority is a party.

134 (t) To sell security interests in the loan portfolio of the
135 authority. The security interests shall be evidenced by
136 instruments issued by the authority. Proceeds from the
137 sale of security interests may be issued in the same manner
138 and for the same purposes as bond and note revenues.

139 (u) To propose legislative rules for promulgation, in
140 accordance with the provisions of article three, chapter
141 twenty-nine-a of this code, to implement and make
142 effective the powers, duties and responsibilities invested in
143 the authority by the provisions of this article and otherwise
144 by law.

145 (v) To assume the responsibility for operation and
146 management of regional jail facilities under the
147 jurisdiction of the state regional jail and correctional
148 facility authority. The authority shall provide for the
149 transportation of inmates between the regional jails and
150 local holding facilities for court appearances.

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

155 (x) To exercise all power and authority provided in
156 this article necessary and convenient to plan, finance,
157 construct, renovate, repair and replace juvenile detention
158 facilities and juvenile correctional facilities.

159 (y) To cooperate with the commission for distribution
160 of surplus foods and to authorize the executive director to
161 exercise all power and authority provided in this section
162 necessary to implement the pilot program for delivery of
163 leftover prepared foods at the regional jail located in
164 Marshall County, pursuant to section seventeen, article two,
165 chapter eighteen of this code.

**§31-20-5c. Additional powers and duties of the authority;
juvenile detention facilities.**

1 (a) The regional jail and correctional facility authority
2 shall complete a comprehensive study of all existing
3 juvenile detention facilities in the state of West Virginia no
4 later than the first day of October, one thousand nine
5 hundred ninety-eight. During the conduct of this study, all
6 state agencies shall provide the authority with any relevant
7 information and materials that the authority requests. This
8 study shall include an assessment of the physical
9 conditions of confinement within the existing juvenile
10 detention facilities and the relative need for facilities of
11 that type, taking into account the broad range of
12 alternatives that are available for juveniles who are in the
13 custody of the division of juvenile services.

14 (b) After completing this study, the authority shall
15 submit a report to the governor proposing a plan for the
16 establishment of regional juvenile detention facilities.

17 (c) The authority shall consider, but is not limited to,
18 the following when in developing the regional juvenile
19 detention facilities plan:

20 (1) All federal statutes and mandates concerning the
21 location, construction, operation, administration and
22 staffing of juvenile detention facilities;

23 (2) The relative physical condition of the juvenile
24 detention facilities located within the state;

25 (3) The transportation costs associated with the
26 establishment of centralized and regional juvenile
27 detention facilities, including, but not limited to, the costs
28 of transporting detained juveniles to court appearances
29 and for other necessary absences from the facility;

30 (4) The availability of medical services and
31 educational and recreational opportunities;

32 (5) Information received from public hearings;

33 (6) The relative savings in cost and efficiency of
34 providing regional juvenile detention services at facilities
35 located adjacent to existing regional jail facilities,
36 including moneys saved by the sharing of certain staff and
37 services, including food services, to the extent that such

38 sharing of resources is permitted by federal law and
39 guidelines;

40 (7) Available facilities located adjacent to existing
41 regional jails which may be used as regional juvenile
42 detention facilities, including, but not limited to, existing
43 county and state owned properties: *Provided*, That if the
44 authority determines that an existing facility meets
45 applicable standards, including all federal standards, or
46 could reasonably be made to meet the standards for a
47 regional juvenile detention facility, the authority may
48 proceed to acquire that existing facility and compensate
49 the owner thereof in an amount that may not exceed fair
50 market value.

**§31-20-8. Jail facilities standards commission; appointment;
compensation; vacancies; quorum.**

1 (a) A jail facilities standards commission of twelve
2 members is hereby created. The superintendent of the
3 state police or his or her designee shall serve as
4 chairperson of the commission and is eligible to vote on
5 matters before the commission. The governor shall
6 appoint two county sheriffs, to be chosen from a list of
7 three names provided by the president of the West
8 Virginia sheriffs' association, three county commissioners,
9 to be chosen from a list of five names provided by the
10 president of the West Virginia county commissioners'
11 association, and one chief of police, to be chosen from a
12 list of three names provided by the president of the West
13 Virginia police chiefs' association. Each of the
14 appointed members shall serve for a term of three years, is
15 eligible for reappointment and may vote on matters before
16 the commission. The executive director of the regional
17 jail and correctional facility authority, the commissioner
18 of the division of corrections, the commissioner of the
19 bureau of public health, the state fire marshal, and the
20 superintendent of schools or their designees shall be
21 members ex officio in an advisory capacity.

22 (b) Members of the commission shall serve without
23 compensation, but may be reimbursed by the regional jail
24 and correctional facility authority for reasonable and
25 necessary expenses incurred in the performance of their

26 duties. The regional jail and correctional facility authority
27 shall provide the commission with secretarial and other
28 necessary services.

29 (c) A vacancy among the appointed members of the
30 commission shall be filled, within thirty days, in the same
31 manner as the original appointment. A quorum consists
32 of four of the seven voting members.

§31-20-8a. Juvenile facilities standards commission; appointment; compensation; vacancies; quorum.

1 (a) A juvenile facilities standards commission
2 consisting of nine members is hereby created. The
3 governor shall appoint two citizen members who are
4 experienced and knowledgeable in the field of law
5 enforcement; one citizen member who is experienced and
6 knowledgeable in the field of juvenile development; and
7 one lay member. Each of these appointed members shall
8 serve for a term of three years and be eligible for
9 reappointment. The secretary of the department of
10 military affairs and public safety shall be a member ex
11 officio and shall serve as the commission's chairman. The
12 state fire marshal and the chairman of the juvenile justice
13 subcommittee of the governor's committee on crime,
14 delinquency and correction shall be members ex officio.
15 The director of the division of juvenile services and the
16 executive director of the regional jail and correctional
17 facility authority shall be members ex officio but shall
18 serve in an advisory capacity and are not entitled to vote
19 on matters coming before the commission.

20 (b) Members of the commission shall serve without
21 compensation, but may be reimbursed by the division of
22 juvenile services for reasonable and necessary expenses
23 incurred in the performance of their duties. The division
24 of juvenile services shall provide the commission with
25 secretarial and other necessary services.

26 (c) A vacancy among the appointed members of the
27 commission shall be filled, within thirty days, in the same
28 manner as the original appointment. A quorum consists
29 of four of the seven voting members.

§31-20-9. Jail facilities standards commission; purpose, powers and duties.

1 (a) The purpose of the jail facilities standards
2 commission is to assure that proper minimum standards
3 and procedures are developed for jail facility operation,
4 maintenance and management of inmates for regional jails
5 and local jail facilities used as temporary holding facilities.
6 In order to accomplish this purpose, the commission shall:

7 (1) Prescribe standards for the maintenance and
8 operation of county and regional jails. The standards
9 shall include, but not be limited to, requirements assuring
10 adequate space, lighting and ventilation; fire protection
11 equipment and procedures; provision of specific personal
12 hygiene articles; bedding, furnishings and clothing; food
13 services; appropriate staffing and training; sanitation,
14 safety and hygiene; isolation and suicide prevention;
15 appropriate medical, dental and other health services;
16 indoor and outdoor exercise; appropriate vocational and
17 educational opportunities; classification; inmate rules and
18 discipline; inmate money and property; religious services;
19 inmate work programs; library services; visitation, mail
20 and telephone privileges; and other standards necessary to
21 assure proper operation: *Provided*, That the standards
22 developed for the construction, operation and
23 maintenance of jails apply only to jail facilities completed
24 after the fifth day of April, one thousand nine hundred
25 eighty-eight, and that the standards serve only as
26 guidelines for any jail facility in operation prior to that
27 date: *Provided, however*, That the commission shall
28 establish standards and procedures permitting and
29 implementing in those facilities the double bunking of
30 inmates in all appropriate cases to the extent that this
31 practice does not violate federal law;

32 (2) Propose legislative rules for promulgation
33 pursuant to the provisions of article three, chapter
34 twenty-nine-a of this code that are necessary to implement
35 the provisions of this article relating to jail facilities,
36 including, without limitation, minimum jail and work farm
37 standards which shall be proposed for promulgation on or
38 before the first day of July, one thousand nine hundred

39 ninety-nine: *Provided*, That rules filed by the jail and
40 correctional facilities standards commission and
41 authorized by the Legislature to be promulgated before
42 the amendment to this section enacted in the regular
43 session of the Legislature in the year one thousand nine
44 hundred ninety-eight remain in force except that such
45 previously promulgated rules no longer apply to: (i)
46 Correctional facilities; and (ii) jail facilities that were
47 originally constructed for use as a jail which were
48 completed and placed in operation before the fifth day of
49 April, one thousand nine hundred ninety-eight: *Provided*,
50 *however*, That such previously promulgated rules shall
51 serve as guidelines for those facilities that fall within the
52 specifications of (ii) herein;

53 (3) Develop a process for reviewing and updating the
54 jail and work farm standards pursuant to the provisions of
55 article three, chapter twenty-nine-a of this code as
56 necessary to assure that they conform to current law; and

57 (4) Report periodically to the regional jail and
58 correctional facility authority and the appropriate county
59 and municipal authorities to advise, recommend, and
60 direct actions to be taken by the authority, the county or
61 the municipality to implement proper minimum jail and
62 work farm standards.

63 (b) Notwithstanding any other provision of this code
64 to the contrary, any county commission providing and
65 maintaining a jail on the effective date of this article may
66 not be required to provide and maintain a jail after a
67 regional jail becomes available pursuant to the provisions
68 of article twenty, chapter thirty-one of this code, unless the
69 county commission determines that a facility is necessary:
70 *Provided*, That the county commission may provide and
71 maintain a holding facility which complies with the
72 standards set forth for holding facilities in legislative rules
73 promulgated by the jail facilities standards commission or
74 its predecessor, the jail and correctional facilities standards
75 commission.

**§31-20-9a. Juvenile facilities standards commission; purpose;
powers; and duties.**

1 The purpose of the commission is to assure that
2 proper minimum standards and procedures are developed
3 for juvenile detention and juvenile correctional facility
4 operation, maintenance and management. To this end,
5 the commission shall:

6 (1) Develop standards for the maintenance and
7 operation of juvenile detention and correctional facilities.
8 These standards shall include, but not be limited to,
9 requirements assuring adequate space, lighting and
10 ventilation; fire protection equipment and procedures;
11 provision of specific personal hygiene articles; bedding,
12 furnishings and clothing; food services; appropriate
13 staffing and training; sanitation, safety and hygiene;
14 isolation and suicide prevention; appropriate medical,
15 dental and other health services; indoor and outdoor
16 exercise; appropriate vocational and educational
17 opportunities; rules and discipline; religious services;
18 vocational programs; library services; visitation, mail and
19 telephone privileges; and other standards necessary to
20 assure proper operation.

21 (2) Propose legislative rules for promulgation
22 pursuant to article three, chapter twenty-nine-a of this
23 code, including, without limitation, the minimum standards
24 for juvenile detention and correctional facilities as
25 provided in subdivision (1) of this section not later than
26 the first day of January, one thousand nine hundred
27 ninety-nine.

28 (3) Develop a process for reviewing and updating
29 these standards as necessary to assure that they conform to
30 current law.

31 (4) Report periodically to the authority to advise and
32 recommend actions to be taken by the authority, if
33 necessary, to implement proper standards in the state's
34 juvenile detention and correctional facilities.

§31-20-10. Regional jail and correctional facility development fund.

1 (a) The regional jail and correctional facility
2 development fund is hereby created and shall be

3 composed of special accounts in the state treasury. The
4 fund shall operate as a revolving fund whereby all
5 appropriations and payments to the fund may be applied
6 and reapplied by the authority for the purposes of this
7 article. Separate accounts may be established within the
8 fund for the purpose of identification of various revenue
9 resources and payment of specific obligations. These
10 separate accounts may be used for purposes that include,
11 but are not limited to, the construction, renovation or
12 repair of specific facilities, cash control, facility
13 maintenance and for the individual operating accounts of
14 facilities operated by the authority. The authority may
15 create other separate accounts within the fund that it
16 determines are necessary for the efficient operation of the
17 authority.

18 (b) Revenues deposited into the fund shall be used to
19 make payments of interest and shall be pledged as security
20 for bonds, security interests or notes issued or
21 lease-purchase obligations entered into with another state
22 entity by the authority pursuant to this article.

23 (c) Whenever the authority determines that the balance
24 in the fund is in excess of the immediate requirements of
25 this article, it may request that the excess be invested until
26 needed. In this case the excess shall be invested in a
27 manner consistent with the investment of temporary state
28 funds. Interest earned on any money invested pursuant to
29 this section shall be credited to the fund.

30 (d) If the authority determines that funds held in the
31 fund are in excess of the amount needed to carry out the
32 purposes of this article, it shall take any action that is
33 necessary to release the excess and transfer it to the
34 general revenue fund of the state treasury.

35 (e) The fund shall consist of the following:

36 (1) Amounts raised by the authority by the sale of
37 bonds or other borrowing authorized by this article;

38 (2) Moneys collected and deposited in the state
39 treasury which are specifically designated by acts of the
40 Legislature for inclusion into the fund;

41 (3) Contributions, grants and gifts from any source,
42 both public and private, which may be used by the
43 authority for any project or projects;

44 (4) All sums paid by the counties pursuant to
45 subsection (h) of this section; and

46 (5) All interest earned on investments made by the
47 state from moneys deposited in this fund.

48 (f) The amounts deposited in the fund shall be
49 accounted for and expended in the following manner:

50 (1) Amounts raised by the sale of bonds or other
51 borrowing authorized by this article shall be deposited in a
52 separate account within the fund and expended for the
53 purpose of construction, renovation and repair of
54 correctional facilities, regional jails and juvenile detention
55 and correctional facilities for which need has been
56 determined by the authority;

57 (2) Amounts deposited from all other sources shall be
58 pledged first to the debt service on any bonded
59 indebtedness, including lease-purchase obligations entered
60 into by the authority with another state entity or other
61 obligation incurred by borrowing of the authority;

62 (3) After any requirements of debt service have been
63 satisfied, the authority shall requisition from the fund the
64 amounts that are necessary to provide for payment of the
65 administrative expenses of this article;

66 (4) The authority shall requisition from the fund after
67 any requirements of debt service have been satisfied the
68 amounts that are necessary for the maintenance and
69 operation of the correctional facilities or regional jails or
70 both that are constructed pursuant to the provisions of this
71 article and shall expend those amounts for that purpose.
72 The fund shall make an accounting of all amounts
73 received from each county by virtue of any filing fees,
74 court costs or fines required by law to be deposited in the
75 fund and amounts from the jail improvement funds of the
76 various counties. After the expenses of administration
77 have been deducted, the amounts expended in the
78 respective regions from those sources shall be in

79 proportion to the percentage the amount contributed to
80 the fund by the counties in each region bears to the total
81 amount received by the fund from those sources;

82 (5) Notwithstanding any other provisions of this
83 article, sums paid into the fund by each county pursuant
84 to subsection (h) of this section for each inmate shall be
85 placed in a separate account and shall be requisitioned
86 from the fund to pay for costs incurred at the regional jail
87 facility at which each inmate was incarcerated; and

88 (6) Any amounts deposited in the fund from other
89 sources permitted by this article shall be expended in the
90 respective regions based on particular needs to be
91 determined by the authority.

92 (g) After a regional jail facility becomes available
93 pursuant to this article for the incarceration of inmates,
94 each county within the region shall incarcerate all persons
95 whom the county would have incarcerated in any jail prior
96 to the availability of the regional jail facility in the
97 regional jail facility except those whose incarceration in a
98 local jail facility used as a local holding facility is
99 specified as appropriate under the standards and
100 procedures developed pursuant to section nine of this
101 article and who the sheriff or the circuit court elects to
102 incarcerate therein.

103 (h) When inmates are placed in a regional jail facility
104 pursuant to subsection (g) of this section, the county shall
105 pay into the regional jail and correctional facility
106 development fund a cost per day for each incarcerated
107 inmate to be determined by the regional jail and
108 correctional facility authority according to criteria and by
109 procedures established by legislative rules proposed for
110 promulgation pursuant to article three, chapter
111 twenty-nine-a of this code to cover the costs of operating
112 the regional jail facilities of this state to maintain each
113 inmate. The per diem costs for incarcerating inmates may
114 not include the cost of construction, acquisition or
115 renovation of the regional jail facilities: *Provided*, That
116 each regional jail facility operating in this state shall keep
117 a record of the date and time that an inmate is
118 incarcerated, and a county may not be charged for a

119 second day of incarceration for an individual inmate until
120 that inmate has remained incarcerated for more than
121 twenty-four hours. Thereafter, in cases of continuous
122 incarceration, subsequent per diem charges shall be made
123 upon a county only as subsequent intervals of twenty-four
124 hours pass from the original time of incarceration.

§31-20-26. Legislative oversight committee.

1 The president of the Senate and the speaker of the
2 House of Delegates shall each designate five members of
3 their respective houses, at least one of whom shall be a
4 member of the minority party, to serve on a legislative
5 oversight committee charged with immediate and ongoing
6 oversight of the authority and the commissions, and
7 functions and duties of the authority and the commissions
8 created by this article. This committee shall report
9 regularly at each legislative session on the implementation
10 of the purposes set forth in section one-a of this article. It
11 shall regularly investigate all matters relating to integrity,
12 probity and foresight in funding, operating and planning
13 the correctional system on state, regional and county
14 levels, and may include the planning, funding,
15 constructing and operating of juvenile detention and
16 correctional facilities. Specifically, the committee shall
17 study and make recommendations to the Legislature as to
18 the revision of the system of classifying adult inmates, with
19 a view variously to decreasing the prison population
20 confined in "maximum security" facilities and to
21 designating and meeting the needs of inmates classified as
22 elderly, disabled or otherwise handicapped. In addition,
23 the committee may study and make recommendations to
24 the Legislature relating to the system of juvenile detention
25 and juvenile corrections.

26 The committee shall further study and inform the state
27 judiciary of the impact of sentencing on the composition
28 of the prison population in proportion to the use of
29 facilities. It shall recommend alternatives to long-term
30 sentencing, and shall recommend measures to improve the
31 quality of correctional staff and facilitate
32 nonconfrontational contacts with inmates. The committee
33 shall investigate means to structure inmates' time to ensure

34 genuine and willing reaccommodations to societal norms;
35 shall probe and coordinate all available means for funding
36 state, regional and county correctional facilities; and shall
37 contract with penal experts to study these issues in
38 appropriate depth and perspective. Annually, to predict a
39 prudent use of available funds, the committee shall study
40 the profile of the inmate population with regard to its age
41 and social background and needs.

42 The committee shall recommend to the Legislature the
43 funding required to execute these functions. It shall meet
44 regularly with the governing body of the authority
45 established in this article to determine what may be
46 required for full and timely compliance with all federal
47 mandates and court-ordered changes in the correctional
48 system and shall recommend funding for these changes.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14. Annual financial statement and premium tax return; remittance by insurer of premium tax, less certain deductions; special revenue fund created.

§33-3-15. Annuity tax.

§33-3-17. Minimum tax payable.

§33-3-14. Annual financial statement and premium tax return; remittance by insurer of premium tax, less certain deductions; special revenue fund created.

1 (a) Every insurer transacting insurance in West
2 Virginia shall file with the commissioner, on or before the
3 first day of March, each year, a financial statement made
4 under oath of its president or secretary and on a form
5 prescribed by the commissioner. The insurer shall also,
6 on or before the first day of March of each year subject to
7 the provisions of section fourteen-c of this article, under
8 the oath of its president or secretary, make a premium tax
9 return for the previous calendar year, on a form
10 prescribed by the commissioner showing the gross amount
11 of direct premiums, whether designated as a premium or
12 by some other name, collected and received by it during
13 the previous calendar year on policies covering risks
14 resident, located or to be performed in this state and

15 compute the amount of premium tax chargeable to it in
16 accordance with the provisions of this article, deducting
17 the amount of quarterly payments as required to be made
18 pursuant to the provisions of section fourteen-c of this
19 article, if any, less any adjustments to the gross amount of
20 the direct premiums made during such calendar year, if
21 any, and transmit with the return to the commissioner a
22 remittance in full for the tax due. The tax is the sum
23 equal to two percent of the gross direct premiums,
24 including dividends, by whatever name called, on
25 participating policies applied in reduction of premiums,
26 less premiums returned to policyholders because of
27 cancellation of policies, and also includes any additional
28 tax due under section fourteen-a of this article. All taxes
29 received by the commissioner shall be paid into the
30 insurance tax fund created in subsection (b) of this
31 section.

32 (b) There is created a special revenue fund in the state
33 treasury which is designated the "insurance tax fund."
34 This fund is not part of the general revenue fund of the
35 state. It consists of all amounts deposited in the fund
36 pursuant to subsection (a) of this section, sections fifteen
37 and seventeen of this article, any appropriations to the
38 fund, all interest earned from investment of the fund and
39 any gifts, grants or contributions received by the fund.
40 The treasurer shall administer the fund.

41 (c) The treasurer shall dedicate and transfer from the
42 insurance tax fund to the regional jail and correctional
43 facility investment fund created under the provisions of
44 section twenty, article six, chapter twelve of this code, on
45 or before the tenth day of each month, an amount equal to
46 one twelfth of the projected annual investment earnings to
47 be paid and the capital invested to be returned, as certified
48 to the treasurer by the investment management board:
49 *Provided*, That the amount dedicated and transferred may
50 not exceed twenty million dollars in any fiscal year. In
51 the event there are insufficient funds available in any
52 month to transfer the amount required pursuant to this
53 subsection to the regional jail and correctional facility
54 investment fund, the deficiency shall be added to the
55 amount transferred in the next succeeding month in which

56 revenues are available to transfer the deficiency. Each
57 month a lien on the revenues generated from the
58 insurance premium tax, the annuity tax and the minimum
59 tax, provided in this section and sections fifteen and
60 seventeen of this article, up to a maximum amount equal
61 to one twelfth of the projected annual principal and return
62 is granted to the investment management board to secure
63 the investment made with the regional jail and correctional
64 facility authority pursuant to section twenty, article six,
65 chapter twelve of this code. The treasurer shall, no later
66 than the last business day of each month, transfer amounts
67 the treasurer determines are not necessary for making
68 refunds under this article to meet the requirements of
69 subsection (d), section twenty, article six, chapter twelve of
70 this code, to the credit of the general revenue fund.

71 (d) The amendment to this section enacted during the
72 regular session of the Legislature in the year one thousand
73 nine hundred ninety-eight is effective on the first day of
74 July, one thousand nine hundred ninety-eight.

§33-3-15. Annuity tax.

1 (a) Every life insurer transacting insurance in West
2 Virginia shall make a return to the commissioner annually
3 on a form prescribed by the commissioner, on or before
4 the first day of March, under the oath of its president or
5 secretary, of the gross amount of annuity considerations
6 collected and received by it during the previous calendar
7 year on business transacted in this state and stating the
8 amount of tax due under this section, together with
9 payment in full for the tax due. The tax is the sum equal
10 to one per centum of the gross amount of the annuity
11 considerations, less annuity considerations returned and
12 less termination allowances on group annuity contracts.
13 All the taxes received by the commissioner shall be paid
14 into the insurance tax fund created in subsection (b),
15 section fourteen of this article.

16 (b) The amendment to this section enacted during the
17 regular session of the Legislature in the year one thousand
18 nine hundred ninety-eight is effective on the first day of
19 July, one thousand nine hundred ninety-eight.

§33-3-17. Minimum tax payable.

1 (a) The minimum amount of tax payable by any
2 insurer licensed in the state of West Virginia when
3 considering the aggregate payments due from all of the
4 taxes imposed by this article is two hundred dollars for
5 any calendar year. This minimum tax is payable annually
6 on or before the first day of March and shall be calculated
7 on a form prescribed by the commissioner. Except as
8 otherwise provided in this section, all provisions of this
9 article relating to the levy, imposition and collection of the
10 regular premium tax are applicable to the levy, imposition
11 and collection of this minimum tax. All moneys received
12 by the commissioner from this minimum tax shall be paid
13 into the insurance tax fund created in subsection (b),
14 section fourteen of this article.

15 (b) The amendment to this section enacted during the
16 regular session of the Legislature in the year one thousand
17 nine hundred ninety-eight is effective on the first day of
18 July, one thousand nine hundred ninety-eight.

CHAPTER 96

(S. B. 548—By Senators Wooton, Ball, Bowman, Dittmar, Kessler, Ross,
Schoonover, Snyder, Buckalew, Deem and Kimble)

[Passed March 5, 1998; to take effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the list of facilities under the direction of the commissioner of corrections.

Be it enacted by the Legislature of West Virginia:

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

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

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

5 Mount Olive correctional complex;

6 Huttonsville correctional center;

7 Anthony correctional center;

8 Denmar correctional center;

9 Pruntytown correctional center;

10 Northern West Virginia correctional center; and

11 St. Marys correctional center.

12 Jurisdiction of and title to the West Virginia children's
13 home at Elkins are hereby transferred to the department
14 of health and human resources, which shall be the
15 custodian of all deeds and other muniments of title to the
16 property and record those that are susceptible of
17 recordation to be recorded in the proper offices.
18 Notwithstanding any provision of this code to the
19 contrary, the West Virginia children's home shall be
20 managed and controlled by a superintendent appointed by
21 the commissioner of health and human resources.

22 The commissioner is hereby authorized to establish
23 work and study release units as extensions and subsidiaries
24 of those state institutions under his or her control and
25 authority. The work and study release units may be
26 coeducational and shall be managed, directed and
27 controlled as provided for in this article.

28 The commissioner is hereby authorized to serve as a
29 member of the commission for distribution of surplus

30 foods and exercise all powers and authority otherwise
31 granted to him or her in this article to implement the pilot
32 program for delivery of leftover prepared foods at any
33 institution under his or her control and supervision,
34 pursuant to section seventeen, article two, chapter eighteen
35 of this code.

36 Any person employed by the office of public
37 institutions who on the effective date of this article is a
38 classified civil service employee shall, within the limits
39 contained in section two, article six, chapter twenty-nine of
40 this code, remain in the civil service system as a covered
41 employee.

CHAPTER 97

(Com. Sub. for H. B. 2895—By Delegates Leach, Beane, Seacrist,
Kelley and Proudfoot)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the treatment of mentally ill persons in correctional facilities; authorizing the commissioner of corrections to establish policies relating to treatment and providing that certain rules and policies are not applicable to correctional facilities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-5. Rules and regulations.

1 The commissioner of corrections is authorized to
2 make rules for the proper execution of his or her duties
3 and powers; adopt rules for the government of the
4 institutions named or referred to in section three of this
5 article; adopt rules for the administration of the financial
6 and business affairs of the institutions named or referred
7 to in section four of this article; and establish policies
8 regarding the treatment of mentally ill inmates, which
9 reflect the safety and security concerns specific to
10 correctional facilities. Notwithstanding any provisions of
11 law to the contrary, the division of corrections is not
12 subject to the rules promulgated by the board of health
13 for the treatment of mentally ill patients nor the mandates
14 developed pursuant to *E. H. v. Matin*.

15 Consistent with the provisions of this article, the
16 commissioner shall prescribe the duties of the persons
17 connected with the management of institutions. When any
18 of the guards, attendants, or other employees are
19 uniformed, the commissioner shall prescribe the design, or
20 designs, of the uniforms, which shall be dissimilar to the
21 design of the uniform worn by the members of the state
22 police. When the institution is located in, or in close
23 proximity to, a municipality, no guard, attendant or other
24 employee may wear the cap or caps designed by the
25 commissioner as part of the uniform, when not actually on
26 duty connected with his or her employment, nor shall the
27 municipality adopt for its police officers or other
28 employees a uniform which is similar in design to the
29 uniform adopted by the commissioner.

30 Any person violating the provisions of this article is
31 guilty of a misdemeanor and, upon conviction, shall be
32 punished by a fine of not more than ten dollars, or by
33 imprisonment for ten days, or both.

CHAPTER 98

(Com. Sub. for H. B. 4221—By Delegates Cann, Kominar, Coleman,
Michael, Martin, Pino and Border)

[Passed March 11, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight, relating to authorizing the commissioner of the division of corrections to assess inmates in state penal and correctional facilities reasonable charges for health care and treatment services provided to them by the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-8. Charges assessed against inmates for services provided by state.

1 (a) The commissioner is authorized to assess inmates
2 serving a sentence in any state penal or correctional
3 facility reasonable charges for health care and treatment
4 services provided to them by the state. The charges
5 assessed against an inmate may be deducted directly from
6 the inmate's trustee account without the inmate's consent.
7 The inmate shall be notified of the amount deducted and
8 the charges to which it has been applied.

9 (b) As used in this section, a "reasonable charge"
10 may not exceed the sum of five dollars for any billable
11 service. Inmates shall be notified of the fee schedule,
12 billable services, and exempt services. Services initiated by
13 the inmate shall be assessed a fee, except that no charge
14 may be assessed for: (1) A specific health care service
15 required under the law of this state, including, by way of
16 illustration, tuberculin testing; (2) an emergency service
17 following a traumatic injury other than a self-induced

18 injury, or necessary to prevent death or severe or
19 permanent disability; (3) diagnosis and treatment of
20 communicable diseases, including, by way of illustration,
21 tuberculosis or hepatitis; (4) treatment of diagnosed
22 severe mental illness; (5) treatment of specific chronic
23 conditions identified by the commissioner, including heart
24 disease and diabetes; (6) staff-initiated care, including
25 follow-up and referral visits; (7) preventive services that
26 the commissioner determines are to be provided or made
27 available to all inmates, including services related to
28 disease prevention and promotion of proper health habits;
29 or (8) such other services as may be exempted by rule of
30 the commissioner. No inmate may be denied any
31 necessary billable medical service because of inability to
32 pay the charge.

33 (c) Each inmate shall be afforded an opportunity at
34 least quarterly to review all deposits into, withdrawals from
35 and balance remaining in the inmate's trustee account
36 during the preceding three months.

37 (d) The commissioner shall promulgate interpretive
38 rules implementing this section pursuant to article three,
39 chapter twenty-nine-a of this code prior to making any
40 assessment under this section. The rules may establish the
41 fee schedule and list of billable services and further define
42 services to be exempted.

CHAPTER 99

(H. B. 2698—By Delegates Ashley and Staton)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article five, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to private prisons and removing the former Spencer state hospital as a potential site for a private prison facility.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PRIVATE PRISONS.

§25-5-10. Site selection.

1 The regional jail authority shall approve the site for
2 the proposed facility. Approval shall be in accordance
3 with legislative rules promulgated in accordance with
4 chapter twenty-nine-a of this code. One such legislative
5 rule shall establish criteria for identifying and evaluating
6 potential sites for private prisons and shall provide for a
7 public hearing or hearings to allow reasonable
8 participation in the selection process by the citizens of the
9 area to be affected by the construction and operation of a
10 private prison.

CHAPTER 100

(S. B. 757—By Senators Wooton, Ball, Bowman, Hunter, Kessler,
Oliverio, Ross, Snyder, White, Buckalew and Deem)

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections one and twenty-two, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to repealing sections of the code dealing with continuation and the management of property of West Virginia penitentiary at Moundsville; and dealing with qualifications of officers and employees at the West Virginia penitentiary at Moundsville.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. THE PENITENTIARY.

§1. Repeal of section relating to continuation; management; property.

1 Section one, article five, chapter twenty-eight of the
 2 code of West Virginia, one thousand nine hundred thirty-
 3 one, as amended, is hereby repealed.

§2. Repeal of section relating to qualifications of officers and employees.

1 Section twenty-two, article five, chapter twenty-eight of
 2 the code of West Virginia, one thousand nine hundred
 3 thirty-one, as amended, is hereby repealed.

CHAPTER 101

(S. B. 581—By Senators Wooton, Ball, Bowman, Dittmar, Fanning,
 Hunter, Kessler, Oliverio, Ross, Schoonover,
 Snyder, White, Buckalew, Kimble and Scott)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying that authority to issue parole violator warrants rests in the commissioner of corrections; and authorizing division of corrections to assess costs for returning violators where parolee is able to pay.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. PROBATION AND PAROLE.

§62-12-19. Violation of parole.

1 (a) If at any time during the period of parole, there
 2 shall be reasonable cause to believe that the parolee has
 3 violated any of the conditions of his release on parole, the
 4 parole officer may arrest him with or without an order or

5 warrant, or the commissioner of corrections may issue its
6 written order or warrant for his arrest, which written order
7 or warrant shall be sufficient for his arrest by any officer
8 charged with the duty of executing an ordinary criminal
9 process. The commissioner's written order or warrant
10 delivered to the sheriff against the paroled prisoner shall
11 be a command to keep custody of the parolee for the
12 jurisdiction of the division of corrections, and during the
13 period of custody, the parolee may be admitted to bail by
14 the court before which the parolee was sentenced. If the
15 parolee is not released on a bond, the costs of confining
16 such paroled prisoner shall be paid out of the funds
17 appropriated for the division of corrections.

18 (b) When a parolee is under arrest for violation of the
19 conditions of his parole, he shall be given a prompt and
20 summary hearing, at which the parolee and his counsel
21 shall be given an opportunity to attend. If at the hearing,
22 it shall appear to the satisfaction of the board that the
23 parolee has violated any condition of his release on parole,
24 or any rules and regulations for his supervision, the board
25 may revoke his parole and may require him to serve in
26 prison the remainder or any portion of his maximum
27 sentence for which, at the time of his release, he was
28 subject to imprisonment: *Provided*, That if the violation
29 of the conditions of parole or rules and regulations for his
30 supervision is not a felony as set out in section eighteen of
31 this article, the board may, if in its judgment the best
32 interests of justice do not require that the parole be
33 revoked, release him from custody and continue him on
34 parole.

35 (c) When a parolee has violated the conditions of his
36 release on parole by confession to, or being convicted of
37 any of the crimes set forth in section eighteen of this
38 article, he shall be returned to the custody of the division
39 of corrections to serve the remainder of his maximum
40 sentence, during which remaining part of his sentence he
41 shall be ineligible for further parole.

42 (d) Whenever the parole of a paroled prisoner has

43 been revoked, the commissioner shall upon receipt of the
44 board's written order of revocation, convey and transport
45 the paroled prisoner to a state penal institution from which
46 he was granted a release on parole. A paroled prisoner
47 whose parole has been revoked shall remain in custody of
48 the sheriff until delivery to a corrections officer sent and
49 duly authorized by the commissioner for the removal of
50 the paroled prisoner to a state penal institution; the cost of
51 confining such paroled prisoner shall be paid out of the
52 funds appropriated for the penitentiary from which he was
53 paroled.

54 (e) When a paroled prisoner is convicted of, or
55 confesses to, any one of the crimes enumerated in section
56 eighteen of this article, it shall be the duty of the board to
57 cause him to be returned to this state for a summary
58 hearing as provided by this article. A warrant filed by the
59 commissioner shall stop the running of his sentence until
60 the paroled prisoner is returned to custody. Whenever a
61 paroled prisoner has absconded supervision, the
62 commissioner shall issue a warrant for his apprehension
63 and return to this state for the hearing provided for in this
64 article: *Provided*, That the board may, if it be of opinion
65 the best interests of justice do not require such hearing,
66 cause the paroled absconder to be released to continue on
67 parole.

68 (f) Whenever a parolee, who has absconded
69 supervision or has been transferred out of this state for
70 supervision pursuant to section one, article six, chapter
71 twenty-eight of this code is returned to West Virginia due
72 to a violation of parole and costs are incurred by the
73 division of corrections, the commissioner may assess
74 reasonable costs from the parolee's inmate funds as
75 reimbursement to the division of corrections for the costs
76 of returning him to the state of West Virginia.

CHAPTER 102

(Com. Sub. for S. B. 422—By Senators Hunter, Love, Buckalew and Ball)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article two, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the bonding of deputy sheriffs; and providing that bonding not required when liability insurance is in place.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. OFFICIAL AND OTHER BONDS.

§6-2-10. Bonds of county officers; required for deputy sheriffs.

1 Every commissioner of a county commission and
2 every clerk of a circuit court shall give bond with good
3 security, to be approved by the circuit court, or the judge
4 thereof in vacation; and every sheriff, deputy sheriff,
5 surveyor of lands, clerk of a county commission, assessor,
6 county superintendent of schools, notary public and
7 magistrate shall give bond with good security, to be
8 approved, unless otherwise provided by law, by the county
9 commission of the county in which such officer is to act.
10 The penalty of the bond of each commissioner of a
11 county commission shall be not less than twenty thousand
12 dollars and not more than two hundred thousand dollars,
13 the amount to be fixed by the circuit court of the county,
14 or the judge thereof in vacation, by order entered of
15 record on the proper order books of both the county and
16 circuit courts; of the clerk of the circuit court, not less than
17 ten thousand nor more than fifty thousand dollars; of the
18 sheriff, not less than one hundred thousand dollars nor
19 more than the aggregate amount of all state, county,
20 district, school, municipal and other moneys which will
21 probably come into his hands during any one year of his
22 term of office; of the deputy sheriff, not less than thirty-

23 five thousand nor more than one hundred thousand
24 dollars; of the surveyor of lands, not less than one
25 thousand nor more than three thousand dollars; of the
26 clerk of the county commission, not less than ten thousand
27 nor more than fifty thousand dollars; of the assessor, not
28 less than two thousand nor more than five thousand
29 dollars; of the county superintendent of schools, not less
30 than ten thousand nor more than fifty thousand dollars; of
31 a notary public, not less than two hundred fifty nor more
32 than one thousand dollars. Any public body required to
33 pay the premiums on official bonds may provide a
34 blanket bond policy for two or more such official bonds:
35 *Provided*, That the bond herein required to be given by a
36 notary public may be given before the clerk of the county
37 commission, in the vacation of said commission, and
38 approved by it at its next regular session.

39 For the purposes of this section, "deputy sheriff" shall
40 mean a person appointed by a sheriff as his deputy whose
41 primary duty as such deputy is within the scope of active,
42 general law enforcement and as such is authorized to carry
43 deadly weapons, patrol the highways, perform police
44 functions, make arrests or safeguard prisoners.

45 The bond described in this section is not required for
46 deputy sheriffs if a county purchases professional liability
47 insurance pursuant to the provisions of section three,
48 article fourteen-a, chapter seven of this code.

CHAPTER 103

(Com. Sub. for S. B. 228—By Senators Love, Snyder, Hunter and Buckalew)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-ff, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority of county commissions to adopt ordinances regulating the repair, alteration, improvement, vacating,

closing, removal or demolition of structures and the removal or cleanup of refuse, debris, overgrown vegetation, toxic spillage or seepage on private lands representing a health or safety hazard to the public; creating an agency to enforce such ordinances; providing for promulgation of rules governing investigation and hearing of complaints; establishing a procedure for complaints; requiring the owner of such property to perform the ordered repairs, alterations or clean-up; authorizing imposition of daily civil monetary penalties on an owner who refuses to comply with such order; authorizing the county commission to contract with private individuals for the ordered repairs, alterations or clean-up; permitting the county commission to institute a civil action for imposition of a lien against the property to recover the costs of such services, any civil penalties imposed, attorney fees and court costs and for the sale of the property to satisfy the lien; authorizing the county commission to institute a civil action for damages to recover such costs from the landowner; authorizing entry on the private land for purposes of conducting designated repairs or alterations and for purposes of satisfying the lien; and allowing the county commission to receive grants and subsidies for the purposes of this section.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ff. Authority of county commission to enact ordinances regulating the repair, alteration, improvement, vacating, closing, removal or demolition of unsafe or unsanitary structures and the clearance and removal of refuse, debris, overgrown vegetation, toxic spills or toxic seepage on private land; authority to create enforcement agency; procedure for complaints; promulgation of rules governing

investigation and hearing of complaints; remedies for failure to comply with commission-ordered repairs or alterations; lien and sale of land to recover costs; entry on land to perform repairs and alterations or to satisfy lien; receipt of grants and subsidies.

1 (a) Plenary power and authority are hereby conferred
2 upon every county commission to adopt ordinances
3 regulating the repair, alteration or improvement, or the
4 vacating and closing or removal or demolition, or any
5 combination thereof, of any dwellings or other buildings,
6 except for buildings utilized for farm purposes on land
7 actually being used for farming, unfit for human
8 habitation due to dilapidation, defects increasing the
9 hazard of fire, accidents or other calamities, lack of
10 ventilation, light or sanitary facilities or any other
11 conditions prevailing in any dwelling or building, whether
12 used for human habitation or not, which would cause such
13 dwellings or other buildings to be unsafe, unsanitary,
14 dangerous or detrimental to the public safety or welfare,
15 whether the result of natural or manmade force or effect.

16 (b) Plenary power and authority are hereby conferred
17 upon every county commission to adopt ordinances
18 regulating the removal and clean up of any accumulation
19 of refuse or debris, overgrown vegetation or toxic spillage
20 or toxic seepage located on private lands which is deemed
21 to be unsafe, unsanitary, dangerous or detrimental to the
22 public safety or welfare whether the result of natural or
23 manmade force or effect.

24 (c) The county commission in formally adopting such
25 ordinances shall designate an enforcement agency, which
26 shall consist of the county engineer (or other technically
27 qualified county employee or consulting engineer),
28 county health officer or his or her designee, a fire chief
29 from a county fire company, and two members at large
30 selected by the county commission to serve two-year
31 terms. The county sheriff shall serve as an ex officio

32 member of such enforcement agency and the county
33 officer charged with enforcing the orders of the county
34 commission under this section.

35 (d) Any ordinance adopted pursuant to the provisions
36 of this section shall provide fair and equitable rules of
37 procedure and any other standards deemed necessary to
38 guide the enforcement agency, or its agents, in the
39 investigation of dwelling or building conditions,
40 accumulation of refuse or debris, overgrown vegetation or
41 toxic spillage or toxic seepage, and shall provide for fair
42 and equitable rules of procedure for instituting and
43 conducting hearings in such matters before the county
44 commission. Any entrance upon premises for the purpose
45 of making examinations shall be made in such manner as
46 to cause the least possible inconvenience to the persons in
47 possession.

48 (e) Any county commission adopting ordinances
49 authorized by this section shall hear and determine
50 complaints of the enforcement agency. Complaints shall
51 be initiated by petition of the county engineer (or other
52 technically qualified county employee or consulting
53 engineer) on behalf of and at the direction of the
54 enforcement agency, but only after that agency has
55 investigated and determined that any dwelling, building,
56 accumulation of refuse or debris, overgrown vegetation or
57 toxic spillage or toxic seepage is unsafe, unsanitary,
58 dangerous or detrimental to the public safety or welfare
59 and should be repaired, altered, improved, vacated,
60 removed, closed, cleaned or demolished. The county
61 commission shall cause the owner or owners of the private
62 land in question to be served with a copy of the complaint.
63 Service shall be accomplished in the manner provided in
64 rule four of the West Virginia rules of civil procedure. The
65 complaint shall state the findings and recommendations of
66 the enforcement agency and that unless the owner or
67 owners of the property file with the clerk of the county
68 commission a written request for a hearing within ten days

69 of receipt of the complaint, an order will be issued by the
70 county commission implementing the recommendations
71 of the enforcement agency. If the owner or owners of the
72 property file a request for a hearing, the county
73 commission shall issue an order setting this matter down
74 for hearing within twenty days. Hearings shall be
75 recorded by electronic device or by court reporter. The
76 West Virginia rules of evidence do not apply to such
77 proceedings, but each party has the right to present
78 evidence and examine and cross examine all witnesses.
79 The enforcement agency has the burden of proving its
80 allegation by a preponderance of the evidence and has the
81 duty to go forward with the evidence. At the conclusion
82 of the hearing the county commission shall make findings
83 of fact, determinations and conclusions of law as to
84 whether the dwelling or building: Is unfit for human
85 habitation due to dilapidation; has defects that increase the
86 hazard of fire, accidents or other calamities, lacks
87 ventilation, light or sanitary facilities; or any other
88 conditions prevailing in the dwelling or building, whether
89 used for human habitation or not, and whether the result
90 of natural or manmade force or effect, which would cause
91 such dwelling or other building to be unsafe, unsanitary,
92 dangerous or detrimental to the public safety or welfare;
93 or whether there is an accumulation of refuse or debris;
94 overgrown vegetation; toxic spillage or toxic seepage on
95 private lands which is deemed to be unsafe, unsanitary,
96 dangerous or detrimental to the public safety or welfare,
97 whether the result of natural or manmade force or effect.
98 The county commission has authority to order the owner
99 or owners thereof to repair, alter, improve, vacate, remove,
100 close, clean up or demolish the dwelling or building in
101 question or to remove or clean up any accumulation of
102 refuse or debris, overgrown vegetation or toxic spillage or
103 toxic seepage within a reasonable time and to impose daily
104 civil monetary penalties on the owner or owners who fail
105 to obey such an order. Appeals from the county
106 commission to the circuit court shall be in accordance with

107 the provisions of article three, chapter fifty-eight of this
108 code.

109 (f) Upon the failure of the owner or owners of the
110 private land to perform the ordered duties and obligations
111 as set forth in the order of the county commission, the
112 county commission may advertise for and seek contractors
113 to make the ordered repairs, alterations or improvements,
114 or the ordered demolition, removal or clean up. The
115 county commission may enter into any contract with any
116 such contractor to accomplish the ordered repairs,
117 alterations or improvements, or the ordered demolition,
118 removal or clean up.

119 (g) A civil proceeding may be brought in circuit court
120 by the county commission against the owner or owners of
121 the private land which is the subject matter of the order of
122 the county commission to subject the private land in
123 question to a lien for the amount of the contractor's costs
124 in making these ordered repairs, alterations or
125 improvements, or ordered demolition, removal or clean up
126 together with any daily civil monetary penalty imposed
127 and reasonable attorney fees and court costs and to order
128 and decree the sale of the private land in question to
129 satisfy the lien, and to order and decree that the contractor
130 may enter upon the private land in question at any and all
131 times necessary to make improvements, or ordered repairs,
132 alterations or improvements, or ordered demolition,
133 removal or clean up. In addition, the county commission
134 shall have the authority to institute a civil action in a court
135 of competent jurisdiction against the landowner or other
136 responsible party for all costs incurred by the county with
137 respect to the property and for reasonable attorney fees
138 and court costs incurred in the prosecution of the action.

139 (h) County commissions have the power and authority
140 to receive and accept grants, subsidies, donations and
141 services in kind consistent with the objectives of this
142 section.

CHAPTER 104

(S. B. 209—By Senator Helmick)

[Passed February 20, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to counties selecting depositories for their moneys to provide nondiscriminatory treatment of out-of-state banks as required by changes in federal law; and to delete and correct obsolete references.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. COUNTY DEPOSITORIES.

§7-6-1. Designation of depositories.

1 On or before the thirtieth day of June, of each year,
2 the county commission of every county shall, by order of
3 record, designate all of the banking institutions, as defined
4 in section two, article one, chapter thirty-one-a of this
5 code, situated in the county and duly incorporated under
6 the laws of any state, or organized under the laws of the
7 United States, as depositories of public moneys: *Provided,*
8 That in any county where no such banking institutions
9 exist, or where such banking institutions fail, refuse or
10 neglect to comply with all the provisions and conditions of
11 this article, the county commission shall designate some
12 qualified banking institution in some other county of this
13 state convenient to the county seat. Risk and expense of
14 making deposits in county depositories located outside of
15 the county seat shall be borne by the banking institution
16 in which the deposits are made. When any banking
17 institution, designated by the county commission as
18 provided by this section, has complied with all of the
19 requirements and provisions of this article, the commission
20 shall declare it a county depository.

CHAPTER 105

(Com. Sub. for H. B. 4307—By Mr. Speaker, Mr. Kiss, and Delegates Ashley, Staton and Trump)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven and thirteen, article twelve, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to allowing county and municipal development authorities to sell, lease or otherwise dispose of real or personal property which they may own either by contract or at public auction; clarifying legislative intent; retroactive provisions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. COUNTY AND MUNICIPAL DEVELOPMENT AUTHORITIES.

§7-12-7. Powers generally.

§7-12-13. Sale or lease of property; reversion of assets upon dissolution.

§7-12-7. Powers generally.

1 The development authority is hereby given power and
2 authority as follows: (1) To make and adopt all necessary
3 bylaws and rules for its organization and operations not
4 inconsistent with laws; (2) to elect its own officers, to
5 appoint committees and to employ and fix compensation
6 for personnel necessary for its operation; (3) to enter into
7 contracts with any person, agency, governmental
8 department, firm or corporation, including both public
9 and private corporations, and generally to do any and all
10 things necessary or convenient for the purpose of
11 promoting, developing and advancing the business
12 prosperity and economic welfare of the county in which it
13 is intended to operate, its citizens and industrial complex,

14 including, without limiting any of the foregoing, the
15 construction of any building or structure for lease to the
16 federal government or any of its agencies or departments,
17 and in connection therewith to prepare and submit bids
18 and negotiate with the federal government or such
19 agencies or departments in accordance with plans and
20 specifications and in the manner and on the terms and
21 conditions and subject to any requirements, regulations,
22 rules and laws of the United States of America for the
23 construction of said buildings or structures and the leasing
24 thereof to the federal government or such agencies or
25 departments; (4) to amend or supplement any contracts or
26 leases or to enter into new, additional or further contracts
27 or leases upon such terms and conditions, for such
28 consideration and for such term of duration, with or
29 without option of renewal, as may be agreed upon by the
30 authority and such person, agency, governmental
31 department, firm or corporation; (5) unless otherwise
32 provided for in, and subject to the provisions of, such
33 contracts, or leases, to operate, repair, manage, and
34 maintain such buildings and structures and provide
35 adequate insurance of all types, and in connection with the
36 primary use thereof and incidental thereto to provide such
37 services, such as barber shops, newsstands, drugstores and
38 restaurants, and to effectuate such incidental purposes,
39 grant leases, permits, concessions or other authorizations
40 to any person or persons, upon such terms and conditions,
41 for such consideration and for such term of duration as
42 may be agreed upon by the authority and such person,
43 agency, governmental department, firm or corporation;
44 (6) to delegate any authority given to it by law to any of
45 its officers, committees, agents or employees; (7) to apply
46 for, receive and use grants-in-aid, donations and
47 contributions from any source or sources, and to accept
48 and use bequests, devises, gifts and donations from any
49 person, firm or corporation; (8) to acquire real property
50 by gift, purchase, or construction, or in any other lawful
51 manner, and hold title thereto in its own name and to sell,
52 lease or otherwise dispose of all or part of such real
53 property which it may own, either by contract or at public
54 auction, upon the approval by the board of directors of
55 the development authority; (9) to purchase or otherwise

56 acquire, own, hold, sell, lease and dispose of all or part of
57 any personal property which it may own, either by
58 contract or at public auction; (10) pursuant to a
59 determination by the board that there exists a continuing
60 need for programs to alleviate and prevent unemployment
61 within the county in which the authority is intended to
62 operate or aid in the rehabilitation of areas in said county
63 which are underdeveloped, decaying or otherwise
64 economically depressed, and that moneys or funds of the
65 authority are necessary therefor, to borrow money and
66 execute and deliver the authority's negotiable notes,
67 mortgage bonds, other bonds, debentures, and other
68 evidences of indebtedness therefor, on such terms as the
69 authority shall determine, and give such security therefor
70 as shall be requisite, including giving a mortgage or deed
71 of trust on its real or personal property and facilities in
72 connection with the issuance of mortgage bonds; (11) to
73 raise funds by the issuance and sale of revenue bonds in
74 the manner provided by the applicable provisions of
75 article sixteen, chapter eight of this code, it being hereby
76 expressly provided that a development authority created
77 under this article is a "governing body" within the
78 definition of that term as used in said article sixteen,
79 chapter eight of this code; and (12) to expend its funds in
80 the execution of the powers and authority herein given,
81 which expenditures, by the means authorized herein, are
82 hereby determined and declared as a matter of legislative
83 finding to be for a public purpose and use, in the public
84 interest, and for the general welfare of the people of West
85 Virginia, to alleviate and prevent economic deterioration
86 and to relieve the existing critical condition of
87 unemployment existing within the state.

88 The amendment of this section enacted in the year one
89 thousand nine hundred ninety-eight, is intended to clarify
90 the intent of the Legislature as to the manner in which an
91 authority may sell, lease or otherwise dispose of real and
92 personal property owned by an authority, and shall be
93 retroactive to the date of the prior enactment of this
94 section.

**§7-12-13. Sale or lease of property; reversion of assets upon
dissolution.**

1 In the event the board of the authority shall so
 2 determine, the authority may lease or sell all of its
 3 property and equipment, either by contract or at public
 4 auction, on such terms and conditions as the authority
 5 may fix and determine. Upon the dissolution of the
 6 authority, all of its assets and property shall revert to and
 7 become the property of the county or municipality for
 8 which said authority was created.

9 The amendment of this section in the year one
 10 thousand nine hundred ninety-eight, is intended to clarify
 11 the intent of the Legislature as to the manner in which an
 12 authority may sell, lease or otherwise dispose of real and
 13 personal property owned by an authority, and shall be
 14 retroactive to the date of the prior enactment of this
 15 section.

CHAPTER 106

(H. B. 4254—By Delegates Mahan, Dalton, Tomblin,
 Stemple, Smirl and L. White)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and three, article two, chapter two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the computation of time within which a proceeding is to take place or an act is to be done; and designating days as weather or other emergency days when weather or emergency conditions prevent the general transaction of court business in a county.

Be it enacted by the Legislature of West Virginia:

That sections one, two and three, article two, chapter two 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. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.

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

§2-2-2. When acts to be done fall on Saturday, Sunday or legal holiday; adjournments from day to day.

§2-2-3. Computation of time.

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

1 (a) The following days are legal holidays:

2 (1) The first day of January is "New Year's Day";

3 (2) The third Monday of January is "Martin Luther
4 King's Birthday";

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

66 (f) With regard to the courts of this state, the

67 computation of periods of time, the specific dates or days
68 when an act, event, default or omission is required or
69 allowed to occur and the relationship of those time periods
70 and dates to Saturdays, Sundays, legal holidays, or days
71 designated as weather or other emergency days pursuant
72 to section two of this article are governed by rules
73 promulgated by the supreme court of appeals.

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

**§2-2-2. When acts to be done fall on Saturday, Sunday or
legal holiday; adjournments from day to day.**

1 (a) When a proceeding is directed to take place or any
2 act to be done on any particular day of the month or
3 within any period of time prescribed or allowed, including
4 those provided by article two, chapter fifty-five, of this
5 code, if that day or the last day falls on a Saturday,
6 Sunday, legal holiday, or a weather or other emergency
7 day, the next day that is not a Saturday, Sunday, legal
8 holiday, or a weather or other emergency day shall be
9 deemed to be the one intended, and when the day upon
10 which a term of court is directed by law to commence,
11 falls on a Saturday, Sunday, legal holiday, or a weather or
12 other emergency day, the following day that is not a
13 Saturday, Sunday, legal holiday, or a weather or other
14 emergency day shall be deemed to be the day intended.
15 When an adjournment is authorized from day to day, an
16 adjournment from Friday to Monday will be legal.

17 (b)(1) For purposes of this section, "weather or other
18 emergency day" means a day designated for a county in
19 accordance with the provisions of subdivision (2) of this
20 subsection as a day upon which weather or other
21 emergency conditions in that county prevent the general
22 transaction of court business in that county.

23 (2) A weather or other emergency day is designated
24 by order of the chief justice of the supreme court of
25 appeals or by order of the chief judge of the circuit court
26 of the county in which the proceeding is directed to take
27 place or in which the act is to be done.

§2-2-3. Computation of time.

1 The provisions of sections one and two of this article
2 relating to the time or period prescribed or allowed within
3 which an act is to be done shall not be deemed to change
4 any rule of law applicable to bills of exchange or
5 negotiable notes.

CHAPTER 107

(S. B. 239—By Senators Wooton, Ball, Bowman, Dittmar, Fanning, Hunter,
Kessler, Oliverio, Ross, Schoonover, Snyder, White, Buckalew, Deem,
Kimble and Scott)

[Passed February 20, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article four, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishment of the prosecuting attorneys institute; establishing the executive counsel; creating the position of executive director; establishing duties of institute and personnel; establishing dues structure for counties; and limitations on scope of lobbying activities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

§7-4-6. West Virginia prosecuting attorneys institute.

1 (a) There is hereby created the West Virginia
2 prosecuting attorneys institute, a public body whose
3 membership shall consist of the fifty-five elected county
4 prosecuting attorneys in the state. The institute shall meet
5 at least once each calendar year and the presence of
6 twenty-eight of the fifty-five prosecutors at any meeting

7 constitutes a quorum for the conduct of the institute's
8 business.

9 (b) There is hereby created the executive council of
10 the West Virginia prosecuting attorneys institute which
11 shall consist of five prosecuting attorneys elected by the
12 membership of the West Virginia prosecuting attorneys
13 institute at its annual meeting and two persons appointed
14 annually by the county commissioner's association of West
15 Virginia. The executive council shall elect one member of
16 the council to serve as chairman of the institute for a term
17 of one year without compensation. The executive council
18 shall serve as the regular executive body of the institute.

19 (c) There is hereby created the position of executive
20 director of the West Virginia prosecuting attorneys
21 institute to be employed by the executive council of the
22 institute. The executive director of the West Virginia
23 prosecuting attorneys institute shall serve at the will and
24 pleasure of the executive council of the institute at an
25 annual salary of fifty thousand dollars per year. The
26 executive director shall be licensed to practice law in the
27 state of West Virginia and shall devote full time to his or
28 her official duties and may not engage in the private
29 practice of law.

30 (d) The duties and responsibilities of the institute, as
31 implemented by and through its executive council and its
32 executive director, shall include the following:

33 (1) To provide for special prosecuting attorneys to
34 pursue a criminal matter in any county upon the request
35 of a circuit court judge of that county and upon the
36 approval of the executive council;

37 (2) To establish and to implement general and
38 specialized training programs for prosecuting attorneys
39 and their professional staffs;

40 (3) To provide materials for prosecuting attorneys and
41 their professional staffs, including legal research, technical
42 assistance and technical and professional publications;

43 (4) To compile and disseminate information on behalf
44 of prosecuting attorneys and their professional staffs on

45 current developments and changes in the law and the
46 administration of criminal justice;

47 (5) To establish and to implement uniform reporting
48 procedures for prosecuting attorneys and their
49 professional staffs in order to maintain and to provide
50 accurate and timely data and information relative to
51 criminal prosecutorial matters;

52 (6) To accept and expend funds, grants and gifts and
53 accept services from any public or private source;

54 (7) To enter into agreements and contracts with public
55 or private agencies or educational institutions;

56 (8) To identify experts and other resources for use by
57 prosecutors in criminal matters;

58 (9) To make recommendations to the Legislature or
59 the supreme court of appeals of the state of West Virginia
60 on measures required, or procedural rules to be
61 promulgated, to make uniform the processing of juvenile
62 cases in the fifty-five counties of the state; and

63 (10) To develop a written handbook for prosecutors
64 and their assistants to use which delineates relevant
65 information concerning the elements of various crimes in
66 West Virginia and other information as the institute deems
67 appropriate.

68 (e) Each prosecuting attorney is subject to
69 appointment by the institute to serve as a special
70 prosecuting attorney in any county where the prosecutor
71 for that county or his or her office has been disqualified
72 from participating in a particular criminal case. The
73 circuit judge of any county of this state, who disqualifies
74 the prosecutor or his or her office from participating in a
75 particular criminal case in that county, shall seek the
76 appointment by the institute of a special prosecuting
77 attorney to substitute for the disqualified prosecutor. The
78 executive director of the institute shall, upon written
79 request to the institute by any circuit judge as a result of
80 disqualification of the prosecutor or for other good cause
81 shown, and upon approval of the executive council,
82 appoint a prosecuting attorney to serve as a special

83 prosecuting attorney. The special prosecuting attorney
 84 appointed shall serve without any further compensation
 85 other than that paid to him or her by his or her county,
 86 except that he or she is entitled to be reimbursed for his or
 87 her legitimate expenses associated with travel, mileage and
 88 room and board from the county to which he or she is
 89 appointed as a prosecutor. The county commission in
 90 which county he or she is special prosecutor is responsible
 91 for all expenses associated with the prosecution of the
 92 criminal action.

93 (f) The executive director of the institute shall
 94 maintain an appointment list that shall include the names
 95 of all fifty-five prosecuting attorneys and that shall also
 96 include the names of any assistant prosecuting attorney
 97 who wishes to serve as a special prosecuting attorney upon
 98 the same terms and conditions as set forth in this section.
 99 The executive director of the institute, with the approval of
 100 the executive council, shall appoint special prosecuting
 101 attorneys from the appointment list for any particular
 102 matter giving due consideration to the proximity of the
 103 proposed special prosecuting attorney's home county to
 104 the county requesting a special prosecutor and giving due
 105 consideration to the expertise of the special prosecuting
 106 attorney.

107 (g) Commencing on the first day of July, one
 108 thousand nine hundred ninety-six, each county
 109 commission shall pay, on a monthly basis, a special
 110 prosecution premium to the treasurer of the state for the
 111 funding of the West Virginia prosecuting attorneys
 112 institute. The monthly premiums shall be paid according
 113 to the following schedule:

114

MONTHLY PREMIUMS

115

Assessed Valuation of Property
 of All Classes in the County

116

117	Category	Minimum	Maximum	Premium
118	A	\$1,500,000,000	Unlimited	\$400
119	B	\$1,000,000,000	\$1,499,999,000	\$375

120	C	\$ 800,000,000	\$ 999,999,000	\$350
121	D	\$ 700,000,000	\$ 799,999,000	\$325
122	E	\$ 600,000,000	\$ 699,999,000	\$300
123	F	\$ 500,000,000	\$ 599,999,000	\$250
124	G	\$ 400,000,000	\$ 499,999,000	\$200
125	H	\$ 300,000,000	\$ 399,999,000	\$150
126	I	\$ 200,000,000	\$ 299,999,000	\$100
127	J	. -0-	\$ 199,999,000	\$ 50

128 Upon receipt of a premium, the treasurer shall deposit
 129 the premium into a special revenue fund to be known as
 130 the "West Virginia Prosecuting Attorneys Institute Fund".
 131 All costs of operating the West Virginia prosecuting
 132 attorneys institute shall be paid from the West Virginia
 133 prosecuting attorneys institute fund upon proper
 134 authorization by the executive council or by the executive
 135 director of the institute and subject to annual
 136 appropriation by the Legislature of the amounts contained
 137 within the fund.

138 (h) The West Virginia prosecuting attorneys institute
 139 shall continue to exist until the first day of July, two
 140 thousand one, unless continued by an act of the
 141 Legislature. The institute shall annually by the first day of
 142 the regular legislative session provide the joint committee
 143 on government and finance with a report setting forth the
 144 activities of the institute and suggestions for legislative
 145 action.

146 (i) Neither the institute nor its employees acting in
 147 their employment capacity shall engage in activities before
 148 governmental bodies which advocate positions on issues
 149 other than those issues consistent with the duties of the
 150 institute set forth in subsection (d) of this section.

CHAPTER 108

(S. B. 398—By Senators Wooton, Ball, Bowman, Dittmar, Fanning,
Hunter, Kessler, Oliverio, Ross, Schoonover,
Snyder, Buckalew and Deem)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and four, article six-a, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the commitment of certain persons found incompetent to stand trial; determination of mental competency to stand trial; hearings procedure; findings required; jurisdiction of court; release; and disclosure from court jurisdiction.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6A. COMMITMENT OF PERSONS CHARGED OR CONVICTED OF A CRIME.

§27-6A-2. Hearing on competency to stand trial; findings.

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

§27-6A-2. Hearing on competency to stand trial; findings.

1 (a) At a hearing to determine a defendant's
2 competency to stand trial, the defendant shall be present
3 and he or she shall have the right to be represented by
4 counsel and introduce evidence and cross-examine
5 witnesses. The defendant shall be afforded timely and
6 adequate notice of the issues at the hearing and shall have
7 access to a summary of the medical evidence to be
8 presented by the state. The defendant shall have the right
9 to an examination by an independent expert of his or her
10 choice and testimony from such expert as a medical

11 witness on his or her behalf. All rights generally afforded
12 a defendant in criminal proceedings shall be afforded to a
13 defendant in such competency proceedings except trial by
14 jury.

15 (b) At the termination of such hearing the court of
16 record shall make a finding of fact upon a preponderance
17 of the evidence as to the defendant's competency to stand
18 trial based on whether or not the defendant is capable of
19 participating substantially in his or her defense and
20 understanding the nature and consequences of a criminal
21 trial. If the defendant is found competent, the court of
22 record shall forthwith proceed with the criminal
23 proceedings. If the defendant is found incompetent to
24 stand trial, the court of record shall upon the evidence
25 make further findings as to whether or not there is a
26 substantial likelihood that the defendant will attain
27 competency within the next ensuing six months, and if the
28 court of record so finds, the defendant may be committed
29 to a mental health facility for an improvement period not
30 to exceed six months. If requested by the chief medical
31 officer of the mental health facility on the grounds that
32 additional time is necessary for the defendant to attain
33 competency, the court of record may, prior to the
34 termination of the six-month period, extend the period for
35 an additional three months. Within ten days of the
36 termination of such period, the court of record shall
37 ascertain by hearing in accordance with subsection (a) of
38 this section whether or not the defendant has attained
39 competency to stand trial.

40 (c) If the defendant has been indicted or charged with
41 a misdemeanor or felony in which the misdemeanor or
42 felony does not involve an act of violence against a person
43 and is found to be incompetent to stand trial with no
44 substantial likelihood of obtaining competency, or if after
45 such improvement period the defendant is found to be
46 incompetent to stand trial, the criminal charges shall be
47 dismissed. The dismissal order may be stayed for ten days

48 to allow civil commitment proceedings to be instituted
49 pursuant to article five of this chapter.

50 (d) If the defendant has been indicted or charged with
51 a misdemeanor or felony in which the misdemeanor or
52 felony does involve an act of violence against a person
53 and upon hearing: (1) The defendant is found initially to
54 be incompetent to stand trial with no substantial likelihood
55 of obtaining competency and is found not to be a danger
56 to self or others; or (2) after an improvement period
57 pursuant to subsection (b) of this section, the defendant is
58 found to be incompetent to stand trial and is found not to
59 be a danger to self or others, then the court shall maintain
60 jurisdiction over the defendant.

61 (e) If the defendant has been indicted or charged with
62 a misdemeanor or felony in which the misdemeanor or
63 felony does involve an act of violence against a person
64 and, upon hearing: (1) The defendant is found initially to
65 be incompetent to stand trial with no substantial likelihood
66 of obtaining competency and is found to be a danger to
67 self or others; or (2) after an improvement period
68 pursuant to subsection (b) of this section, the defendant is
69 found to be incompetent to stand trial and is found to be a
70 danger to self or others, then the court shall maintain
71 jurisdiction over the defendant and shall commit the
72 defendant to a mental health facility under the authority
73 of the department of health and human resources. The
74 defendant's supervising physician or psychologist shall
75 cause the defendant's competency to stand trial and
76 dangerousness to self or others to be reviewed every six
77 months during the period of his or her inpatient
78 hospitalization.

79 (f) If the defendant has been indicted or charged with
80 a misdemeanor or felony in which the misdemeanor or
81 felony does involve an act of violence against a person,
82 upon notice from the medical director of the mental
83 health facility that the defendant no longer constitutes a
84 danger to self or others along with an alternative

85 disposition plan which sets forth in detail a treatment plan
86 for the defendant designed to allow his or her release
87 without endangering the public, the court shall promptly
88 conduct a hearing. The clerk shall give notice of the
89 hearing to the prosecuting attorney and the victim or next
90 of kin of the victim of the offense for which the person
91 was committed. The burden shall be on the victim or next
92 of kin of the victim to keep the court apprised of that
93 person's current mailing address.

94 After hearing, the court may order the release from
95 hospitalization of a defendant found incompetent to stand
96 trial due to mental illness, addiction or retardation prior to
97 the expiration of the court's jurisdiction only when the
98 court finds that the defendant is no longer a danger to self
99 or others: *Provided*, That a defendant may be released
100 from inpatient hospitalization by the court when the
101 defendant's mental illness is in remission solely as a result
102 of medication or hospitalization or other mode of
103 treatment only if it can be determined by clear and
104 convincing evidence that with continued outpatient
105 therapy or other mode of outpatient treatment, the
106 defendant's mental illness does not make him or her a
107 danger to self or others. When a defendant's mental
108 illness is in remission solely as a result of medication or
109 hospitalization or other mode of treatment, the court in its
110 discretion, may make the continuance of the medication
111 or other mode of treatment a condition of the defendant's
112 release. Upon notice that a defendant who is released on
113 the condition that he or she continues medication or other
114 mode of treatment does not continue his medication or
115 other mode of treatment, the prosecuting attorney shall, by
116 motion, cause the court to reconsider the defendant's
117 release. Upon a showing that defendant is in violation of
118 the conditions of his or her release, the court shall
119 recommit the defendant to the mental health facility.

120 (g) The prosecuting attorney shall, by motion, cause
121 the competency to stand trial of a defendant subject to the

122 court's jurisdiction pursuant to subsection (d) of this
123 section or released pursuant to subsection (f) of this
124 section to be determined at least every six months while
125 the defendant remains under the jurisdiction of the court.
126 A defendant placed under the jurisdiction of the court
127 pursuant to the provisions of subsections (d) or (e) of this
128 section shall remain under the court's jurisdiction until the
129 expiration of the maximum possible sentence the
130 defendant could have received if convicted unless the
131 defendant regains competency and the criminal charges
132 reach resolution or the court, upon motion of the
133 prosecuting attorney, dismisses the indictment or charge.

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

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

13 (b) Except as provided in subsection (g), section two
14 of this article, the court may discharge a mentally ill or
15 addicted defendant from the court's jurisdiction prior to
16 the expiration of the period specified in this section only
17 when the court finds that the person is no longer mentally
18 ill or addicted and that the person is no longer a danger to
19 self or others: *Provided*, That a defendant may not be
20 released from the court's jurisdiction when the
21 defendant's mental illness is in remission solely as a result
22 of medication or hospitalization or other mode of
23 treatment only if it can be determined by clear and
24 convincing evidence that with continued outpatient

25 therapy or other mode of outpatient treatment, the
26 defendant's mental illness does not make him or her a
27 danger to self or others. When a defendant's mental
28 illness is in remission solely as a result of medication or
29 hospitalization or other mode of treatment, the court in its
30 discretion, may make the continuance of the medication
31 or other mode of treatment a condition of the defendant's
32 release. Upon notice that a defendant who is released on
33 the condition that he or she continues medication or other
34 mode of treatment does not continue his medication or
35 other mode of treatment, the prosecuting attorney shall, by
36 motion, cause the court to reconsider the defendant's
37 release. Upon a showing that defendant is in violation of
38 the conditions of his or her release, the court shall reinstate
39 its jurisdiction over the defendant. The court may
40 discharge a mentally retarded defendant from the court's
41 jurisdiction prior to the expiration of the period specified
42 in this section only when the court finds that the person is
43 no longer a danger to self or others.

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

51 (d) The court shall promptly conduct a hearing after
52 receipt of the physician's or psychologist's notification
53 referred to in subsection (a) of this section. The clerk
54 shall notify the prosecuting attorney and the victim or
55 next of kin of the victim of the offense for which the
56 defendant was committed of the hearing. The burden
57 shall be on the victim or next of kin of the victim to keep
58 the court apprised of the defendant's current mailing
59 address.

CHAPTER 109

(S. B. 193—By Senators Bowman, Dittmar, Kessler,
Snyder, White, Deem and Kimble)

[Passed February 26, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fifteen, relating to creating a commission to study the implementation of alternative dispute resolution programs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. ALTERNATIVE DISPUTE RESOLUTION COMMISSION.

§55-15-1. Legislative findings and purpose.

§55-15-2. Alternative dispute resolution commission created; composition; appointment of members; chairman.

§55-15-3. Compensation and expenses of commission members; expenses of commission.

§55-15-4. Powers and duties of the commission.

§55-15-5. Meetings of the commission; quorum.

§55-15-6. Interpretation of article; termination of commission.

§55-15-1. Legislative findings and purpose.

1 (a) The Legislature hereby finds and declares:

2 (1) That due to growing concern with limits on access
3 to justice arising from court case backlog, delays and
4 costs, that it has been beneficial to implement an
5 alternative dispute resolution program in various circuit
6 courts of our state and in certain administrative
7 proceedings;

8 (2) That since implementation, these procedures have
9 proven to be a highly-effective method for resolving
10 disputes without resorting to adjudicatory measures,
11 thereby easing the burden of cases pending in the judicial
12 system;

13 (3) That alternative dispute resolution is continually
14 changing the perceptions regarding the appropriateness
15 and effectiveness of court procedures, and that the
16 continuation and growth of these procedures is important
17 in enhancing the quality of life for the citizens of this
18 state;

19 (4) That the effectiveness of the alternative dispute
20 resolution programs implemented in the state and in other
21 states has increased but more definition and synthesis is
22 necessary to better serve the citizens; and

23 (5) That the purpose of this article is to create a
24 commission, as hereinafter constituted and appointed, to
25 study various facets of alternative dispute resolution
26 including, but not limited to, defining the objectives and
27 goals of the programs, the types of disputes to be resolved,
28 the promulgation of a system to ensure appropriate
29 uniformity of alternative dispute resolution programs
30 statewide, certification or licensure of persons engaged in
31 providing services in alternative methods of resolving
32 disputes and the structuring and funding of such
33 programs.

34 (b) The Legislature further declares that it recognizes
35 that the provisions of section 1, article V of the
36 constitution of West Virginia prohibit any person from
37 exercising the powers of more than one branch or
38 department of government at the same time; however, it is
39 the express purpose, intent and finding of the Legislature
40 that those members of the commission who are members
41 of the Legislature are acting as such while serving on the
42 commission and in the furtherance of the Legislature's
43 inherent right and power to investigate and inquire into
44 and report on those matters which are legitimately within
45 its powers, and that since the commission's role and duties

46 are investigative and reportive in nature, the service upon
47 the commission by its legislative members is not violative
48 of nor inimical to the constitutional mandate with respect
49 to the separation of governmental powers.

**§55-15-2. Alternative dispute resolution commission created;
composition; appointment of members; chairman.**

1 The West Virginia alternative dispute resolution
2 commission is hereby created. The commission shall
3 consist of eleven members, who are designated or to be
4 appointed as follows:

5 (a) The chief justice of the supreme court of appeals
6 of West Virginia, or his or her designee, shall serve as the
7 chair of the commission, and shall appoint two additional
8 members, one of whom is currently serving as a circuit
9 court judge;

10 (b) The speaker of the House of Delegates and the
11 president of the Senate, or their respective designee, shall
12 be members, and the speaker of the House of Delegates
13 and the president of the Senate shall appoint one
14 additional member;

15 (c) Two members shall be appointed by the governor
16 who shall be representative private citizens;

17 (d) The dean of the West Virginia university college of
18 law shall appoint one faculty member to the commission
19 who possesses knowledge and experience unique in
20 alternative dispute resolution processes; and

21 (e) The executive director of the West Virginia state
22 bar.

**§55-15-3. Compensation and expenses of commission
members; expenses of commission.**

1 (a) Members of the commission shall be reimbursed
2 for their reasonable and necessary travel and other
3 expenses actually incurred in connection with the
4 performance of their duties as members of the

5 commission including, but not limited to, their attendance
6 at meetings thereof.

7 (b) The expenses of the members of the commission
8 shall be paid from legislative appropriations.

9 (c) Members of the commission shall receive no other
10 compensation for their services on or with the commission
11 other than the reimbursement of expenses as provided in
12 this section.

13 (d) The president of the Senate and the speaker of the
14 House of Delegates shall designate a member of the
15 legislative staff to serve as counsel and reporter to the
16 commission.

§55-15-4. Powers and duties of the commission.

1 The commission shall have the following powers,
2 duties and responsibilities:

3 (a) To conduct a thorough and comprehensive study
4 into the various ways and means of financing and
5 structuring the alternative dispute resolution programs,
6 define the goals and objectives of alternative methods of
7 resolving disputes in the state, determine types of disputes
8 to be included within any alternative dispute resolution
9 programs, evaluate the advantages of establishing
10 certification or licensure of persons engaged in providing
11 services in alternative methods of resolving disputes and
12 propose a system to ensure appropriate uniformity of
13 alternative dispute resolution programs statewide;

14 (b) To request such information and data from any
15 state officer or agency or from any political subdivision of
16 the state as the commission may deem necessary to assist it
17 in the performance of its duties and it shall be the duty of
18 all such officers and agencies to cooperate with and assist
19 the commission in and about the completion of its studies
20 and deliberations;

21 (c) To confer with representative citizens, the judiciary,
22 the legal profession and other groups of the private and

23 business sectors with respect to all matters deemed relevant
24 to the duties of the commission;

25 (d) To notify the chair of the commission on the
26 future of the judiciary so that the commission established
27 herein may share information with such commission on
28 the future of the judiciary;

29 (e) To perform every other act necessary or desirable
30 to carry out any of the other powers, duties or
31 responsibilities enumerated in this article; and

32 (f) To file its final report with respect to its findings
33 and conclusions, together with any legislation it deems
34 appropriate to recommend and as it deems necessary to
35 carry its findings and conclusions into effect with the
36 president of the Senate and the speaker of the House of
37 Delegates not later than the thirtieth day of November, one
38 thousand nine hundred ninety-eight.

§55-15-5. Meetings of the commission; quorum.

1 The commission shall meet at such times and places as
2 its chair shall deem to be proper and expedient. Such
3 meetings shall be coordinated with and be in conjunction
4 with the monthly meeting of the joint committee on
5 government and finance insofar as the same may be
6 practicable. Nothing herein shall preclude the commission
7 from meeting with such frequency or at such times and
8 places as it may determine. The presence of no less than
9 six members of the commission shall constitute a quorum
10 for the purposes of conducting any business.

§55-15-6. Interpretation of article; termination of commission.

1 (a) The provisions of this article shall be liberally
2 construed in order to permit the commission sufficient
3 latitude for the orderly completion of its studies and
4 duties.

5 (b) The commission shall cease its existence on the
6 thirty-first day of December, one thousand nine hundred
7 ninety-eight.

CHAPTER 110

(Com. Sub. for H. B. 4060—By Delegates Staton, Trump, Underwood, Amores, Buchanan, Hunt and Rowe)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal articles one and two, chapter fifty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections eight, nine, ten, eleven, twelve, thirteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine and thirty-one, article five of said chapter; to amend and reenact section twenty-seven, article seven, chapter twenty-one-a of said code; to amend and reenact section four, article five, chapter twenty-nine-a of said code; and to amend and reenact sections one, two, three, four, five, six, seven, fourteen and thirty, article five, chapter fifty-eight of said code, all relating generally to appellate procedure; repealing provisions of law relating to appellate relief in the supreme court of appeals which are outdated, archaic, or not in conformity with rules of appellate procedure promulgated by the supreme court of appeals; providing for appeal from circuit court in an unemployment compensation case to be made in accordance with the provisions of the state administrative procedures act; prescribing when an appeal will lie to the supreme court of appeals; providing for the certification of questions of law to the supreme court of appeals; providing for a petition for appeal to be filed in accordance with rules of appellate procedure promulgated by the supreme court of appeals; prescribing the time for filing a petition for appeal to the supreme court of appeals; providing for the suspension of the execution of a judgment at the instance of a person desiring to present a petition for appeal; providing that a petition for appeal shall be filed and processed filed in accordance with rules of appellate procedure promulgated by the supreme court of appeals; providing that the contents of the transcript of record shall be governed by rules of appellate procedure promulgated by

the supreme court of appeals; providing for an appeal to be given before an appeal takes effect; and providing for an appeal by the state of a judgment quashing an indictment.

Be it enacted by the Legislature of West Virginia:

That articles one and two, chapter fifty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections eight, nine, ten, eleven, twelve, thirteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine and thirty-one, article five of said chapter be repealed; that section twenty-seven, article seven, chapter twenty-one-a of said code be amended and reenacted; that section four, article five, chapter twenty-nine-a of said code be amended and reenacted; and that sections one, two, three, four, five, six, seven, fourteen and thirty, article five, chapter fifty-eight of said code be amended and reenacted, all to read as follows:

Chapter

21A. Unemployment Compensation.

29A. State Administrative Procedures Act.

58. Appeal and Error.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 7. CLAIM PROCEDURE.

§21A-7-27. Appeal to supreme court of appeals.

1 The judgment of the circuit court shall be final unless
2 reversed, vacated or modified on appeal to the supreme
3 court of appeals in accordance with the provisions of
4 section one, article six, chapter twenty-nine-a of this code.

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES ACT.

ARTICLE 5. CONTESTED CASES.

§29A-5-4. Judicial review of contested cases.

1 (a) Any party adversely affected by a final order or
2 decision in a contested case is entitled to judicial review
3 thereof under this chapter, but nothing in this chapter shall

4 be deemed to prevent other means of review, redress or
5 relief provided by law.

6 (b) Proceedings for review shall be instituted by filing
7 a petition, at the election of the petitioner, in either the
8 circuit court of Kanawha County, West Virginia or in the
9 circuit court of the county in which the petitioner or any
10 one of the petitioners resides or does business, or with the
11 judge thereof in vacation, within thirty days after the date
12 upon which such party received notice of the final order
13 or decision of the agency. A copy of the petition shall be
14 served upon the agency and all other parties of record by
15 registered or certified mail. The petition shall state
16 whether the appeal is taken on questions of law or
17 questions of fact, or both. No appeal bond shall be
18 required to effect any such appeal.

19 (c) The filing of the petition shall not stay
20 enforcement of the agency order or decision or act as a
21 supersedeas thereto, but the agency may stay such
22 enforcement, and the appellant, at any time after the filing
23 of his petition, may apply to such circuit court for a stay
24 of or supersedeas to such final order or decision. Pending
25 the appeal, the court may grant a stay or supersedeas upon
26 such terms as it deems proper.

27 (d) Within fifteen days after receipt of a copy of the
28 petition by the agency, or within such further time as the
29 court may allow, the agency shall transmit to such circuit
30 court the original or a certified copy of the entire record
31 of the proceeding under review, including a transcript of
32 all testimony and all papers, motions, documents, evidence
33 and records as were before the agency, all agency staff
34 memoranda submitted in connection with the case, and a
35 statement of matters officially noted; but, by stipulation of
36 all parties to the review proceeding, the record may be
37 shortened. The expense of preparing such record shall be
38 taxed as a part of the costs of the appeal. The appellant
39 shall provide security for costs satisfactory to the court.
40 Any party unreasonably refusing to stipulate to limit the
41 record may be taxed by the court for the additional costs
42 involved. Upon demand by any party to the appeal, the
43 agency shall furnish, at the cost of the party requesting

44 same, a copy of such record. In the event the complete
45 record is not filed with the court within the time provided
46 for in this section, the appellant may apply to the court to
47 have the case docketed, and the court shall order such
48 record filed.

49 (e) Appeals taken on questions of law, fact or both,
50 shall be heard upon assignments of error filed in the cause
51 or set out in the briefs of the appellant. Errors not argued
52 by brief may be disregarded, but the court may consider
53 and decide errors which are not assigned or argued. The
54 court or judge shall fix a date and time for the hearing on
55 the petition, but such hearing, unless by agreement of the
56 parties, shall not be held sooner than ten days after the
57 filing of the petition, and notice of such date and time
58 shall be forthwith given to the agency.

59 (f) The review shall be conducted by the court without
60 a jury and shall be upon the record made before the
61 agency, except that in cases of alleged irregularities in
62 procedure before the agency, not shown in the record,
63 testimony thereon may be taken before the court. The
64 court may hear oral arguments and require written briefs.

65 (g) The court may affirm the order or decision of the
66 agency or remand the case for further proceedings. It
67 shall reverse, vacate or modify the order or decision of the
68 agency if the substantial rights of the petitioner or
69 petitioners have been prejudiced because the
70 administrative findings, inferences, conclusions, decision
71 or order are:

72 (1) In violation of constitutional or statutory
73 provisions; or

74 (2) In excess of the statutory authority or jurisdiction
75 of the agency; or

76 (3) Made upon unlawful procedures; or

77 (4) Affected by other error of law; or

78 (5) Clearly wrong in view of the reliable, probative and
79 substantial evidence on the whole record; or

80 (6) Arbitrary or capricious or characterized by abuse
81 of discretion or clearly unwarranted exercise of discretion.

82 (h) The judgment of the circuit court shall be final
83 unless reversed, vacated or modified on appeal to the
84 supreme court of appeals of this state in accordance with
85 the provisions of section one, article six of this chapter.

CHAPTER 58. APPEAL AND ERROR.

ARTICLE 5. APPELLATE RELIEF IN SUPREME COURT OF APPEALS.

§58-5-1. When appeal lies.

§58-5-2. Certification to supreme court of appeals.

§58-5-3. Presentation of petition.

§58-5-4. Time for appeal.

§58-5-5. Stay of proceedings pending appeal; supersedeas bond; post-conviction bail.

§58-5-6. Filing of petition.

§58-5-7. Contents of transcript of record.

§58-5-14. Appeal bond generally.

§58-5-30. Appeal by state of judgment quashing indictment.

§58-5-1. When appeal lies.

1 A party to a civil action may appeal to the supreme
2 court of appeals from a final judgment of any circuit
3 court or from an order of any circuit court constituting a
4 final judgment as to one or more but fewer than all claims
5 or parties upon an express determination by the circuit
6 court that there is no just reason for delay and upon an
7 express direction for the entry of judgment as to such
8 claims or parties. The defendant in a criminal action may
9 appeal to the supreme court of appeals from a final
10 judgment of any circuit court in which there has been a
11 conviction or which affirms a conviction obtained in an
12 inferior court.

§58-5-2. Certification to supreme court of appeals.

1 Any question of law, including, but not limited to,
2 questions arising upon the sufficiency of a summons or
3 return of service, upon a challenge of the sufficiency of a
4 pleading or the venue of the circuit court, upon the

5 sufficiency of a motion for summary judgment where
6 such motion is denied, or a motion for judgment on the
7 pleadings, upon the jurisdiction of the circuit court of a
8 person or subject matter, or upon failure to join an
9 indispensable party, may, in the discretion of the circuit
10 court in which it arises, be certified by it to the supreme
11 court of appeals for its decision, and further proceedings
12 in the case stayed until such question shall have been
13 decided and the decision thereof certified back. The
14 procedure for processing questions certified pursuant to
15 this section shall be governed by rules of appellate
16 procedure promulgated by the supreme court of appeals.

§58-5-3. Presentation of petition.

1 A party desiring to appeal, seeking the original
2 jurisdiction of the supreme court of appeals, or seeking an
3 opinion of the court on certified questions may file a
4 petition in accordance with rules of appellate procedure
5 promulgated by the supreme court of appeals.

§58-5-4. Time for appeal.

1 No petition shall be presented for an appeal from any
2 judgment rendered more than four months before such
3 petition is filed with the clerk of the court where the
4 judgment being appealed was entered: *Provided*, That the
5 judge of the circuit court may, prior to the expiration of
6 such period of four months, by order entered of record
7 extend and reextend such period for such additional
8 period or periods, not to exceed a total extension of two
9 months, for good cause shown, if the request for
10 preparation of the transcript was made by the party
11 seeking such appellate review within thirty days of the
12 entry of such judgment, decree or order.

§58-5-5. Stay of proceedings pending appeal; supersedeas bond; post-conviction bail.

1 A petition for stay of proceedings pending appeal,
2 supersedeas bond or post-conviction bail relief shall be
3 filed and processed in accordance with rules of appellate
4 procedure promulgated by the supreme court of appeals.

§58-5-6. Filing of petition.

1 Petitions for appeal shall be filed and processed in
2 accordance with rules of appellate procedure promulgated
3 by the supreme court of appeals.

§58-5-7. Contents of transcript of record.

1 The contents of the transcript of record shall be
2 governed in accordance with rules of appellate procedure
3 promulgated by the supreme court of appeals.

§58-5-14. Appeal bond generally.

1 When required by the court, an appeal shall not take
2 effect until bond is given by the appellants or petitioners,
3 or one of them, or some other person, in a penalty to be
4 fixed by the court or judge by or in which the appeal is
5 allowed or entered with condition: If a supersedeas be
6 awarded, to abide by and perform the judgment and to
7 pay to the opposite party, and to any person injured all
8 such costs and damages as they, or either of them, may
9 incur or sustain by reason of said appeal, in case such
10 judgment, or such part, be affirmed, or the appeal be
11 dismissed, and also, to pay all damages, costs and fees,
12 which may be awarded against or incurred by the
13 appellant or petitioners; and if it is an appeal from a
14 judgment dissolving an injunction, or dismissing a bill of
15 injunction, with a further condition, to indemnify and save
16 harmless the surety in the injunction bond against loss or
17 damage in consequence of his suretyship; and with
18 condition when no supersedeas is awarded to pay such
19 specific damages, and such costs and fees as may be
20 awarded or incurred: *Provided*, That whenever an appeal
21 is awarded in any action or suit wherein a judgment for
22 the payment of money has been entered against an
23 insured in an action which is defended by an insurance
24 corporation, or other insurer, on behalf of the insured
25 under a policy of insurance, the limit of liability of which
26 is less than the amount of said judgment, execution on the
27 judgment to the extent of the policy coverage shall be
28 stayed until final determination of such appeal, and no
29 execution shall be issued, or action brought, maintained or
30 continued against such insured, insurance corporation, or
31 other insurer, for the amount of such judgment so stayed,
32 by either the injured party, the insured, or the legal

33 representative, heir or assigns of any of them, during the
34 pendency of such proceeding, provided such insurance
35 corporation, or other insurer, shall:

36 (1) File with the clerk of the court in which the
37 judgment was entered, a sworn statement of one of its
38 officers, describing the nature of the policy and the
39 amount of coverage thereof;

40 (2) Give or cause to be given by the judgment debtor
41 or some other person for him a bond in a penalty to be
42 fixed by the court or judge by or in which the appeal is
43 allowed or entered, not to exceed the amount of such
44 insurance coverage set out in the sworn statement above
45 required, with condition to pay the amount of such
46 coverage upon said judgment if the judgment or such part
47 is affirmed or the appeal is dismissed, plus interest on said
48 sum and cost;

49 (3) Serve a copy of such sworn statement and bond
50 upon the judgment creditor or his attorney;

51 (4) Deliver or mail to the insured at the latest address
52 of the insured appealing upon the records of such
53 insurance corporation, or other insurer, written notice that
54 execution on such judgment to the extent that it is not
55 covered by such insurance is not stayed in respect to the
56 insured: *Provided*, That the filing of a bond by the
57 insured or someone for him, conditioned upon the
58 payment of the balance of the judgment and interest not
59 stayed by the insured as aforesaid if the judgment is
60 affirmed or the appeal is dismissed, shall stay execution on
61 the balance of said judgment not covered by such
62 insurance: *Provided, however*, That the filing of such
63 statement and bond hereunder by an insurance
64 corporation or other insurer shall not thereby make such
65 insurance corporation or other insurer a party to such
66 action, either in the trial court or in the appellate court.

§58-5-30. Appeal by state of judgment quashing indictment.

1 Whenever in any criminal case an indictment is held
2 bad or insufficient by the judgment of a circuit court, the
3 state, on the application of the attorney general or the

4 prosecuting attorney, may appeal such judgment to the
5 supreme court of appeals. No such appeal shall be allowed
6 unless the state presents its petition therefor to the supreme
7 court of appeals within thirty days after the entry of such
8 judgment. No such judgment shall finally discharge, or
9 have the effect of finally discharging, the accused from
10 further proceedings on the indictment unless the state fails,
11 within such period of thirty days, to file a petition for
12 appeal with the clerk of the court in which judgment was
13 entered; but after the entry of such judgment or order the
14 accused shall not be kept in custody or required to give
15 bail pending the hearing and determination of the case by
16 the supreme court of appeals.

17 Except as herein otherwise provided, all the provisions
18 of the other sections of this article shall, so far as
19 appropriate, be applicable to a petition for an appeal
20 under this section, and to all subsequent proceedings
21 thereon in the supreme court of appeals in case such
22 appeal is granted.

CHAPTER 111

(Com. Sub. for H. B. 4098—By Delegates Leach, Pino and Clements)

[Passed March 11, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten-b, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to crimes against the person; assaults and batteries on enumerated persons; extending protections of section to humane officers, emergency medical personnel, firefighters, state fire marshal or employee, state and county correctional employees and special police; and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-10b. Malicious assault; unlawful assault; battery and recidivism of battery; assault on police officers, conservation officers, humane officers, emergency medical service personnel, firefighters, fire marshal and county or state correctional employees; penalties.

1 (a) *Malicious assault.* — Any person who maliciously
2 shoots, stabs, cuts or wounds or by any means causes
3 bodily injury with intent to maim, disfigure, disable or kill
4 a police officer, conservation officer, humane officer,
5 emergency medical service personnel, firefighter, state fire
6 marshal or employee, county correctional employee or
7 state correctional employee acting in his or her official
8 capacity and the person committing the malicious assault
9 knows or has reason to know that the victim is a police
10 officer, conservation officer, humane officer, emergency
11 medical service personnel, firefighter, state fire marshal or
12 employee, county correctional employee, or state
13 correctional employee acting in his or her official
14 capacity, is guilty of a felony and, upon conviction, shall
15 be confined in a correctional facility for not less than
16 three nor more than fifteen years.

17 (b) *Unlawful assault.* — Any person who unlawfully
18 but not maliciously shoots, stabs, cuts or wounds or by any
19 means causes a police officer, conservation officer,
20 humane officer, emergency medical service personnel,
21 firefighter, state fire marshal or employee, county
22 correctional employee or state correctional employee
23 acting in his or her official capacity, bodily injury with
24 intent to maim, disfigure, disable or kill said person and
25 the person committing the unlawful assault knows or has
26 reason to know that the victim is a police officer,
27 conservation officer, humane officer, emergency medical
28 service personnel, firefighter, state fire marshal or
29 employee, county correctional employee or state
30 correctional employee acting in his or her official
31 capacity, is guilty of a felony and, upon conviction, shall
32 be confined in a correctional facility for not less than two
33 years nor more than five years.

34 (c) *Battery.* — Any person who unlawfully, knowingly
35 and intentionally makes physical contact of an insulting or
36 provoking nature with a police officer, conservation
37 officer, humane officer, emergency medical service

38 personnel, firefighter, state fire marshal or employee,
39 county correctional employee or state correctional
40 employee acting in his or her official capacity, or
41 unlawfully and intentionally causes physical harm to a
42 police officer, conservation officer, humane officer,
43 emergency medical service personnel, firefighter, state fire
44 marshal or employee, county correctional employee, or
45 state correctional employee acting in such capacity, is
46 guilty of a misdemeanor and, upon conviction thereof,
47 shall be confined in the county or regional jail for not less
48 than one month nor more than twelve months, fined the
49 sum of five hundred dollars, or both. If any person
50 commits a second such offense, he or she is guilty of a
51 felony and, upon conviction thereof, shall be confined in a
52 correctional facility for not less than one year nor more
53 than three years or fined the sum of one thousand dollars
54 or both fined and confined. Any person who commits a
55 third violation of this subsection is guilty of a felony and,
56 upon conviction, shall be confined in a correctional
57 facility not less than two years nor more than five years or
58 fined not more than two thousand dollars or both fined
59 and confined.

60 (d) *Assault.* — Any person who unlawfully attempts to
61 commit a violent injury to the person of a police officer,
62 conservation officer, humane officer, emergency medical
63 service personnel, firefighter, state fire marshal or
64 employee, county correctional employee, or state
65 correctional employee unlawfully commits an act which
66 places a police officer, conservation officer, humane
67 officer, emergency medical service personnel, firefighter,
68 county correctional employee, or state correctional
69 employee acting in his or her official capacity in
70 reasonable apprehension of immediately receiving a
71 violent injury, is guilty of a misdemeanor and, upon
72 conviction, shall be confined in the county or regional jail
73 for not less than twenty-four hours nor more than six
74 months, fined not more than two hundred dollars, or both.

75 (e) For purposes of this section, “police officer”
76 means any person employed by the state police, any
77 person employed by the state to perform law-enforcement
78 duties, any person employed by a political subdivision of
79 this state who is responsible for the prevention or detection
80 of crime and the enforcement of the penal, traffic or
81 highway laws of this state or employed as a special police
82 officer as such is defined in section forty-one, article three,
83 chapter sixty-one of this code.

CHAPTER 112

(Com. Sub. for H. B. 2285—By Delegates Stalnaker, Everson, Riggs,
Williams, Willison and Ashley)

[Passed February 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections thirty-nine-e, thirty-nine-f and thirty-nine-g, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to procedures for recovering on dishonored checks, drafts and orders in magistrate court; authorizing payees or holders of such checks, drafts or orders to provide notice to the drawer; permitting the filing of a complaint in magistrate court for the issuance of a warrant for the drawer's arrest; providing the form of the complaint, including information on the bank service charges imposed on the payee as a result of the dishonored check, draft or order; requiring the magistrate court to issue a notice to the drawer of his opportunity to avoid arrest by making payment to the court; and including bank service charges incurred by the payee or holder and magistrate court cost in the amount recoverable after the complaint is delivered to the magistrate court.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-39e. Notice of dishonor by payee; service charge.

§61-3-39f. Manner of filing complaint for warrant; form.

§61-3-39g. Complaint; notice of complaint; issuance of warrant; payment procedures; costs.

§61-3-39e. Notice of dishonor by payee; service charge.

- 1 The payee or holder of a check, draft or order which
- 2 has been dishonored because of insufficient funds or
- 3 credit may send notice thereof to the drawer of the check,

4 draft or order. The payee or holder of any dishonored
 5 check may impose a fee of up to fifteen dollars. This fee
 6 may not be imposed or collected after a complaint for
 7 warrant has been delivered to magistrate court. No payee
 8 or holder of a check, draft or order which has been
 9 dishonored because of insufficient funds or credit shall
 10 incur any civil or criminal liability for the sending of a
 11 notice substantially in the form provided herein, other
 12 provisions of law notwithstanding. The form of the notice
 13 shall be substantially as follows:

14 "You are hereby notified that a check, number
 15, issued by you on (date of check), drawn upon
 16 (name of bank), and payable to, has
 17 been dishonored. Pursuant to West Virginia law, you have
 18 ten days from the date of this notice to tender payment of
 19 the full amount of the check plus a fee of \$.....
 20 (not to exceed fifteen dollars) to the undersigned at
 21 You are further notified that in the
 22 event the above amount is timely paid in full you will not
 23 be subject to legal proceedings, civil or criminal.

24 Dated, 19.....

25
 26 (Signed)."

27 The provisions of this section do not authorize the
 28 making of any other written or oral threats of prosecution
 29 to enforce or enhance the collection or honoring of the
 30 dishonored check, draft or order.

31 The holder or payee of any check, draft or order shall
 32 relinquish the check, draft or order to the maker upon
 33 tender of the full amount due at any time before a
 34 complaint for warrant has been presented to magistrate
 35 court. In the event complaint for warrant has been
 36 presented to magistrate court, payment may be made only
 37 through the court and any holder or payee unlawfully
 38 accepting payment after that time shall be liable for all
 39 costs which may be imposed by the magistrate court in the
 40 matter, including all costs which may have accrued by the
 41 time the magistrate court is notified of the payment.

§61-3-39f. Manner of filing complaint for warrant; form.

1 Notwithstanding the provisions of section one, article
 2 one, chapter sixty-two of this code, a complaint for
 3 warrant for violations of section thirty-nine-a of this article
 4 need not be made upon oath before a magistrate but may
 5 be made upon oath before any magistrate court clerk or
 6 other court officer authorized to administer oaths or
 7 before a notary public in any county of the state and may
 8 be delivered by mail or otherwise to the magistrate court
 9 of the county wherein venue lies.

10 A complaint for warrant for violations of section
 11 thirty-nine-a of this article shall be deemed sufficient if it
 12 is in form substantially as follows:

13 "State of West Virginia

14 County of, to wit:

15, upon oath complains that:

16 (a) Within one year past, on the day of,
 17 19..., in the county stated above, ('the
 18 maker') unlawfully issued and delivered to
 19 a check, draft or order with the
 20 following words and figures:

21 19..... No.....

22
 23 (Name of Bank)

24 Pay to the Order of \$..... Dollars

25 For..... when the
 26 maker did not have funds on deposit in or credit with this
 27 bank with which to pay the check, draft or order upon
 28 presentation against the peace and dignity of the State of
 29 West Virginia. The complainant therefore prays a warrant
 30 issue and that the maker be apprehended and held to
 31 answer the warrant and dealt with in relation thereto
 32 according to the law.

33 (b) At the time the check, draft or order was delivered
 34 and before it was accepted there was either on the check or
 35 on a record in the possession of the complainant the
 36 following information regarding the identity of the maker:

37 (1) Name

- 38 (2) Residence address
- 39 (3) Business address
- 40 (4) Mailing address
- 41 (5) Motor vehicle operator's number
- 42 (6) Home phone
- 43 (7) Work phone
- 44 (8) Place of employment

45 That since the time the check, draft or order was
 46 delivered the complainant has ascertained to the best of his
 47 or her knowledge and belief the following facts
 48 concerning the maker:

- 49 Full name
- 50 Home address
- 51 Home phone no..... Business phone no.
- 52 Place of employment
- 53 Race Sex Height

54 Date of birth

Day	Month	Year
-----	-------	------

56, Complainant

57

58 Address Phone No.

59 (c) The complainant's bank or financial institution has
 60 imposed on or collected from the complainant a service
 61 charge in the amount of \$..... in connection
 62 with the check, draft or order described above.

63 Taken, subscribed and sworn to before me, this
 64 day of, 19....

65

66

67 (Title)

68 My commission expires the day of,
 69 19...."

70 The failure to supply information indicated in parts
71 (b) or (c) of the foregoing complaint for warrant shall not
72 affect the sufficiency thereof.

**§61-3-39g. Complaint; notice of complaint; issuance of
warrant; payment procedures; costs.**

1 After receipt of a complaint for warrant for a violation
2 of section thirty-nine or thirty-nine-a of this article the
3 magistrate court shall proceed with the issuance of the
4 warrant as is provided by law: *Provided*, That no warrant
5 may issue for an offense under section thirty-nine or
6 thirty-nine-a of this article which, upon conviction, would
7 be punishable as a misdemeanor, unless the payee or
8 holder of the check, draft or order which has been
9 dishonored has sent notice thereof to the drawer of the
10 check, draft or order in accordance with the provisions of
11 section thirty-nine-e of this article, or unless notice has
12 been sent by the magistrate as hereinafter provided. Proof
13 that the notice was sent by the payee or holder may be
14 evidenced by presentation of a return receipt indicating
15 that the notice was mailed to the drawer by certified mail,
16 or, in the event the mailed notice was not received or was
17 refused by the drawer, by presentation of the mailed
18 notice itself. The magistrate court shall receive and hold
19 the check, draft or order.

20 Upon receipt of a complaint for a misdemeanor
21 warrant unaccompanied by proof that notice was sent by
22 the payee or holder, the magistrate court shall immediately
23 prepare and mail to the drawer of the check, draft or order
24 a notice in form substantially as follows. The magistrate
25 court shall impose any service charge reflected in the
26 complaint as having been imposed on the payee or holder
27 by the payee's or holder's bank or financial institution in
28 connection with the check, draft or order and additional
29 court costs in the amount of ten dollars. This notice shall
30 be mailed to the drawer by United States mail, first class
31 and postpaid, at the address provided at the time of
32 presenting the check, draft or order. Service of this notice
33 is complete upon mailing. The notice shall be in form
34 substantially as follows:

35 "You are hereby notified that a complaint for a
36 warrant for your arrest has been filed with this office to

37 the following effect and purpose by who upon
 38 oath complains that on the day of, 19....,
 39 you did unlawfully issue and deliver unto him a certain
 40 check, draft or order in the amount of
 41 drawn on (name of
 42 bank or financial institution) where you did
 43 not have funds on deposit in or credit with the bank or
 44 financial institution with which to pay the check, draft or
 45 order upon presentation and pray that a warrant issue and
 46 that you be apprehended wherever you may be found by
 47 an officer authorized to make an arrest and dealt with in
 48 accordance with the laws of the state of West Virginia.

49 "A warrant for arrest will be issued on or after the
 50 day of, 19....

51 "You can nullify the effect of this complaint and
 52 avoid arrest by paying to the magistrate court clerk at
 53 the amount due on the check, draft or
 54 order; service charges imposed on the payee or holder by
 55 the payee's or holder's bank or financial institution in
 56 connection with the check, draft or order in the amount of
 57; and the costs of this proceeding in the amount of
 58 ten dollars on or before the day of,
 59 19...., at which time you will be given a receipt with
 60 which you can obtain the check, draft or order from the
 61 magistrate court. The complainant is forbidden by law to
 62 accept payment after the complaint is filed.

63 Magistrate Court of County
 64

65 Date:"

66 This notice shall give the drawer of any such check,
 67 draft or order ten days within which to make payment to
 68 magistrate court. In the event the drawer pays the total
 69 amount set forth in the notice to the magistrate court
 70 within the ten-day period, no warrant may issue. The
 71 payment may be made to the magistrate court in person or
 72 by mail by cash, certified check, bank draft or money
 73 order and, in the event the payment is made by mail, the
 74 magistrate court clerk shall immediately mail to the maker
 75 of the check, draft or order the receipt required by this
 76 section. In the event the total amount is not so paid the

77 court shall proceed with the issuance of the warrant as is
78 provided by law.

79 Upon receipt of payment of the total amount the
80 magistrate court clerk shall issue to the drawer a receipt
81 sufficiently describing the check, draft or order with which
82 receipt the drawer is entitled to receive the dishonored
83 check, draft or order from the magistrate court holding it.
84 The magistrate court clerk shall forward the amount of the
85 check, draft or order, together with any service charge
86 reflected on the complaint as having been imposed on the
87 payee or holder by the payee's or holder's bank or
88 financial institution in connection with the check, draft or
89 order, to the payee or holder thereof, along with a
90 description of the check, draft or order sufficient to enable
91 the person filing the complaint to identify it and the
92 transaction involved. Costs collected shall be dealt with as
93 is provided by law for other criminal proceedings.

94 The drawer of a check, draft or order against whom a
95 warrant has been issued may at any time prior to trial pay
96 to the court the amount of the check, draft or order; any
97 service charge reflected in the complaint as having been
98 imposed on the payee or holder by the payee's or
99 holder's bank or financial institution in connection with
100 the check, draft or order; and the court costs which would
101 be assessed if the person were found guilty of the offense
102 charged. These costs shall be imposed in accordance with
103 the provisions of section two, article three, chapter fifty of
104 this code.

CHAPTER 113

(Com. Sub. for H. B. 2726—By Delegates C. White, Proudfoot, Underwood,
Shelton, Campbell and Coleman)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter sixty-one of the code of
West Virginia, one thousand nine hundred thirty-one, as

amended, by adding thereto a new section, designated section fifty-three, relating to establishing a misdemeanor offense of unauthorized use of a dumpster or solid waste container; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-53. Unauthorized use of dumpsters.

1 (a) Any person who without authorization dumps
2 garbage or trash, or assists in the unauthorized dumping
3 of garbage or trash, in a dumpster or other solid waste
4 container which is located on the property of another
5 person and leased or otherwise owned or maintained by
6 another person is guilty of a misdemeanor and, upon
7 conviction thereof, shall be punished in accordance with
8 subsection (b) of this section. The act of throwing isolated
9 objects into a dumpster or other solid waste container in
10 the prevention or elimination of litter is specifically
11 excepted from any penalties under this section.

12 (b) Any person convicted of a misdemeanor under
13 subsection (a) of this section shall be subject to the
14 following penalties:

15 (1) Upon a first conviction under this section, the
16 defendant shall be fined not less than fifty dollars nor
17 more than two hundred fifty dollars.

18 (2) Upon a second conviction under this section, the
19 defendant shall be fined not less than two hundred fifty
20 dollars nor more than five hundred dollars.

21 (3) Upon any subsequent conviction in excess of a
22 second conviction under this section, the defendant shall
23 be fined not less than five hundred dollars nor more than
24 one thousand dollars, or imprisoned in the county jail not
25 less than thirty days nor more than sixty days, or both
26 fined and imprisoned.

27 Notwithstanding the provisions of section four, article
28 eleven-a of this chapter or section two-a, article three,
29 chapter fifty of this code, the magistrate or court may
30 order restitution not to exceed the value of unauthorized
31 solid waste services received.

CHAPTER 114

(Com. Sub. for H. B. 4234—By Delegates L. White, Staton, Hunt, Trump,
Beane, Smirl and Manuel)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifty-four, relating to creating a felony offense for taking another person's name for the purpose of conducting financial or credit transactions in that person's name; and excepting certain persons therefrom.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-54. Taking identity of another person; penalty.

1 Any person who knowingly takes the name, birth date,
2 social security number or other identifying information of
3 another person, without the consent of that other person,
4 with the intent to fraudulently represent that he or she is
5 the other person for the purpose of making financial or
6 credit transactions in the other person's name, is guilty of
7 a felony, and upon conviction, shall be punished by
8 confinement in the penitentiary not more than five years,
9 or fined not more than one thousand dollars, or both:
10 *Provided*, That the provisions of this section do not apply
11 to any person who obtains another person's drivers license
12 or other form of identification for the sole purpose of
13 misrepresenting his or her age.

CHAPTER 115

(H. B. 4106—By Delegates Rowe, Johnson, Staton, Faircloth and Martin)

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three, relating to limitation of nuisance actions for shooting ranges; prohibiting nuisance actions when property purchased near an existing shooting range, establishing limitations of actions when a shooting range is established or undergoes substantial change.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-23. Shooting range; limitations on nuisance actions.

1 (a) As used in this section:

2 (1) "Person" means an individual, proprietorship,
3 partnership, corporation, club or other legal entity;

4 (2) "Shooting range" or "range" means an area
5 designed and operated for the use of rifles, shotguns,
6 pistols, silhouettes, skeet, trap, black powder or any other
7 similar shooting.

8 (b) Except as provided in this section, a person may
9 not maintain a nuisance action for noise against a shooting
10 range located in the vicinity of that person's property if
11 the range was established as of the date of the person
12 acquiring the property. If there is a substantial change in
13 use of the range after the person acquires the property, the
14 person may maintain a nuisance action if the action is
15 brought within two years from the beginning of the
16 substantial change in use of the range.

17 (c) A person who owned property in the vicinity of a
18 shooting range that was established after the person
19 acquired the property may maintain a nuisance action for
20 noise against that range only if the action is brought
21 within four years after establishment of the range or two
22 years after a substantial change in use of the range.

23 (d) If there has been no shooting activity at a range
24 for a period of two years, resumption of shooting is
25 considered establishment of a new range for the purposes
26 of this section.

CHAPTER 116

(H. B. 4296—By Delegates Smirl, Trump, Thomas,
Staton, Kominar and Martin)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing individuals from other states to carry a concealed weapon in this state and authorizing the governor to execute reciprocity agreements with other states and political subdivisions regarding the carrying of concealed weapons.

Be it enacted by the Legislature of West Virginia:

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

§61-7-6. Exceptions as to prohibitions against carrying concealed deadly weapons.

1 The licensure provisions set forth in this article shall
2 not apply to:

3 (1) Any person carrying a deadly weapon upon his
4 own premises; nor shall anything herein prevent a person
5 from carrying any firearm, unloaded, from the place of
6 purchase to his or her home, residence or place of
7 business or to a place of repair and back to his or her
8 home, residence or place of business, nor shall anything
9 herein prohibit a person from possessing a firearm while
10 hunting in a lawful manner or while traveling from his or
11 her home, residence or place of business to a hunting site,
12 and returning to his or her home, residence or place of
13 business;

14 (2) Any person who is a member of a properly
15 organized target-shooting club authorized by law to
16 obtain firearms by purchase or requisition from this state,
17 or from the United States for the purpose of target
18 practice, from carrying any pistol, as defined in this article,
19 unloaded, from his home, residence or place of business to
20 a place of target practice, and from any such place of
21 target practice back to his home, residence or place of
22 business, for using any such weapon at such place of
23 target practice in training and improving his skill in the
24 use of such weapons;

25 (3) Any law-enforcement officer or law-enforcement
26 official as such are defined in section one, article
27 twenty-nine, chapter thirty of this code;

28 (4) Any employee of the West Virginia department of
29 corrections duly appointed pursuant to the provisions of
30 section five, article five, chapter twenty-eight of this code
31 while such employee is on duty;

32 (5) Any member of the armed forces of the United
33 States or the militia of this state while such member is on
34 duty;

35 (6) Any circuit judge, including any retired circuit
36 judge designated senior status by the supreme court of
37 appeals of West Virginia, prosecuting attorney, assistant
38 prosecuting attorney or a duly appointed investigator
39 employed by a prosecuting attorney;

40 (7) Any resident of another state, who has been issued
41 a license to carry a concealed weapon by a state or a
42 political subdivision which has entered into a reciprocity
43 agreement with this state, shall be exempt from the
44 licensing requirements of section four of this article. The
45 governor may execute reciprocity agreements on behalf
46 of the state of West Virginia with states or political
47 subdivisions which have similar gun permitting laws and
48 which recognize and honor West Virginia licenses issued
49 pursuant to section four of this article.

CHAPTER 117

(Com. Sub. for S. B. 148—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article eight-d, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to criminal penalties for engaging or procuring another to engage in sexual misconduct with a child; adding parents to persons to whom the criminal penalties apply; and increasing the penalties against a parent, guardian or custodian who engages or procures another person to engage in sexual misconduct with a child.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8D. CHILD ABUSE.

§61-8D-5. Sexual abuse by a parent, guardian or custodian; parent, guardian or custodian allowing sexual abuse to be inflicted upon a child; displaying of sex organs by a parent, guardian or custodian; penalties.

1 (a) In addition to any other offenses set forth in this
2 code, the Legislature hereby declares a separate and
3 distinct offense under this subsection, as follows: If any
4 parent, guardian or custodian of a child under his or her
5 care, custody or control, shall engage in or attempt to
6 engage in sexual exploitation of, or in sexual intercourse,
7 sexual intrusion or sexual contact with, a child under his
8 or her care, custody or control, notwithstanding the fact
9 that the child may have willingly participated in such
10 conduct, or the fact that the child may have consented to
11 such conduct or the fact that the child may have suffered
12 no apparent physical injury or mental or emotional injury
13 as a result of such conduct, then such parent, guardian or
14 custodian shall be guilty of a felony and, upon conviction
15 thereof, shall be imprisoned in the penitentiary not less
16 than ten nor more than twenty years, or fined not less than
17 five hundred nor more than five thousand dollars and
18 imprisoned in the penitentiary not less than ten years nor
19 more than twenty years.

20 (b) If any parent, guardian or custodian shall
21 knowingly procure another person to engage in or attempt
22 to engage in sexual exploitation of, or sexual intercourse,
23 sexual intrusion or sexual contact with, a child under the
24 care, custody or control of such parent, guardian or
25 custodian when such child is less than sixteen years of age,
26 notwithstanding the fact that the child may have willingly
27 participated in such conduct or the fact that the child may
28 have suffered no apparent physical injury or mental or
29 emotional injury as a result of such conduct, such parent,
30 guardian or custodian shall be guilty of a felony and,
31 upon conviction thereof, shall be imprisoned in the
32 penitentiary not less than five years nor more than fifteen
33 years, or fined not less than one thousand nor more than
34 ten thousand dollars and imprisoned in the penitentiary
35 not less than five years nor more than fifteen years.

36 (c) If any parent, guardian or custodian shall
37 knowingly procure another person to engage in or attempt
38 to engage in sexual exploitation of, or sexual intercourse,
39 sexual intrusion or sexual contact with, a child under the
40 care, custody or control of such parent, guardian or
41 custodian when such child is sixteen years of age or older,

42 notwithstanding the fact that the child may have consented
43 to such conduct or the fact that the child may have
44 suffered no apparent physical injury or mental or
45 emotional injury as a result of such conduct, then such
46 parent, guardian or custodian shall be guilty of a felony
47 and, upon conviction thereof, shall be imprisoned in the
48 penitentiary not less than one year nor more than five
49 years.

50 (d) The provisions of this section shall not apply to a
51 custodian whose age exceeds the age of the child by less
52 than four years.

CHAPTER 118

(Com. Sub. for S. B. 158—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eight-f, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto three new sections, designated sections one-a, two-a and two-b; to amend and reenact sections two, three, four, five, seven, eight, nine and ten of said article; and to amend and reenact section two, article twelve, chapter sixty-two of said code, all relating to the registration of sex offenders; legislative intent; expansion of persons required to be registered; notification requirements for sex offenders who leave prison or move in or out of the state; changing the definition of mental abnormality; establishment of a judicial process to determine whether a person is a sexually violent person; establishment of sex offender registration advisory board; requiring registration within ten days of change in address; expansion of the duration certain persons must register; notification distribution; creation of disclosure exemptions; criminal penalties for failing to provide information and registering; parole officers providing information to the state police; and establishment of a verification process.

Be it enacted by the Legislature of West Virginia:

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

Chapter

61. Crimes and Their Punishment.

62. Criminal Procedure.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8F. SEX OFFENDER REGISTRATION ACT.

§61-8F-1a. Intent.

§61-8F-2. Registration.

§61-8F-2a. Court determination of sexually violent predator.

§61-8F-2b. Creation of sex offender registration advisory board.

§61-8F-3. Change of address.

§61-8F-4. Duration.

§61-8F-5. Distribution and disclosure of information; community information programs by prosecuting attorney and state police; petition to circuit court.

§61-8F-7. Information shall be released when person moves out of state.

§61-8F-8. Failure to register; penalty.

§61-8F-9. Registration of out-of-state offenders.

§61-8F-10. Address verification.

§61-8F-1a. Intent.

1 It is the intent of this article to provide a law-
2 enforcement tool to protect the public from child
3 molesters and violent sexual offenders by registration of
4 persons who have demonstrated by their criminal conduct
5 that they may constitute a continuing threat to the public
6 safety.

§61-8F-2. Registration.

1 (a) Any person who has been convicted of a violation
2 of the provisions of article eight-b, eight-c, or sections five
3 and six, article eight-d of this chapter, or of section
4 fourteen, article two, or of sections twelve and thirteen,

5 article eight of this chapter, or of a felony violation
6 involving a minor of sections six or seven, article eight,
7 chapter sixty-one of this code, or of a similar provision in
8 another state, federal or military jurisdiction shall be
9 required to be registered as set forth in this article. Any
10 person who has been convicted of an attempt to commit
11 any of the offenses set forth in this section shall also be
12 required to register as set forth in this article.

13 (b) On the date that any person convicted of any of
14 the crimes listed herein, including those persons
15 continuing under some post conviction supervisory status
16 for crimes committed prior to the date of this law, is
17 released, is granted probation, is granted a suspended
18 sentence, is released on parole, probation, home detention,
19 work release or any other release from incarceration, the
20 commissioner of corrections, regional jail administrator or
21 city or sheriff operating a jail which releases such person
22 and any parole or probation officer who releases such
23 person or supervises such person following the release
24 shall obtain all information required by this subsection
25 prior to the release of the person, inform the person that
26 he or she must register within three days of release with
27 the state police detachment in the county where he or she
28 shall reside, and shall send written notice of the release of
29 the person to the state police within three days of receiving
30 the information. The notice shall include:

- 31 (1) The full name of the person;
- 32 (2) The address where the person shall reside;
- 33 (3) The person's social security number;
- 34 (4) A recent photograph of the person;
- 35 (5) A brief description of the crime for which the
36 person was convicted;
- 37 (6) Fingerprints; and
- 38 (7) For any person determined to be a sexually violent
39 predator, the notice shall also include:
 - 40 (i) Identifying factors, including physical character-
41 istics;
 - 42 (ii) History of the offense; and

43 (iii) Documentation of any treatment received for the
44 mental abnormality or personality disorder.

45 Persons who have been convicted for any of the
46 offenses contained in subsection (a) of this section and
47 released from incarceration or correctional supervision
48 shall be required to register as provided herein if that
49 person is arrested on any new criminal charge within a
50 period of ten years from release from correctional
51 supervision of the original sexual offense. The arresting
52 agency shall inform the person of his or her duty to
53 register and shall send written notice of the person's arrest
54 and of this notification to the state police.

55 (c) At the time the person is convicted of the crimes
56 set forth in subsection (a) of this section, the person shall
57 sign in open court, a statement acknowledging that he or
58 she understands the requirements imposed by this article.
59 The court shall inform the person so convicted of the
60 requirements to register imposed by this article and shall
61 further satisfy itself by interrogation of the defendant or
62 his or her counsel that the defendant has received notice
63 of the provisions of this article and that the defendant
64 understands such provisions. Such statement, when signed
65 and witnessed, shall constitute prima facie evidence that
66 the person had knowledge of the requirements of this
67 article.

68 (d) When a person required to register under this
69 article is released following incarceration, the
70 commissioner of corrections, the regional jail supervisor
71 or the city or sheriff or any other person supervising the
72 operation of the place of confinement shall, within three
73 days, inform the state police of such release and provide
74 such further information as is required by this article.

75 (e) The state police shall maintain a central registry of
76 all persons who register under this article and shall release
77 information only as provided in this article. The
78 information required to be made public by the state police
79 by subdivision (2), subsection (b), section five of this
80 article shall be accessible through the internet.

81 (f) For the purposes of this article, sexually violent
82 offenses shall be defined as any criminal offenses set forth
83 in article eight-b of this chapter which include forcible
84 compulsion, bodily injury or the use of deadly weapons.

84 (g) The term "sexually violent predator" means a
85 person who has been convicted of a sexually violent
86 offense and who suffers from a mental abnormality or
87 personality disorder that makes the person likely to
88 engage in predatory sexually violent offenses.

89 (h) The term "mental abnormality" means a
90 congenital or acquired condition of a person that affects
91 the emotional or volitional capacity of the person in a
92 manner that predisposes that person to the commission of
93 criminal sexual acts to a degree that makes the person a
94 menace to the health and safety of other persons.

95 (i) The term "predatory act" means an act directed at a
96 stranger or at a person with whom a relationship has been
97 established or promoted for the primary purpose of
98 victimization.

§61-8F-2a. Court determination of sexually violent predator.

1 (a) The circuit court that has sentenced a person for
2 having committed a sexually violent offense shall make a
3 determination whether:

4 (1) A person is a sexually violent predator; or

5 (2) A person is no longer a sexually violent predator.

6 (b) A hearing to make a determination as provided for
7 in subsection (a) of this section is a summary proceeding,
8 triable before the court without a jury.

9 (c) A proceeding seeking to establish that a person is a
10 sexually violent predator is initiated by the filing of a
11 written information by the prosecuting attorney. The
12 information shall describe the record of the judgment of
13 the court on the person's conviction of a sexually violent
14 offense, and shall set forth a short and plain statement of
15 the prosecutor's claim that the person suffers from a
16 mental abnormality or personality disorder that makes the
17 person likely to engage in predatory sexually violent
18 offenses.

19 (d) A proceeding seeking to establish that a person is
20 no longer a sexually violent predator is initiated by the
21 filing of a petition by the person who has been determined
22 to be a sexually violent predator.

23 (e) Prior to making a determination pursuant to the
24 provisions of this section, the sentencing court may order
25 a psychiatric or other clinical examination and, after such
26 examination, may further order a period of observation in
27 an appropriate facility within this state designated by the
28 court after consultation with the director of the division of
29 health.

30 (f) Prior to making a determination pursuant to the
31 provisions of this section, the sentencing court shall
32 request and receive a report by the board established
33 pursuant to section two-b of this article. The report shall
34 set forth the findings and recommendation of the board
35 on the issue of whether the person is a sexually violent
36 predator.

37 (g) At a hearing to determine whether a person is a
38 sexually violent predator, the person shall be present and
39 shall have the right to be represented by counsel and
40 introduce evidence and cross-examine witnesses. The
41 offender shall have access to a summary of the medical
42 evidence to be presented by the state. The offender shall
43 have the right to an examination by an independent expert
44 of his choice and testimony from such expert as a medical
45 witness on his behalf. At the termination of such hearing
46 the court shall make a finding of fact upon a
47 preponderance of the evidence as to whether the person is
48 a sexually violent predator.

49 (h) If a person is determined by the circuit court to be
50 a sexually violent predator, the clerk of the court shall
51 forward a copy of the order to the state police in the
52 manner prescribed by the superintendent of state police in
53 procedural rules promulgated in accordance with the
54 provisions of article three, chapter twenty-nine-a of this
55 code.

§61-8F-2b. Creation of sex offender registration advisory board.

1 (a) There is hereby created within the department of
2 military affairs and public safety a sex offender
3 registration advisory board consisting of a minimum of
4 five members appointed by the secretary of the
5 department of military affairs and public safety. At least
6 two of the members shall be experts in the field of the

7 behavior and treatment of sexual offenders, and each shall
8 be a physician, psychologist or social worker in the
9 employ of this state appointed by the secretary in
10 consultation with the director of the division of health.
11 The remaining members shall be victims rights advocates
12 and representatives of law-enforcement agencies.
13 Members of the board shall be reimbursed their
14 reasonable expenses pursuant to the rules promulgated by
15 the department of administration for the reimbursement of
16 expenses of state officials and employees, and shall receive
17 no other compensation for their services. The board shall
18 utilize the staff of the division or office within the
19 department of military affairs and public safety designated
20 by the secretary thereof in carrying out its duties and
21 responsibilities as set forth in this article.

22 (b) The board shall assist the circuit courts of this state
23 in determining whether persons convicted of sexually
24 violent offenses are sexually violent predators.

§61-8F-3. Change of address.

1 When any person required to register under this article
2 changes his or her residence or address, he or she shall,
3 within ten days, inform the West Virginia state police of
4 his or her new address in the manner prescribed by the
5 superintendent of state police in procedural rules
6 promulgated in accordance with the provisions of article
7 three, chapter twenty-nine-a of this code.

§61-8F-4. Duration.

1 (a) A person required to register under terms of this
2 article shall continue to comply with this section, except
3 during ensuing periods of incarceration, until:

4 (1) Ten years have elapsed since the person was
5 released from prison or jail, or from the time the person
6 was placed upon probation, parole or supervised release;
7 or

8 (2) For the life of that person if that person: (A) Has
9 one or more prior convictions for any qualifying offense
10 described in this article; or (B) has been convicted of a
11 sexually violent offense; or (C) has been determined to be
12 a sexually violent predator as defined above.

13 (b) A person whose conviction is overturned for the
14 offense which required them to register under this article
15 shall, upon petition to the court, have their name removed
16 from the registry.

§61-8F-5. Distribution and disclosure of information; community information programs by prosecuting attorney and state police; petition to circuit court.

1 (a) Within five working days after receiving any
2 notification as described in this article, the state police
3 shall distribute a copy of the notification statement to:

4 (1) The supervisor of each county and municipal law-
5 enforcement office in the city and county where the
6 person will reside;

7 (2) The county superintendent of schools where the
8 person will reside;

9 (3) The child protective services office charged with
10 investigating allegations of child abuse or neglect in the
11 county where the person will reside;

12 (4) All community organizations or religious
13 organizations which regularly provide services to youths
14 in the county where the person will reside;

15 (5) Individuals and organizations which provide day
16 care services for youths or day care, residential or respite
17 care, or other supportive services for incapacitated, infirm
18 or mentally incapacitated or infirm persons in the county
19 where the registered person will reside; and

20 (6) The federal bureau of investigation (FBI).

21 (b) Information concerning persons whose names are
22 contained on the list of the sexual offender registry shall
23 be disseminated only in the following manner, and not be
24 subject to the requirements of the West Virginia freedom
25 of information act of this code:

26 (1) When a person has been determined to be a
27 sexually violent predator under terms of section two-a of
28 this article, the state police shall notify the prosecuting
29 attorney of the county in which the person intends to
30 reside. The prosecuting attorney shall in cooperation with

31 the state police conduct a community notification
32 program which shall include publication of the offender's
33 name and place of residence, and information concerning
34 the legal rights and obligations of both the offender and
35 the community. The prosecuting attorney and state police
36 may conduct a community notification program in the
37 county of residence of any person who is required to
38 register for life under the terms of subdivision (2),
39 subsection (a), section four of this article. Community
40 notification may be repeated when determined appropriate
41 by the prosecuting attorney;

42 (2) The state police shall maintain and make available
43 to the public at least quarterly the list of all persons who
44 are required to register for life according to the terms of
45 subdivision (2), subsection (a), section four of this article.
46 The method of publication and access to this list shall be
47 determined by the superintendent; and

48 (3) A resident of a county may petition the circuit
49 court for an order requiring the state police to release
50 information about persons residing in that county who are
51 required to register under section two of this article. The
52 court shall determine whether information contained on
53 the list and relevant to public safety outweighs the
54 importance of confidentiality, and if the court orders
55 information to be released, it may further order limitations
56 upon secondary dissemination by the resident seeking the
57 information.

58 In no event shall information concerning the identity
59 of a victim of an offense requiring registration be
60 released.

61 (c) The state police may furnish information and
62 documentation required in connection with the
63 registration to authorized law-enforcement and
64 governmental agencies of the United States and its
65 territories, of foreign countries duly authorized to receive
66 the same, of other states within the United States and of the
67 state of West Virginia upon proper request stating that the
68 records will be used solely for law-enforcement related
69 purposes. The state police may disclose information
70 collected under this article to federal, state and local

71 governmental agencies responsible for conducting pre-
72 employment checks.

73 (d) An elected public official, public employee or
74 public agency is immune from civil liability for damages
75 arising out of any action relating to the provisions of this
76 section except when the official, employee or agency
77 acted with gross negligence or in bad faith.

**§61-8F-7. Information shall be released when person moves
out of state.**

1 A person who is required to register pursuant to the
2 provisions of this article, who intends to move to another
3 state or country shall at least ten days prior to such move
4 notify the state police of his or her intent to move and of
5 the location to which he or she intends to move, or if that
6 person is incarcerated he or she shall notify correctional
7 officials of his or her intent to reside in some other state or
8 country upon his or her release, and of the location to
9 which he or she intends to move. Upon such notification,
10 the state police shall notify law-enforcement officials of
11 the jurisdiction where the person indicates he or she
12 intends to reside of the information provided by the
13 person under the provisions of this article.

§61-8F-8. Failure to register; penalty.

1 (a) Except as outlined below, any person required to
2 register under this article who knowingly provides false
3 identity or address information or who refuses to provide
4 such accurate information when so required by terms of
5 this article, or who knowingly fails to register or
6 knowingly fails to provide a change of address as required
7 by this article, is guilty of a misdemeanor and, upon
8 conviction thereof, shall be fined not less than two
9 hundred fifty dollars nor more than ten thousand dollars,
10 or imprisoned in the county jail not more than one year,
11 or both fined and imprisoned: *Provided*, That each time
12 such person changes residence and fails to register, such
13 failure shall constitute a separate offense.

14 (b) Any person required to register under this article
15 who is convicted of a second or subsequent offense of
16 failing to register or provide a change of address as
17 required, or any person who has one or more prior

18 convictions for qualifying sexual offenses under this
19 article and who fails to register or has any conviction for a
20 sexually violent offense and who fails to register is guilty
21 of a felony and, upon conviction thereof, shall be
22 imprisoned in a state penal facility for not less than one
23 year nor more than five years.

24 (c) Any person required to register as a sexual
25 predator as defined by section two of this article, who fails
26 to register or provide a change of address as required by
27 this article is guilty of a felony and, upon conviction
28 thereof, shall, for a first offense, be imprisoned in a state
29 correctional facility not less than two years nor more than
30 ten years, and for a second or subsequent offense, be
31 imprisoned in a state correctional facility not less than five
32 years nor more than twenty years.

33 (d) In addition to any other penalty specified for
34 failure to register under this article, any person under the
35 supervision of a probation officer, parole officer or any
36 other sanction short of confinement in jail or prison, who
37 knowingly refuses to register, or who knowingly gives
38 false information concerning his or her residence, or who
39 knowingly fails to provide a change of address as required
40 by this article, shall be subject to immediate revocation of
41 probation or parole and returned to confinement for the
42 remainder of any suspended or unserved portion of his or
43 her original sentence.

§61-8F-9. Registration of out-of-state offenders.

1 (a) When any probation or parole officer accepts
2 supervision of and has legal authority over any person
3 required to register under this article from another state
4 under the terms and conditions of the uniform act for out-
5 of-state parolee supervision established under article six,
6 chapter twenty-eight of this code, such officer shall give
7 the person written notice of the registration requirements
8 of this section and obtain a signed statement from the
9 person required to register acknowledging the receipt of
10 the notice. The officer shall obtain and submit to the state
11 police the identical information required of persons
12 convicted in this state under subsection (b), section two of
13 this article.

14 (b) Any person:

15 (1) Who resides in another state;

16 (2) Who is employed, carries on a vocation or is a
17 student in this state; and

18 (3) Who is required by the state in which he or she
19 resides to register in that state under provisions of the law
20 of that state that are similar to the provisions of this article,
21 shall register in this state and otherwise comply with the
22 provisions of this article.

§61-8F-10. Address verification.

1 The state police shall verify addresses of those persons
2 registered as sexually violent predators every ninety days
3 and all other registered persons once a year. The state
4 police may require registrants to periodically submit to
5 new fingerprints and photographs as part of the
6 verification process. The method of verification shall be
7 in accordance with internal management rules and
8 regulations pertaining thereto promulgated by the
9 superintendent under authority of section twenty-five,
10 article two, chapter fifteen of this code.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-2. Eligibility for probation.

1 (a) All persons who are found guilty of or plead guilty
2 to any felony, the maximum penalty for which is less than
3 life imprisonment, and all persons who are found guilty of
4 or plead guilty to any misdemeanor, shall be eligible for
5 probation, notwithstanding the provisions of sections
6 eighteen and nineteen, article eleven, chapter sixty-one of
7 this code.

8 (b) The provisions of subsection (a) of this section to
9 the contrary notwithstanding, any person who commits or
10 attempts to commit a felony with the use, presentment or
11 brandishing of a firearm shall be ineligible for probation.
12 Nothing in this section shall apply to an accessory before
13 the fact or a principal in the second degree who has been
14 convicted as if he or she were a principal in the first
15 degree if, in the commission of or in the attempted

16 commission of the felony, only the principal in the first
17 degree used, presented or brandished a firearm.

18 (c) (1) The existence of any fact which would make
19 any person ineligible for probation under subsection (b)
20 of this section because of the commission or attempted
21 commission of a felony with the use, presentment or
22 brandishing of a firearm shall not be applicable unless
23 such fact is clearly stated and included in the indictment
24 or presentment by which such person is charged and is
25 either: (i) Found by the court upon a plea of guilty or
26 nolo contendere; or (ii) found by the jury, if the matter be
27 tried before a jury, upon submitting to such jury a special
28 interrogatory for such purpose; or (iii) found by the court,
29 if the matter be tried by the court, without a jury.

30 (2) The amendments to this subsection adopted in the
31 year one thousand nine hundred eighty-one:

32 (A) Shall apply to all applicable offenses occurring on
33 or after the first day of August of that year;

34 (B) Shall apply with respect to the contents of any
35 indictment or presentment returned on or after the first
36 day of August of that year irrespective of when the
37 offense occurred;

38 (C) Shall apply with respect to the submission of a
39 special interrogatory to the jury and the finding to be
40 made thereon in any case submitted to such jury on or
41 after the first day of August of that year or to the requisite
42 findings of the court upon a plea of guilty or in any case
43 tried without a jury: *Provided*, That the state shall give
44 notice in writing of its intent to seek such finding by the
45 jury or court, as the case may be, which notice shall state
46 with particularity the grounds upon which such finding
47 shall be sought as fully as such grounds are otherwise
48 required to be stated in an indictment, unless the grounds
49 therefor are alleged in the indictment or presentment upon
50 which the matter is being tried;

51 (D) Shall not apply with respect to cases not affected
52 by such amendment and in such cases the prior provisions
53 of this section shall apply and be construed without
54 reference to such amendment; and

55 Insofar as such amendments relate to mandatory
56 sentences without probation, all such matters requiring
57 such sentence shall be proved beyond a reasonable doubt
58 in all cases tried by the jury or the court.

59 (d) For the purpose of this section, the term "firearm"
60 shall mean any instrument which will, or is designed to, or
61 may readily be converted to, expel a projectile by the
62 action of an explosive, gunpowder, or any other similar
63 means.

64 (e) In the case of any person who has been found
65 guilty of, or pleaded guilty to, a felony or misdemeanor
66 under the provisions of section twelve or twenty-four,
67 article eight, chapter sixty-one of this code, or under the
68 provisions of article eight-c or eight-b of said chapter,
69 such person shall only be eligible for probation after
70 undergoing a physical, mental and psychiatric study and
71 diagnosis which shall include an on-going treatment plan
72 requiring active participation in sexual abuse counseling at
73 a mental health facility or through some other approved
74 program: *Provided*, That nothing disclosed by the person
75 during such study or diagnosis shall be made available to
76 any law-enforcement agency, or other party without that
77 person's consent, or admissible in any court of this state,
78 unless such information disclosed shall indicate the
79 intention or plans of the probationer to do harm to any
80 person, animal, institution or property, in which case such
81 information may be released only to such persons as
82 might be necessary for protection of the said person,
83 animal, institution or property.

84 (f) Any person who has been convicted of a violation
85 of the provisions of article eight-b, eight-c or sections five
86 and six, article eight-d, chapter sixty-one of this code, or
87 of section fourteen, article two, or of sections twelve and
88 thirteen, article eight, chapter sixty-one of this code, or of
89 a felony violation involving a minor of section six or
90 seven, article eight, chapter sixty-one of this code, or of a
91 similar provision in another jurisdiction shall be required
92 to be registered upon release on probation. Any person
93 who has been convicted of an attempt to commit any of
94 the offenses set forth in this subsection shall also be
95 registered upon release on probation.

- 96 (g) The probation officer shall within three days of
97 release of the offender, send written notice to the state
98 police of the release of the offender. The notice shall
99 include:
- 100 (1) The full name of the person;
- 101 (2) The address where the person shall reside;
- 102 (3) The person's social security number;
- 103 (4) A recent photograph of the person;
- 104 (5) A brief description of the crime for which the
105 person was convicted;
- 106 (6) Fingerprints; and
- 107 (7) For any person determined to be a sexually violent
108 predator as defined in section two, article eight-f, chapter
109 sixty-one of this code, the notice shall also include:
- 110 (i) Identifying factors, including physical characteris-
111 tics;
- 112 (ii) History of the offense; and
- 113 (iii) Documentation of any treatment received for the
114 mental abnormality or personality disorder.

CHAPTER 119

(Com. Sub. for S. B. 105—Senators Jackson, Kessler and Sharpe)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article four, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one-a, article eleven-a of said chapter, all relating to community service being credited against criminal fine or confinement; limitations; provisions for punishing willful failure to perform community service; approval of entities for which work may be performed; and standards of proof.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article four, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one-a, article eleven-a of said chapter be amended and reenacted, all to read as follows:

Article

4. Recovery of Fines in Criminal Cases.

11A. Release for Work and Other Purposes.

ARTICLE 4. RECOVERY OF FINES IN CRIMINAL CASES.

§62-4-16. Community service work may be substituted in lieu of a fine in municipal court.

1 (a) Notwithstanding any provision of this code to the
2 contrary, a municipal judge may substitute in lieu of the
3 imposition of a sentence of incarceration or imposition of
4 a fine, substitute community service work for such
5 incarceration or fine. Where community service work is
6 ordered as a substitute on a sentence of incarceration an
7 eight hour work day shall extinguish one day of any
8 sentence of incarceration. The minimum wage established
9 by the prevailing federal minimum wage in effect at the
10 time of sentencing is imposed shall be used to compute
11 the amount of community service work necessary to
12 extinguish the fine. In the discretion of the court, the
13 sentence credits may run concurrently or consecutively.

14 (b) Any community service ordered pursuant to the
15 provisions of this section shall be performed for
16 government entities or charitable or nonprofit entities and
17 be supervised by the chief of police of the municipality or
18 his or her designee.

19 (c) Persons sentenced under the provisions of this
20 section remain under the jurisdiction of the municipal
21 court. The court may withdraw the community service
22 sentence at any time by order entered with or without
23 notice and order a person previously sentenced to
24 community service to serve the term of incarceration or to
25 pay the fine available to the court upon the person's
26 conviction: *Provided*, That any community service work
27 performed before the community service sentence is

28 withdrawn shall be credited against any term of
29 incarceration or fine imposed.

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.

§62-11A-1a. Other sentencing alternatives.

1 (a) Any person who has been convicted in a circuit
2 court or in a magistrate court under any criminal
3 provision of this code of a misdemeanor or felony, which
4 is punishable by imposition of a fine or confinement in
5 the county or regional jail or the state penitentiary, or both
6 fine and confinement, may, in the discretion of the
7 sentencing judge or magistrate, as an alternative to the
8 sentence imposed by statute for the crime, be sentenced
9 under one of the following programs:

10 (1) The weekend jail program under which persons
11 would be required to spend weekends or other days
12 normally off from work in jail;

13 (2) The work program under which sentenced persons
14 would be required to spend the first two or more days of
15 their sentence in jail and then, in the discretion of the
16 court, would be assigned to a county agency to perform
17 labor within the jail, or in and upon the buildings,
18 grounds, institutions, bridges, roads, including orphaned
19 roads used by the general public and public works within
20 the county. Eight hours of labor shall be credited as one
21 day of the sentence imposed. Persons sentenced under
22 this program may be required to provide their own
23 transportation to and from the work site, lunch and work
24 clothes; or

25 (3) The community service program under which
26 persons sentenced would spend no time in jail but would
27 be sentenced to a number of hours or days of community
28 service work with government entities or charitable or
29 nonprofit entities approved by the circuit court.
30 Regarding any portion of the sentence designated as
31 confinement, eight hours of community service work shall
32 be credited as one day of the sentence imposed.
33 Regarding any portion of the sentence designated as a
34 fine, the fine shall be credited at an hourly rate equal to

35 the prevailing federal minimum wage at the time the
36 sentence was imposed. In the discretion of the court, the
37 sentence credits may run concurrently or consecutively.
38 Persons sentenced under this program may be required to
39 provide their own transportation to and from the work site,
40 lunch and work clothes.

41 (b) In no event may the duration of the alternate
42 sentence exceed the maximum period of incarceration
43 otherwise allowed.

44 (c) In imposing a sentence under the provisions of this
45 section, the court shall first make the following findings of
46 fact and incorporate them into the court's sentencing
47 order:

48 (1) The person sentenced was not convicted of an
49 offense for which a mandatory period of confinement is
50 imposed by statute;

51 (2) In circuit court cases, that the person sentenced is
52 not a habitual criminal within the meaning of sections
53 eighteen and nineteen, article eleven, chapter sixty-one of
54 this code;

55 (3) In circuit court cases, that the offense underlying
56 the sentence is not a felony offense for which violence or
57 the threat of violence to the person is an element of the
58 offense;

59 (4) In circuit court cases, that adequate facilities for
60 the administration and supervision of alternative
61 sentencing programs are available through the court's
62 probation officers or the county sheriff or, in magistrate
63 court cases, that adequate facilities for the administration
64 and supervision of alternative sentencing programs are
65 available through the county sheriff; and

66 (5) That an alternative sentence under provisions of
67 this article will best serve the interests of justice.

68 (d) Persons sentenced by the circuit court under the
69 provisions of this article shall remain under the
70 administrative custody and supervision of the court's
71 probation officers or the county sheriff. Persons

72 sentenced by a magistrate shall remain under the
73 administrative custody and supervision of the county
74 sheriff.

75 (e) Persons sentenced under the provisions of this
76 section may be required to pay the costs of their
77 incarceration, including meal costs, at the discretion of the
78 court.

79 (f) Persons sentenced under the provisions of this
80 section remain under the jurisdiction of the court. The
81 court may withdraw any alternative sentence at any time
82 by order entered with or without notice and require that
83 the remainder of the sentence be served in the county jail,
84 regional jail or penitentiary: *Provided*, That no alternative
85 sentence directed by the sentencing judge or magistrate or
86 administered under the supervision of the sheriff, his or
87 her deputies, a jailer or a guard, shall require the convicted
88 person to perform duties which would be considered
89 detrimental to the convicted person's health as attested by
90 a physician.

CHAPTER 120

(H. B. 4121—By Delegates Douglas, Mahan and Manuel)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, three and four, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the division of culture and history; and changing the name of the arts and humanities section to the arts section.

Be it enacted by the Legislature of West Virginia:

That sections one, three and four, article one, 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 1. DIVISION OF CULTURE AND HISTORY.

§29-1-1. Division of culture and history continued; sections and commissions; purposes; definitions; effective date.

§29-1-3. Commission on the arts.

§29-1-4. Arts section; director.

§29-1-1. Division of culture and history continued; sections and commissions; purposes; definitions; effective date.

1 (a) The division of culture and history and the office
2 of commissioner of culture and history heretofore created
3 are hereby continued. The governor shall nominate, and
4 by and with the advice and consent of the Senate, appoint
5 the commissioner, who shall be the chief executive officer
6 of the division and shall be paid an annual salary of
7 forty-five thousand dollars per year, notwithstanding the
8 provisions of section two-a, article seven, chapter six of
9 this code. The commissioner so appointed shall have: (1)
10 A bachelor's degree in one of the fine arts, social sciences,
11 library science or a related field; or (2) four years'
12 experience in the administration of museum management,
13 public administration, arts, history or a related field.

14 (b) The division shall consist of five sections as
15 follows:

- 16 (1) The arts section;
17 (2) The archives and history section;
18 (3) The museums section;
19 (4) The historic preservation section; and
20 (5) The administrative section.

21 (c) The division shall also consist of two citizens
22 commissions as follows:

- 23 (1) A commission on the arts; and
24 (2) A commission on archives and history.

25 (d) The commissioner shall exercise control and
26 supervision of the division and shall be responsible for the

27 projects, programs and actions of each of its sections. The
28 purpose and duty of the division is to advance, foster and
29 promote the creative and performing arts and crafts,
30 including both indoor and outdoor exhibits and
31 performances; to advance, foster, promote, identify,
32 register, acquire, mark and care for historical, prehistorical,
33 archaeological and significant architectural sites, structures
34 and objects in the state; to encourage the promotion,
35 preservation and development of significant sites,
36 structures and objects through the use of economic
37 development activities such as loans, subsidies, grants and
38 other incentives; to coordinate all cultural, historical and
39 artistic activities in state government and at state-owned
40 facilities; to acquire, preserve and classify books,
41 documents, records and memorabilia of historical interest
42 or importance; and, in general, to do all things necessary
43 or convenient to preserve and advance the culture of the
44 state.

45 (e) The division shall have jurisdiction and control and
46 may set and collect fees for the use of all space in the
47 building presently known as the West Virginia science and
48 culture center, including the deck and courtyards forming
49 an integral part thereof; the building presently known as
50 West Virginia Independence Hall in Wheeling, including
51 all the grounds and appurtenances thereof; "Camp
52 Washington Carver" in Fayette County, as provided for in
53 section fourteen of this article; and any other sites as may
54 be transferred to or acquired by the division.
55 Notwithstanding any provision of this code to the
56 contrary, including the provisions of article one of chapter
57 five-b of this code, beginning on and after the first day of
58 July, one thousand nine hundred ninety-three, the division
59 shall have responsibility for, and control of, all visitor
60 touring and visitor tour guide activities within the state
61 capitol building at Charleston.

62 (f) For the purposes of this article, "commissioner"
63 means the commissioner of culture and history, and
64 "division" means the division of culture and history.

§29-1-3. Commission on the arts.

1 The commission on the arts heretofore created is
2 hereby continued and shall be composed of fifteen
3 appointed members.

4 The governor shall appoint, by and with the advice
5 and consent of the Senate, the members of the commission
6 for staggered terms of three years. A person appointed to
7 fill a vacancy shall be appointed only for the remainder of
8 that term.

9 No more than eight members may be of the same
10 political party. Members of the commission shall be
11 appointed so as to fairly represent both sexes, the ethnic
12 and cultural diversity of the state and the geographic
13 regions of the state.

14 The commission shall elect one of its members as
15 chair. It shall meet at such times as shall be specified by
16 the chair. Notice of each meeting shall be given to each
17 member by the chair in compliance with the open
18 meetings laws of the state. A majority of the members
19 shall constitute a quorum for the transaction of business.
20 The director of the arts section shall be an ex officio
21 nonvoting member of the commission and shall serve as
22 secretary. The director or a majority of the members may
23 also call a meeting upon such notice as provided in this
24 section.

25 Each member or ex officio member of the
26 commission shall serve without compensation, but shall be
27 reimbursed for all reasonable and necessary expenses
28 actually incurred in the performance of the duties of the
29 office; except that in the event the expenses are paid, or
30 are to be paid, by a third party, the member or ex officio
31 member, as the case may be, shall not be reimbursed by
32 the state.

33 Upon recommendation of the commissioner, the
34 governor may also appoint such officers of the state as
35 may be appropriate to serve on the commission as ex
36 officio nonvoting members.

37 The commission shall have the following powers:

38 (1) To advise the commissioner and the director of the
39 arts section concerning the accomplishment of the
40 purposes of that section and to establish a state plan with
41 respect thereto;

42 (2) To approve and distribute grants-in-aid and awards
43 from federal and state funds relating to the purposes of
44 the arts section;

45 (3) To request, accept or expend federal funds to
46 accomplish the purposes of the arts section when federal
47 law or regulations would prohibit the same by the
48 commissioner or section director, but would permit the
49 same to be done by the commission on the arts;

50 (4) To otherwise encourage and promote the purposes
51 of the arts section;

52 (5) To approve rules and regulations concerning the
53 professional policies and functions of the section as
54 promulgated by the director of the arts section; and

55 (6) To advise and consent to the appointment of the
56 director by the commissioner.

§29-1-4. Arts section; director.

1 The purposes and duties of the arts section are to
2 stimulate, encourage, assist, promote, foster and develop
3 the performing and creative arts and crafts in the state; and
4 in furtherance thereof to make awards, prizes and grants to
5 individual performers, artists or craftsmen and to public or
6 private corporations or associations in the field of either
7 the performing or creative arts and crafts that would tend
8 to encourage and foster the advancement of such arts and
9 crafts; to support cultural, artistic or craft exhibits or
10 performances at the division's facilities or on tour; and to
11 perform such other duties as may be assigned to said
12 section by the commissioner.

13 With the advice and consent of the commission on the
14 arts, the commissioner shall appoint a director of the arts
15 section, who shall have: (1) A bachelor's degree in the
16 fine arts or related field or equivalent training and
17 experience; or (2) three years' experience in
18 administration of the fine arts or a related field.

19 With the approval of the commissioner, the director
20 shall establish professional positions within the section.
21 The director shall employ the personnel within these
22 professional positions for the section.

23 The director may propose rules for legislative
24 promulgation, in accordance with the provisions of
25 chapter twenty-nine-a of this code, concerning the
26 professional policies and functions of the arts section,
27 subject to the approval of the commission on the arts.

CHAPTER 121

(Com. Sub. for H. B. 2823—By Delegates Laird and Campbell)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen-a, relating to special reports by spending units; requiring reports to be filed with the secretary of administration within ninety days of the end of each fiscal year; providing that reports detail pending activities that result in substantial unbudgeted contingent liabilities, which may have a substantial and material impact on future spending obligations; requiring secretary to file copies of reports with the legislative auditor; and authorizing the secretary of administration to prescribe forms and propose rules for implementing these requirements.

Be it enacted by the Legislature of West Virginia:

That article two, chapter five-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 nineteen-a, to read as follows:

ARTICLE 2. FINANCE DIVISION.

§5A-2-19a. Special reports by spending units; notification of pending matters having impact on future expenditure requirements.

1 (a) Within ninety days following the end of each
2 fiscal year, each spending unit within state government
3 shall submit a detailed report and accounting of all
4 substantial unbudgeted contingent liabilities that may have
5 a substantial and material impact on spending obligations
6 in subsequent fiscal years. Each report is to include, but
7 not be limited to, pending legal actions, unresolved audit
8 findings and any other activities that are reasonably
9 predicted to have an impact on future expenditures by the
10 state.

11 (b) All reports are to be submitted to the secretary on
12 forms and in the manner prescribed by the secretary.
13 Within thirty days of receipt of each final report, the
14 secretary shall forward a copy to the joint committee on
15 government and finance.

16 (c) The secretary shall propose for promulgation all
17 rules required for the implementation of this section in
18 accordance with the provisions of article three, chapter
19 twenty-nine-a of this code. The rules are to include, but
20 not be limited to, definitions of the types of substantial
21 unbudgeted contingent liabilities that are reportable under
22 the provisions of this section.

CHAPTER 122

(S. B. 248—By Senators Bowman, Bailey, Ball, Kessler,
Plymale, White, Boley, Buckalew, Minear and Scott)

[Passed February 16, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the purchasing division within the department of administration.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.

§5A-3-1. Division created; purpose; director; applicability of article; continuation.

1 There is hereby created the purchasing division of the
2 department of administration for the purpose of
3 establishing centralized offices to provide purchasing,
4 travel and leasing services to the various state agencies.

5 No person shall be appointed director of the
6 purchasing division unless that person is, at the time of
7 appointment, a graduate of an accredited college or
8 university and shall have spent a minimum of ten of the
9 fifteen years immediately preceding his appointment
10 employed in an executive capacity in purchasing for any
11 unit of government or for any business, commercial or
12 industrial enterprise.

13 The provisions of this article shall apply to all of the
14 spending units of state government, except as is otherwise
15 provided by this article or by law: *Provided*, That the
16 provisions of this article shall not apply to the legislative
17 branch unless otherwise provided or the Legislature or
18 either house thereof requests the director to render
19 specific services under the provisions of this chapter, nor
20 to purchases of stock made by the alcohol beverage
21 control commissioner, nor to purchases of textbooks for
22 the state board of education.

23 Pursuant to the provisions of article ten, chapter four
24 of this code, the purchasing division within the department
25 of administration shall continue to exist until the first day
26 of July, one thousand nine hundred ninety-nine.

CHAPTER 123

(Com. Sub. for H. B. 4530—By Delegates Trump, Staton, Ashley,
Buchanan, Webb and Fleischauser)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-b, relating generally to parent education classes for parents of minor children when the parents are involved in actions for divorce, paternity, custody or separate maintenance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-10b. Parent education classes.

1 (a) A circuit court, or a judge thereof, may, by
2 administrative rule or order, and with the approval of the
3 supreme court of appeals, designate an organization or
4 agency to establish and operate education programs
5 designed for parents who have filed an action for divorce,
6 paternity, support or separate maintenance and who have
7 minor children. The education programs shall be
8 designed to instruct and educate parents about the effects
9 of divorce and custody disputes on their children and to
10 teach parents ways to help their children and minimize
11 their trauma.

12 (b) The circuit court may issue an order requiring
13 parties to an action for divorce, paternity, custody or
14 separate maintenance to attend parental education classes
15 established pursuant to subsection (a) of this section and
16 may, by order, establish sanctions for failure to attend.

17 (c) The circuit court may require that each person
18 attending a parental education class pay a fee, not to
19 exceed twenty-five dollars, to the clerk of such court to
20 defray the cost of materials and of hiring teachers:
21 *Provided*, That where it is determined that a party is
22 indigent and unable to pay for such classes, the court shall
23 waive the payment of the fee for such party. The clerk of
24 the circuit court shall, on or before the tenth day of each
25 month, transmit all fees collected under this subsection to
26 the state treasurer for deposit in the state treasury to the
27 credit of special revenue fund to be known as the
28 "parental education fund", which is hereby created. All
29 moneys collected and received under this subsection and
30 paid into the state treasury and credited to the "parental
31 education fund" shall be used by the administrative office
32 of the supreme court of appeals solely for reimbursing the
33 provider of parental education classes for the costs of
34 materials and of providing such classes. Such moneys
35 shall not be treated by the auditor and treasurer as part of
36 the general revenue of the state.

37 (d) The administrative office of the supreme court of
38 appeals shall submit a report to the joint committee on
39 government and finance summarizing the effectiveness of
40 any program of parent education no later than two years
41 from the initiation of the program.

CHAPTER 124

(Com. Sub. for H. B. 2817—By Delegates Fleischauer, Amores, Laird,
Caputo, Capito, Osborne and Mahan)

[Passed March 4, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five, six, nine, ten, ten-a, twelve and fourteen, article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section

seven; to amend and reenact sections two, three, four and ten, article two-c of said chapter; to further amend said article by adding thereto eleven new sections, designated sections four-a, four-b, ten-a, thirteen-a, thirteen-b, thirteen-c, sixteen, seventeen, eighteen, nineteen and twenty, all relating generally to domestic or family violence and its treatment and prevention; setting forth legislative findings and purposes; defining certain terms; establishing the venue of proceedings; clarifying provisions relating to full faith and credit; requiring verified petition; authorizing petition to be filed by person who reported or was a witness to domestic or family violence; issuance of protective order; describing terms that may be included in a protective order; prescribing the length of time a protective order may remain in effect; amendment of a protective order; prohibition against mutual protective orders; safety of the child as a factor in determining visitation; prescribing the conditions for visitation in cases involving domestic or family violence; law enforcement response to domestic or family violence; filing of orders with law-enforcement agency; civil contempt alleging violation of an order; registration of protective order; conditions under which arrest is made; defining certain terms used in domestic violence act; establishing the family protection services board; prescribing the duties of the family protection services board; establishing local councils on domestic or family violence; providing for a state public health plan for reducing domestic or family violence; referral of victims by law-enforcement officers to available shelters; notice of victims' rights and remedies and services available; publishing of model standards, procedure and curricula concerning domestic or family violence; regulating intervention programs for perpetrators of domestic or family violence; licensing providers of intervention programs for perpetrators of domestic or family violence; providing for training and continuing education in matters involving domestic or family violence for certain state employees, law-enforcement officers, judicial officers and court personnel, and school personnel who are required to report child abuse and neglect; development of curricula for public education.

Be it enacted by the Legislature of West Virginia:

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

Article

2A. Prevention and Treatment of Domestic and Family Violence.

2C. Domestic Violence Act.

ARTICLE 2A. PREVENTION AND TREATMENT OF DOMESTIC AND FAMILY VIOLENCE.

- §48-2A-1. Findings and purposes.
- §48-2A-2. Definitions.
- §48-2A-3. Jurisdiction; venue; effect of petitioner's leaving residence; priority of petitions filed under this article; who may file; full faith and credit; process.
- §48-2A-4. Commencement of proceeding; forms; counterclaim; accompanying persons.
- §48-2A-5. Temporary orders of court; hearings; persons present.
- §48-2A-6. Protective orders.
- §48-2A-7. Conditions of visitation in cases involving domestic or family violence.
- §48-2A-9. Law enforcement response to domestic or family violence.
- §48-2A-10. Filing of orders with law-enforcement agency.
- §48-2A-10a. Civil contempt; violation of protective orders; order to show cause.
- §48-2A-12. Registration of order.
- §48-2A-14. Arrest in domestic violence matters; conditions.

§48-2A-1. Findings and purposes.

1 (a) The Legislature of this state finds that:

2 (1) No one should be a victim of domestic or family
3 violence. All people have a right to be safe in their homes
4 and in their families;

5 (2) Children are often physically assaulted or witness
6 violence against one of their parents or other family or
7 household members, violence which too often ultimately
8 results in death. These children may suffer deep and
9 lasting emotional harm from victimization and from
10 exposure to domestic or family violence;

11 (3) Domestic or family violence is a major health and
12 law-enforcement problem in this state with enormous costs
13 to the state in both dollars and human lives. It affects
14 people of all racial and ethnic backgrounds and all
15 socioeconomic classes; and

16 (4) Domestic or family violence can be deterred,
17 prevented or reduced by legal intervention that treats this
18 problem with the seriousness that it deserves.

19 (b) This article shall be liberally construed and applied
20 to promote the following purposes:

21 (1) To assure victims of domestic or family violence
22 the maximum protection from abuse that the law can
23 provide;

24 (2) To create a speedy remedy to discourage violence
25 against family or household members with whom the
26 perpetrator of domestic or family violence has continuing
27 contact;

28 (3) To expand the ability of law-enforcement officers
29 to assist victims, to enforce the domestic or family violence
30 law more effectively, and to prevent further abuse;

31 (4) To facilitate equal enforcement of criminal law by
32 deterring and punishing violence against family and
33 household members as diligently as violence committed
34 against strangers;

35 (5) To recognize that domestic or family violence
36 constitutes serious criminal behavior with potentially tragic
37 results and that it will no longer be excused or tolerated;
38 and

39 (6) To recognize that the existence of a former or on-
40 going familial or other relationship should not serve to
41 excuse, explain or mitigate acts of domestic or family

42 violence which are otherwise punishable as crimes under
43 the laws of this state.

§48-2A-2. Definitions.

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

3 (a) "Family violence", "domestic violence", "domestic
4 or family violence" or "abuse" means the occurrence of
5 one or more of the following acts between family or
6 household members, as that term is defined in subsection
7 (b) of this section:

8 (1) Attempting to cause or intentionally, knowingly or
9 recklessly causing physical harm to another with or
10 without dangerous or deadly weapons;

11 (2) Placing another in reasonable apprehension of
12 physical harm;

13 (3) Creating fear of physical harm by harassment,
14 psychological abuse or threatening acts;

15 (4) Committing either sexual assault or sexual abuse as
16 those terms are defined in articles eight-b and eight-d,
17 chapter sixty-one of this code; and

18 (5) Holding, confining, detaining or abducting
19 another person against that person's will.

20 (b) "Family or household member" means current or
21 former spouses, persons living as spouses, persons who
22 formerly resided as spouses, parents, children and
23 stepchildren, current or former sexual or intimate partners,
24 persons who are dating or who have dated, persons who
25 are presently residing or cohabiting together or in the past
26 have resided or cohabited together or a person with whom
27 the victim has a child in common.

28 (c) "Program for victims of domestic or family
29 violence" means a licensed program for victims of
30 domestic or family violence and their children, which
31 program provides advocacy, shelter, crisis intervention,
32 social services, treatment, counseling, education or
33 training.

34 (d) "Program of intervention for perpetrators" means a
35 licensed program, where available, or if no licensed
36 program is available, a program that:

37 (1) Accepts perpetrators of domestic or family
38 violence into educational intervention groups or
39 counseling pursuant to a court order; or

40 (2) Offers educational intervention groups to
41 perpetrators of domestic or family violence.

§48-2A-3. Jurisdiction; venue; effect of petitioner's leaving residence; priority of petitions filed under this article; who may file; full faith and credit; process.

1 (a) *Jurisdiction.* — Circuit courts and magistrate
2 courts, as constituted under chapter fifty of this code, have
3 concurrent jurisdiction over proceedings under this article.

4 (b) *Venue.* — The action may be heard in the county
5 in which the domestic or family violence occurred, in the
6 county in which the respondent is living or in the county
7 in which the petitioner is living, either temporarily or
8 permanently. If the parties are married to each other, the
9 action may also be brought in the county in which an
10 action for divorce between the parties may be brought as
11 provided by section eight, article two of this chapter.

12 (c) *Petitioner's rights.* — The petitioner's right to relief
13 under this article shall not be affected by his or her
14 leaving a residence or household to avoid further abuse.

15 (d) *Priority of petitions.* — Any petition filed under
16 the provisions of this article shall be given priority over
17 any other civil action before the court, except actions in
18 which trial is in progress, and shall be docketed
19 immediately upon filing. Any appeal to the circuit court
20 of a magistrate's judgment on a petition for relief under
21 this article shall be heard within ten working days of the
22 filing of the appeal.

23 (e) *Full faith and credit.* — Any temporary or final
24 protective order issued pursuant to this article shall be
25 effective throughout the state in every county. Any

26 protective order issued by any other state, territory or
27 possession of the United States, Puerto Rico, the District of
28 Columbia or Indian tribe shall be accorded full faith and
29 credit and enforced as if it were an order of this state
30 whether or not such relief is available in this state. A
31 protective order from another jurisdiction is presumed to
32 be valid if the order appears authentic on its face and shall
33 be enforced in this state. If the validity of the order is
34 contested, the court or law enforcement to which the order
35 is presented shall, prior to the final hearing, determine the
36 existence, validity and terms of such order in the issuing
37 jurisdiction. A protective order from another jurisdiction
38 may be enforced even if the order is not entered into the
39 state law-enforcement information system described by
40 section twelve of this article.

41 (f) *Service by publication.* — A protective order may
42 be served on the respondent by means of a Class I legal
43 advertisement published notice, with the publication area
44 being the county in which the respondent resides,
45 published in accordance with the provisions of section two,
46 article three, chapter fifty-nine of this code if: (i) The
47 petitioner files an affidavit with the court stating that an
48 attempt at personal service pursuant to rule four of the
49 West Virginia rules of civil procedure has been
50 unsuccessful or evidence is adduced at the hearing for the
51 protective order that the respondent has left the state of
52 West Virginia; and (ii) a copy of the order is mailed by
53 certified or registered mail to the respondent at the
54 respondent's last known residence and returned
55 undelivered.

**§48-2A-4. Commencement of proceeding; forms; counter-
claim; accompanying persons.**

1 (a) No person shall be refused the right to file a
2 petition under the provisions of this article. No person
3 shall be denied relief under the provisions of this article if
4 she or he presents facts sufficient under the provisions of
5 this article for the relief sought. The petition shall be
6 verified.

7 A petition for a protective order may be filed by:

8 (1) A person seeking relief under this article for
9 herself or himself;

10 (2) An adult family or household member for the
11 protection of the victim or for any family or household
12 member who is a minor child or physically or mentally
13 incapacitated to the extent that he or she cannot file on his
14 or her own behalf, or

15 (3) A person who reported or was a witness to
16 domestic or family violence and who, as a result, has been
17 abused, threatened, harassed or who has been the subject
18 of other actions intended to intimidate the person.

19 (b) The West Virginia supreme court of appeals shall
20 prescribe forms which are necessary and convenient for
21 proceedings pursuant to this article, and the court shall
22 distribute such forms to the clerk of the circuit court and
23 magistrate court of each county within the state.

24 (c) The respondent named in any petition alleging
25 domestic or family violence may file a counterclaim or
26 raise any affirmative defenses.

27 (d) No person accompanying a person who is seeking
28 to file a petition under the provisions of this article is
29 precluded from being present if his or her presence is
30 desired by the person seeking a petition unless the
31 person's behavior is disruptive to the proceeding.

32 (e) No fees shall be charged for the filing of petitions
33 or other papers, service of petitions or orders, copies of
34 orders, or other costs for services provided by, or
35 associated with, any proceedings under this article until the
36 matter is brought before the court for final resolution.

§48-2A-5. Temporary orders of court; hearings; persons present.

1 (a) Upon filing of a verified petition under this article,
2 the court may enter such temporary orders as it may deem
3 necessary to protect the petitioner or minor children from
4 domestic or family violence and, upon good cause shown,
5 may do so ex parte without the necessity of bond being
6 given by the petitioner. Clear and convincing evidence of

7 immediate and present danger of abuse to the petitioner or
8 minor children shall constitute good cause for the issuance
9 of an ex parte order pursuant to this section. If the
10 respondent is not present at the proceeding, the petitioner
11 or the petitioner's legal representative shall certify to the
12 court, in writing, the efforts which have been made to give
13 notice to the respondent or just cause why notice should
14 not be required. Copies of medical reports or records
15 may be admitted into evidence to the same extent as
16 though the original thereof. The custodian of such
17 records shall not be required to be present to authenticate
18 such records for any proceeding held pursuant to this
19 subsection. Following such proceeding, the court shall
20 order a copy of the petition to be served immediately
21 upon the respondent, together with a copy of any
22 temporary order issued pursuant to the proceedings,
23 notice setting forth the time and place of the full hearing
24 and a statement of the right of the respondent to be
25 present and to be represented by counsel. Copies of any
26 order made under the provisions of this section shall also
27 be issued to the petitioner and any law-enforcement
28 agency having jurisdiction to enforce the order, including
29 the city police, the county sheriff's office and local office
30 of the state police within twenty-four hours of the entry of
31 the order. A temporary protective order shall remain
32 effective until such time as a hearing is held and shall be
33 in full force and effect in every county in this state.

34 (b) Within five days following the issuance of the
35 court's temporary order, a full hearing shall be held at
36 which the petitioner must prove the allegation of domestic
37 or family violence, or that he or she reported or witnessed
38 domestic violence against another and has, as a result, been
39 abused, threatened, harassed or has been the subject of
40 other actions to attempt to intimidate him or her, by a
41 preponderance of the evidence, or such petition shall be
42 dismissed. If the respondent has not been served with
43 notice of the temporary order, the hearing may be
44 continued in order to permit service to be effected. The
45 failure to obtain service upon the respondent does not
46 constitute a basis for dismissing the petition. Copies of
47 medical reports may be admitted into evidence to the same

48 extent as though the original thereof, upon proper
49 authentication, by the custodian of such records.

50 (c) No person requested by a party to be present
51 during a hearing held under the provisions of this article
52 shall be precluded from being present unless such person
53 is to be a witness in the proceeding and a motion for
54 sequestration has been made and such motion has been
55 granted. A person found by the court to be disruptive
56 may be precluded from being present.

57 (d) If a hearing is continued, the court may make or
58 extend such temporary orders as it deems necessary.

§48-2A-6. Protective orders.

1 (a) At the conclusion of the hearing, if the petitioner
2 has proven the allegations of domestic or family violence,
3 or that he or she reported or witnessed domestic or family
4 violence against another and has, as a result, been abused,
5 threatened, harassed or has been the subject of other
6 actions to attempt to intimidate him or her, by a
7 preponderance of the evidence, the court shall issue a
8 protective order directing the respondent to refrain from
9 abusing, harassing, stalking, threatening or otherwise
10 intimidating the petitioner, the person who reported or
11 witnessed family or domestic violence or the minor
12 children, or engaging in other conduct that would place
13 the petitioner, the person who reported or witnessed family
14 or domestic violence or the minor children in reasonable
15 fear of bodily injury. Where the respondent is present at
16 the hearing and elects not to contest the allegations of
17 domestic or family violence or does not contest the relief
18 sought, the petitioner is not required to adduce evidence
19 and prove the allegations of domestic or family violence
20 and the court may directly address the issues of the relief
21 requested.

22 (b) Where the petitioner is the victim of domestic or
23 family violence, the terms of a protective order may
24 include:

25 (1) Granting possession to the petitioner of the
26 residence or household jointly resided in at the time the
27 abuse occurred;

28 (2) Awarding temporary custody of or establishing
29 temporary visitation rights with regard to minor children
30 named in the order;

31 (3) Establishing terms of temporary visitation with
32 regard to the minor children named in the order
33 including, but not limited to, requiring third party
34 supervision of visitations if necessary to protect the
35 petitioner and/or the minor children;

36 (4) Ordering the noncustodial parent to pay to the
37 custodial parent a sum for temporary support and
38 maintenance of the petitioner and children, if any;

39 (5) Ordering the respondent to pay to the petitioner a
40 sum for temporary support and maintenance of the
41 petitioner, where appropriate;

42 (6) Ordering the respondent to refrain from entering
43 the school, business or place of employment of the
44 petitioner or household or family members for the
45 purpose of violating the protective order;

46 (7) Ordering the respondent to participate in an
47 intervention program for perpetrators;

48 (8) Ordering the respondent to refrain from
49 contacting, telephoning, communicating, harassing or
50 verbally abusing the petitioner;

51 (9) Providing for either party to obtain personal
52 property or other items from a location, including
53 granting temporary possession of motor vehicles owned
54 by either or both of the parties, and providing for the
55 safety of the parties while this occurs, including ordering a
56 law-enforcement officer to accompany one or both of the
57 parties;

58 (10) Prohibiting the respondent from using or
59 possessing a firearm or other weapon, notwithstanding the
60 fact that the respondent has a valid license to possess such
61 firearm or other weapon;

62 (11) Informing the respondent that possession of a
63 firearm while subject to a protective order is a violation of
64 federal law;

65 (12) Ordering the respondent to reimburse the
66 petitioner or other person for any expenses incurred as a
67 result of the domestic or family violence, including, but
68 not limited to, medical expenses, transportation and
69 shelter; and

70 (13) Ordering the petitioner and respondent to refrain
71 from transferring, conveying, alienating, encumbering, or
72 otherwise dealing with property which could otherwise be
73 subject to the jurisdiction of the court or another court in
74 an action for divorce or support, partition or in any other
75 action affecting their interests in property.

76 (c) Where the petitioner or other person to be
77 protected reported or was a witness to the family or
78 domestic violence, the terms of a protective order may
79 include:

80 (1) Ordering the respondent to refrain from abusing,
81 contacting, telephoning, communicating, harassing,
82 verbally abusing or otherwise intimidating the petitioner
83 or other person to be protected;

84 (2) Ordering the respondent to refrain from entering
85 the school, business or place of employment of the
86 petitioner or other person to be protected, for the purpose
87 of violating the protective order.

88 (d) Except as otherwise provided by subsection (d),
89 section three-a of this article, a final protective order
90 issued by a magistrate, family law master or circuit judge
91 pursuant to this article or subdivision (13), subsection (a),
92 article two of this chapter, is effective for either ninety
93 days or one hundred eighty days, in the discretion of the
94 court. If the court enters an order for a period of ninety
95 days, upon receipt of a written request from the petitioner
96 prior to the expiration of the ninety-day period, the court
97 shall extend its order for an additional ninety-day period.

98 (e) To be effective, a written request to extend an
99 order from ninety days to one hundred eighty days must

100 be submitted to the court prior to the expiration of the
101 original ninety-day period. A notice of the extension
102 shall be sent by the clerk of the court to the respondent by
103 first class mail, addressed to the last known address of the
104 respondent as indicated by the court's case filings. The
105 extension of time is effective upon mailing of the notice.

106 (f) The court may amend the terms of a protective
107 order at any time upon subsequent petition filed by either
108 party. The protective order shall be in full force and
109 effect in every county of this state and shall so state.

110 (g) No order under this article shall in any manner
111 affect title to any real property.

112 (h) Certified copies of any order or extension notice
113 made under the provisions of this section shall be issued to
114 the petitioner, the respondent and any law-enforcement
115 agency having jurisdiction to enforce the order, including
116 the city police, the county sheriff's office or local office of
117 the West Virginia state police within twenty-four hours of
118 the entry of the order.

119 (i) Mutual protective orders are prohibited unless both
120 parties have filed a petition under section four of this
121 article and have proven the allegations of domestic or
122 family violence by a preponderance of the evidence. This
123 shall not prevent other persons, including the respondent,
124 from filing a separate petition. The court may consolidate
125 two or more petitions if he or she determines that
126 consolidation will further the interests of justice and
127 judicial economy. The court shall enter a separate order
128 for each petition filed.

129 (j) Any protective order issued pursuant to this article
130 shall contain on its face the following statement, printed in
131 bold faced type or in capital letters:

132 **"VIOLATION OF THIS ORDER MAY BE**
133 **PUNISHED BY CONFINEMENT IN A REGIONAL**
134 **OR COUNTY JAIL FOR AS LONG AS ONE YEAR**
135 **AND BY A FINE OF AS MUCH AS TWO**
136 **THOUSAND DOLLARS".**

§48-2A-7. Conditions of visitation in cases involving domestic or family violence.

1 (a) A court may award visitation of a child by a parent
2 who has committed domestic or family violence only if
3 the court finds that adequate provision for the safety of
4 the child and the petitioner can be made.

5 (b) In a visitation order, a court may:

6 (1) Order an exchange of a child to occur in a
7 protected setting;

8 (2) Order that supervision be provided by another
9 person or agency;

10 (3) Order the perpetrator of domestic or family
11 violence to attend and complete, to the satisfaction of the
12 court, a program of intervention for perpetrators as a
13 condition of the visitation;

14 (4) Order the perpetrator of domestic or family
15 violence to abstain from possession or consumption of
16 alcohol or controlled substances during the visitation and
17 for the twelve hours that precede the visitation;

18 (5) Order the perpetrator of domestic or family
19 violence to pay the costs of supervised visitation, if any;

20 (6) Prohibit overnight visitation;

21 (7) Impose any other condition that the court
22 considers necessary to provide for the safety of the child,
23 the petitioner or any other family or household member.

24 (c) Regardless of whether visitation is allowed, the
25 court may order that the address of the child and the
26 petitioner be kept confidential.

27 (d) If a court allows a family or household member to
28 supervise visitation, the court shall establish conditions to
29 be followed during visitation.

§48-2A-9. Law enforcement response to domestic or family violence.

1 (a) Notwithstanding any other provision of this code
2 to the contrary, all law-enforcement officers are hereby
3 authorized to serve all pleadings and orders filed or
4 entered pursuant to this article on Sundays and legal
5 holidays. No law-enforcement officer shall refuse to serve
6 any pleadings or orders entered pursuant to this article.

7 (b) Any law-enforcement officer responding to an
8 alleged incident of domestic or family violence shall
9 inform the parties thereto of the availability of the possible
10 remedies provided by this article and the possible
11 applicability of the criminal laws of this state. Any law-
12 enforcement officer investigating an alleged incident of
13 domestic or family violence shall advise the victim of such
14 violence of the availability of the family protection shelter
15 to which such person may be admitted.

16 (c) Any law-enforcement officer responding to an
17 alleged incident of domestic or family violence shall, in
18 addition to providing the information required in
19 subsection (a) of this section, provide transportation for or
20 facilitate transportation of the victim or victims, upon the
21 request of such victim or victims, to a shelter or the
22 appropriate court where there is reasonable cause to
23 believe that such victim or victims have suffered or are
24 likely to suffer physical injury.

25 (d) Each law-enforcement agency shall maintain
26 records on all incidents of domestic or family violence
27 reported to it and shall monthly make and deliver to the
28 West Virginia state police a report on a form prescribed by
29 the state police, listing all such incidents of domestic or
30 family violence. Such reports shall include:

31 (1) The age and sex of the victim and the perpetrator
32 of domestic or family violence;

33 (2) The relationship between the parties;

34 (3) The type and extent of abuse;

35 (4) The number and type of weapons involved;

36 (5) Whether the law-enforcement agency responded to
37 the complaint and if so, the time involved, the action taken

38 and the time lapse between the agency's action and the
39 victim's request for assistance;

40 (6) Whether any prior reports have been made,
41 received or filed regarding domestic or family violence on
42 any prior occasion and if so, the number of such prior
43 reports; and

44 (7) The effective dates and terms of any protective
45 order issued prior to or following the incident to protect
46 the victim: *Provided*, That no information which will
47 permit the identification of the parties involved in any
48 incident of domestic or family violence shall be included
49 in such report.

50 (e) The West Virginia state police shall tabulate and
51 analyze any statistical data derived from the reports made
52 by law-enforcement agencies pursuant to this section and
53 publish a statistical compilation in its annual uniform
54 crime report, as provided for in section twenty-four, article
55 two, chapter fifteen of this code. The statistical
56 compilation shall include, but is not limited to, the
57 following:

58 (1) The number of domestic or family violence
59 complaints received;

60 (2) The number of complaints investigated;

61 (3) The number of complaints received from alleged
62 victims of each sex;

63 (4) The average time lapse in responding to such
64 complaints;

65 (5) The number of complaints received from alleged
66 victims who have filed such complaints on prior occasions;

67 (6) The number of aggravated assaults and homicides
68 resulting from such repeat incidents;

69 (7) The type of police action taken in disposition of
70 the cases; and

71 (8) The number of alleged violations of protective
72 orders.

73 (f) As used in this section, the terms "abuse", "family
74 violence" and "family or household members" shall have
75 the meanings given them in section two of this article; and
76 the term "law-enforcement agency" shall include the West
77 Virginia department of health and human resources in
78 those instances of child abuse reported to the department
79 which are not otherwise reported to any other law-
80 enforcement agency.

81 (g) The governor's committee on crime, delinquency
82 and correction shall develop and promulgate rules for
83 state, county and municipal law-enforcement officers and
84 law-enforcement agencies with regard to domestic
85 violence. The notice of the public hearing on the rules
86 shall be published before the first day of July, one
87 thousand nine hundred ninety-one. Prior to the
88 publication of the proposed rules, the governor's
89 committee on crime, delinquency and correction shall
90 convene a meeting or meetings of an advisory committee
91 to assist in the development of the rules. The advisory
92 committee shall be composed of persons invited by the
93 committee to represent state, county and local law-
94 enforcement agencies and officers, to represent
95 magistrates and court officials, to represent victims of
96 domestic or family violence, to represent shelters receiving
97 funding pursuant to article two-c of this chapter and to
98 represent other persons or organizations who, in the
99 discretion of the committee, have an interest in the rules.
100 The rules and the revisions thereof as provided in this
101 section shall be promulgated as legislative rules in
102 accordance with chapter twenty-nine-a of this code.
103 Following the promulgation of said rules, the committee
104 shall meet at least annually to review the rules and to
105 propose revisions as a result of changes in law or policy.

106 (h) Nothing in this section shall be construed to
107 authorize the inclusion of information contained in a
108 report of an incident of abuse in any local, state, interstate,
109 national or international systems of criminal identification
110 pursuant to section twenty-four, article two, chapter fifteen
111 of this code: *Provided*, That nothing in this section shall
112 prohibit the West Virginia state police from processing

113 information through its criminal identification bureau with
114 respect to any actual charge or conviction of a crime.

115 (i) All law-enforcement officers shall receive training
116 relating to response to calls involving domestic or family
117 violence by the first day of October, one thousand nine
118 hundred ninety-three.

119 (j) Two years after the entry of a final protective order,
120 the circuit court, may, upon motion, order that the
121 protective order and references to the order be purged
122 from the file maintained by any law-enforcement agency
123 and may further order that the file maintained by the
124 court be sealed and not opened except upon order of the
125 court when such is in the interest of justice.

§48-2A-10. Filing of orders with law-enforcement agency.

1 Upon entry of an order pursuant to section five or six
2 of this article, or an order entered pursuant to section
3 thirteen, article two of this chapter granting relief provided
4 for by this article, a copy of the order shall, no later than
5 the close of the next business day, be transmitted by the
6 court or the clerk of the court to a local office of the city
7 police, the county sheriff and the West Virginia state
8 police, where it shall be placed in a confidential file, with
9 access provided only to the law-enforcement agency and
10 the respondent named on the order. A sworn affidavit
11 may be executed by a party who has been awarded
12 exclusive possession of the residence or household,
13 pursuant to an order entered under subsection (b), section
14 six of this article, and shall be delivered to such law-
15 enforcement agencies simultaneously with any order,
16 giving his or her consent for a law-enforcement officer to
17 enter the residence or household, without a warrant, to
18 enforce the protective order or temporary order. Orders
19 shall be promptly served upon the respondent. Failure to
20 serve a protective order does not stay the effect of a valid
21 order if the respondent has actual notice of the existence
22 and contents of the order.

**§48-2A-10a. Civil contempt; violation of protective orders;
order to show cause.**

1 (a) Any party to a protective order or a legal guardian
2 or guardian ad litem may file a petition for civil contempt
3 alleging a violation of an order issued pursuant to the
4 provisions of this article. Such petition shall be filed in a
5 court in the county in which the violation occurred or the
6 county in which the order was issued.

7 (b) When a petition for an order to show cause is filed,
8 a hearing on the petition shall be held within five days
9 from the filing of the petition. Any order to show cause
10 which is issued shall be served upon the alleged violator.

11 (c) Upon a finding of contempt, the court may order
12 the violator to comply with specific provisions of the
13 protective order and post a bond as surety for faithful
14 compliance with such order.

§48-2A-12. Registration of order.

1 (a) The West Virginia state police shall maintain a
2 registry in which it shall enter certified copies of orders
3 entered by courts from every county in this state pursuant
4 to the provisions of this article, or from other jurisdictions
5 pursuant to their laws: *Provided*, That the provisions of
6 this subsection are not effective until a central automated
7 record system is developed.

8 (b) A petitioner who obtains a protective order
9 pursuant to this article, or from another jurisdiction
10 pursuant to its law, may register that order in any county
11 within this state where the petitioner believes enforcement
12 may be necessary.

13 (c) A protective order may be registered by the
14 petitioner in a county other than the issuing county by
15 obtaining a copy of the order of the issuing court,
16 certified by the clerk of that court, and presenting that
17 certified order to the local office of the West Virginia state
18 police where the order is to be registered.

19 (d) Upon receipt of a certified order for registration,
20 the local office of the state police shall provide certified
21 copies to any law-enforcement agency within its
22 jurisdiction, including the city police and the county
23 sheriff's office.

24 (e) Nothing in this section precludes the enforcement
25 of an order in a county other than the county or
26 jurisdiction in which the order was issued, if the petitioner
27 has not registered the order in the county in which an
28 alleged violation of the order occurs.

§48-2A-14. Arrest in domestic violence matters; conditions.

1 (a) Notwithstanding any provision of this code to the
2 contrary, if a person is alleged to have committed a
3 violation of the provisions of subsection (a) or (b), section
4 twenty-eight, article two, chapter sixty-one of this code
5 against a family or household member, in addition to any
6 other authority to arrest granted by this code, a
7 law-enforcement officer has authority to arrest that person
8 without first obtaining a warrant if:

9 (1) The law-enforcement officer has observed credible
10 corroborative evidence that an offense has occurred; and
11 either:

12 (2) The law-enforcement officer has received, from
13 the victim or a witness, an oral or written allegation of facts
14 constituting a violation of section twenty-eight, article two,
15 chapter sixty-one of this code; or

16 (3) The law-enforcement officer has observed credible
17 evidence that the accused committed the offense.

18 (b) For purposes of this section, credible corroborative
19 evidence means evidence that is worthy of belief and
20 corresponds to the allegations of one or more elements of
21 the offense and may include, but is not limited to, the
22 following:

23 (1) *Condition of the alleged victim.* — One or more
24 contusions, scratches, cuts, abrasions, or swellings; missing
25 hair; torn clothing or clothing in disarray consistent with a
26 struggle; observable difficulty in breathing or
27 breathlessness consistent with the effects of choking or a
28 body blow; observable difficulty in movement consistent
29 with the effects of a body blow or other unlawful physical
30 contact.

31 (2) *Condition of the accused.* — Physical injury or
32 other conditions similar to those set out for the condition
33 of the victim which are consistent with the alleged offense
34 or alleged acts of self-defense by the victim.

35 (3) *Condition of the scene.* — Damaged premises or
36 furnishings; disarray or misplaced objects consistent with
37 the effects of a struggle.

38 (4) *Other conditions.* — Statements by the accused
39 admitting one or more elements of the offense; threats
40 made by the accused in the presence of an officer; audible
41 evidence of a disturbance heard by the dispatcher or other
42 agent receiving the request for police assistance; written
43 statements by witnesses.

44 (c) Whenever any person is arrested pursuant to
45 subsection (a) of this section, the arrested person shall be
46 taken before a magistrate within the county in which the
47 offense charged is alleged to have been committed in a
48 manner consistent with the provisions of Rule 1 of the
49 Administrative Rules for the Magistrate Courts of West
50 Virginia.

51 (d) If an arrest for a violation of subsection (c), section
52 twenty-eight, article two, chapter sixty-one of this code is
53 authorized pursuant to this section, that fact constitutes
54 prima facie evidence that the accused constitutes a threat
55 or danger to the victim or other family or household
56 members for the purpose of setting conditions of bail
57 pursuant to section seventeen-c, article one-c, chapter
58 sixty-two of this code.

59 (e) Whenever any person is arrested pursuant to the
60 provisions of this article or for a violation of an order
61 issued pursuant to subdivision (12), subsection (a), section
62 thirteen, article two of this chapter, the arresting officer:

63 (1) Shall seize all weapons that are alleged to have
64 been involved or threatened to be used in the commission
65 of domestic or family violence; and

66 (2) May seize a weapon that is in plain view of the
67 officer or was discovered pursuant to a consensual search,

68 as necessary for the protection of the officer or other
69 persons.

ARTICLE 2C. DOMESTIC VIOLENCE ACT.

- §48-2C-2. Definitions.
- §48-2C-3. Family protection services board; members; purposes.
- §48-2C-4. Duties of board.
- §48-2C-4a. Establishment of local councils authorized.
- §48-2C-4b. State public health plan for reducing domestic or family violence.
- §48-2C-10. Referral to shelters by officers.
- §48-2C-10a. Notice of victims' rights, remedies and available services; required information.
- §48-2C-13a. Standards, procedures and curricula.
- §48-2C-13b. Regulation of intervention programs for perpetrators; required provisions; duties of providers.
- §48-2C-13c. Licensing providers of intervention programs for perpetrators.
- §48-2C-16. Continuing education for certain state employees.
- §48-2C-17. Continuing education for law-enforcement officers concerning domestic or family violence.
- §48-2C-18. Judicial education on domestic or family violence.
- §48-2C-19. Required curricula for public education system.
- §48-2C-20. Continuing education for school personnel who are required to report child abuse and neglect.

§48-2C-2. Definitions.

- 1 As used in this article, unless the context clearly
2 requires otherwise:
- 3 (a) "Board" means the family protection services board
4 created pursuant to section three of this article;
 - 5 (b) "Department" means the department of health and
6 human resources or any successor agency however so
7 named;
 - 8 (c) "Shelter" or "family protection shelter" means a
9 licensed domestic or family violence shelter created for
10 the purpose of receiving, on a temporary basis, persons
11 who are victims of domestic violence, abuse or rape as well
12 as the children of such victims;

13 (d) "Secretary" means the secretary of the
14 department of health and human resources; and

15 (e) "Family protection program" or "program" means
16 a licensed domestic or family violence program offered
17 by a locally controlled organization primarily for the
18 purpose of providing services to victims of domestic or
19 family violence or abuse and their children.

**§48-2C-3. Family protection services board; members;
purposes.**

1 (a) There is hereby created a family protection
2 services board to consist of five persons. The governor,
3 with the advice and consent of the Senate, shall appoint
4 three members of the board. One such member shall be a
5 director of a shelter. One member shall be a member of a
6 major trade association which represents shelters across the
7 state. The final gubernatorial appointee shall be a
8 member of the public. The other two members shall be
9 the secretary of the department of health and human
10 resources, or his or her designee, and the chair of the
11 governor's committee on crime, delinquency and
12 correction, or his or her designee.

13 (b) The terms of the three members appointed by the
14 governor shall be staggered terms of three years. In the
15 case of the initial appointments, the director of the shelter
16 shall serve a one-year term, the representative of the trade
17 association shall serve a two-year term and the appointed
18 member of the public shall serve a three-year term.

19 (c) In the event that a member of the board ceases to
20 be qualified for appointment, then his or her appointment
21 shall terminate.

§48-2C-4. Duties of board.

1 It is the duty of the board to:

2 (a) Regulate its procedural practice;

3 (b) Receive and consider applications for the
4 development of shelters;

5 (c) Facilitate the formation and operation of shelters;

6 (d) Promulgate rules to implement the provisions of
7 this article and any applicable federal guidelines;

8 (e) Advise the secretary on matters of concern relative
9 to his or her responsibilities under this article;

10 (f) Study issues pertinent to family protection shelters,
11 programs for domestic violence victims, and report the
12 results to the governor and the Legislature;

13 (g) Conduct hearings as necessary under this article;

14 (h) Delegate to the secretary such powers and duties of
15 the board as the board may deem appropriate to delegate,
16 including, but not limited to, the authority to approve,
17 disapprove, revoke or suspend licenses;

18 (i) Deliver funds to shelters within forty-five days of
19 the approval of a proposal for such shelters;

20 (j) Establish a system of peer review which will ensure
21 the safety, well-being and health of the clients of all
22 shelters operating in the state;

23 (k) Evaluate annually each funded shelter to
24 determine its compliance with the goals and objectives set
25 out in its original application for funding or subsequent
26 revisions;

27 (l) To award to shelters, for each fiscal year, ninety-
28 five percent of the total funds collected and paid over
29 during the fiscal year to the special revenue account
30 established pursuant to section twenty-four, article one of
31 this chapter and to expend, during said period a sum not
32 in excess of five percent of said funds for cost of
33 administering provisions of this article;

34 (m) Establish and enforce system of standards for
35 annual licensure for all shelters and programs in the state;

36 (n) Enforce standards; and

37 (o) Review its rules biannually.

§48-2C-4a. Establishment of local councils authorized.

1 (a) A local government, a county or a combination
2 thereof may establish an advisory council on domestic or
3 family violence.

4 (b) The purpose of a local advisory council is to
5 increase the awareness and understanding of domestic or
6 family violence and its consequences and to reduce the
7 incidence of domestic or family violence within the
8 locality by:

9 (1) Promoting effective strategies for identification of
10 the existence of domestic or family violence and
11 intervention by public and private agencies serving
12 persons who are victims of domestic or family violence;

13 (2) Providing for public education;

14 (3) Facilitating communication among public and
15 private agencies that provide programs to assist victims
16 and programs of intervention for perpetrators;

17 (4) Providing assistance to public and private agencies
18 and providers of services to develop statewide procedures
19 and community and staff education, including procedures
20 to review fatalities; and

21 (5) Developing a comprehensive plan of data
22 collection concerning domestic or family violence in
23 cooperation with courts, prosecutors, law-enforcement
24 officers, health care practitioners and other local agencies,
25 in a manner that protects the identity of victims of
26 domestic or family violence. Nothing contained in this
27 subdivision shall be construed to modify or diminish any
28 existing law relating to the confidentiality of records.

§48-2C-4b. State public health plan for reducing domestic or family violence.

1 (a) The bureau for public health of the department of
2 health and human resources, in consultation with the
3 family protection services board, shall:

4 (1) Assess the impact of domestic or family violence
5 on public health; and

6 (2) Write a state public health plan for reducing the
7 incidence of domestic or family violence in this state.

8 (b) The state public health plan shall:

9 (1) Include, but not be limited to, public education,
10 including the use of the various communication media to
11 set forth the public health perspective on domestic or
12 family violence;

13 (2) Be developed in consultation with public and
14 private agencies that provide programs for victims of
15 domestic or family violence, advocates for victims,
16 organizations representing the interests of shelters, and
17 persons who have demonstrated expertise and experience
18 in providing health care to victims of domestic or family
19 violence and their children; and

20 (3) Be completed on or before the first day of
21 January, two thousand.

22 (c) The bureau for public health of the department of
23 health and human resources shall:

24 (1) Transmit a copy of the state public health plan to
25 the governor and the Legislature; and

26 (2) Review and update the state public health plan
27 annually.

§48-2C-10. Referral to shelters by officers.

1 Where shelters are available, the law-enforcement
2 officer or other public authority investigating an alleged
3 incident of domestic or family violence shall advise the
4 victim of the availability of the family protection shelter to
5 which that person may be admitted.

§48-2C-10a. Notice of victims' rights, remedies and available services; required information.

1 (a) The bureau for public health of the department of
2 health and human resources shall make available to health
3 care facilities and practitioners a written form notice of the
4 rights of victims and the remedies and services available to
5 victims of domestic or family violence.

6 (b) A health care practitioner whose patient has
7 injuries or conditions consistent with domestic violence
8 shall provide to the patient, and every health care facility
9 shall make available to all patients, a written form notice of
10 the rights of victims and the remedies and services
11 available to victims of domestic or family violence.

§48-2C-13a. Standards, procedures and curricula.

1 (a) The bureau for public health of the department of
2 health and human resources shall publish model standards,
3 including specialized procedures and curricula,
4 concerning domestic or family violence for health care
5 facilities, practitioners and personnel.

6 (b) The procedures and curricula shall be developed
7 in consultation with public and private agencies that
8 provide programs for victims of domestic or family
9 violence, advocates for victims, organizations representing
10 the interests of shelters and personnel who have
11 demonstrated expertise and experience in providing health
12 care to victims of domestic or family violence and their
13 children.

§48-2C-13b. Regulation of intervention programs for perpetrators; required provisions; duties of providers.

1 (a) The family protection services board shall propose
2 legislative rules governing the minimum level of
3 responsibility, service and accountability expected from
4 providers of programs of intervention for perpetrators of
5 domestic and family violence. These rules shall be
6 proposed for promulgation in accordance with the
7 provisions of article three, chapter twenty-nine-a of this
8 code. These rules shall be developed in consultation with
9 public and private agencies that provide programs for
10 victims of domestic or family violence and programs of
11 intervention for perpetrators, with advocates for victims,
12 with organizations that represent the interests of shelters,
13 and with persons who have demonstrated expertise and
14 experience in providing services to victims and
15 perpetrators of domestic and family violence and their
16 children. If a program of intervention for perpetrators
17 receives funds from the state or is licensed by the state, the

18 board shall review the program's compliance with the
19 rules promulgated pursuant to this subsection.

20 (b) The rules for programs for intervention for
21 perpetrators of domestic or family violence shall include:

22 (1) Criteria concerning a perpetrator's appropriateness
23 for the program;

24 (2) Systems for communication and evaluation among
25 the referring court, the public and private agencies that
26 provide programs for victims of domestic or family
27 violence and the programs of intervention for
28 perpetrators; and

29 (3) Required qualifications concerning education,
30 training and experience for providers of intervention
31 programs.

32 (c) The standards shall be based upon and incorporate
33 the following principles:

34 (1) The focus of a program is to end the acts of
35 violence and ensure the safety of the victim and any
36 children or other family or household members;

37 (2) Domestic or family violence constitutes behavior
38 for which the perpetrator is accountable; and

39 (3) Although alcohol and substance abuse often
40 exacerbate domestic or family violence, it is a separate
41 problem which requires specialized intervention or
42 treatment.

43 (d) Providers of perpetrator intervention programs:

44 (1) Shall require participants to sign the following
45 releases:

46 (A) Allowing the provider to inform the victim and the
47 victim's advocates that the perpetrator is participating in a
48 batterers' intervention prevention program with the
49 provider and to provide information to the victim and the
50 victim's advocates, if necessary, for the victim's safety;

51 (B) Allowing prior and current treating agencies to
52 provide information about the perpetrator to the provider;
53 and

54 (C) Allowing the provider, for good cause, to provide
55 information about the perpetrator to relevant legal entities,
56 including courts, parole officers, probation officers and
57 child protective services;

58 (2) Shall report to the court, if the participation was
59 court ordered, and to the victim, if the victim requests and
60 provides a method of notification, any assault, failure to
61 comply with program requirements, failure to attend the
62 program and threat of harm by the perpetrator;

63 (3) Shall report to the victim, without the participant's
64 authorization, all threats of harm;

65 (4) May report to the victim, without the participant's
66 authorization, the participant's failure to attend.

**§48-2C-13c. Licensing providers of intervention programs for
perpetrators.**

1 (a) The board shall establish an application for
2 licensure for all providers of programs of intervention for
3 perpetrators in accordance with section thirteen-b of this
4 article.

5 (b) Licenses may be renewed on an annual basis with
6 all such licenses having a term of one year commencing
7 on the first day of July and terminating on the thirtieth
8 day of June on the next year.

9 (c) The board shall grant or deny any license within
10 forty-five days of the receipt of the application.

11 (d) The license granted by the board shall be
12 conspicuously displayed by the licensees.

13 (e) The board may grant a provisional license or
14 grant a waiver of licensure if the board deems such waiver
15 or provisional license necessary for the operation of a
16 program. All such waivers or provisional licenses shall be
17 reviewed semiannually.

§48-2C-16. Continuing education for certain state employees.

1 (a)(1) Subject to the provisions of subdivision (2) of
2 this subsection, the department of health and human
3 resources shall provide or require continuing education
4 concerning domestic or family violence for child
5 protective services workers, adult protective services
6 workers, social services workers, family support workers
7 and workers in the child support enforcement division.

8 (2) Funding for the continuing education provided or
9 required under subdivision (1) of this section may not
10 exceed the amounts allocated for that purpose by the
11 spending unit from existing appropriations. No provision
12 of this section may be construed to require the Legislature
13 to make any appropriation.

14 (b) The courses or requirements shall be prepared and
15 presented in consultation with public and private agencies
16 that provide programs for victims of domestic or family
17 violence or programs of intervention for perpetrators,
18 advocates for victims, organizations representing the
19 interests of shelters and the family protection services
20 board.

§48-2C-17. Continuing education for law-enforcement officers concerning domestic or family violence.

1 (a)(1) Subject to the provisions of subdivision (2) of
2 this subsection, as a part of the initial law-enforcement
3 officer training required before a person may be
4 employed as a law-enforcement officer pursuant to article
5 twenty-nine, chapter thirty of this code, all law-
6 enforcement officers shall receive training concerning
7 domestic or family violence.

8 (2) Funding for the training required under
9 subdivision (1) of this section may not exceed the
10 amounts allocated by the spending unit for that purpose
11 from existing appropriations. No provision of this section
12 may be construed to require the Legislature to make any
13 appropriation.

14 (b) The course of instruction and the objectives in
15 learning and performance for the education of law-

16 enforcement officers required pursuant to this section
17 shall be developed and presented in consultation with
18 public and private providers of programs for victims of
19 domestic or family violence and programs of intervention
20 for perpetrators, persons who have demonstrated expertise
21 in training and education concerning domestic or family
22 violence and organizations representing the interests of
23 shelters.

§48-2C-18. Judicial education on domestic or family violence.

1 (a)(1) Subject to the provisions of subdivision (2) of
2 this subsection, as a part of existing training for court
3 personnel, the supreme court of appeals shall develop and
4 present courses of continuing education concerning
5 domestic or family violence for magistrates assistants, and
6 juvenile and adult probation officers.

7 (2) Funding for the continuing education required
8 under subdivision (1) of this section may not exceed the
9 amounts allocated for that purpose by the supreme court
10 of appeals from existing appropriations. No provision of
11 this section may be construed to require the Legislature to
12 make any appropriation.

13 (b) The course of instruction shall be prepared and
14 may be presented in consultation with public and private
15 agencies that provide programs for victims of domestic or
16 family violence and programs of intervention for
17 perpetrators, advocates for victims, persons who have
18 demonstrated expertise in training and education
19 concerning domestic or family violence, organizations
20 representing the interests of shelters and the family
21 protection services board.

§48-2C-19. Required curricula for public education system.

1 (a)(1) Subject to the provisions of subdivision (2) of
2 this subsection, the state board of education shall select or
3 develop:

4 (A) Curricula that are appropriate for various ages for
5 pupils concerning the dynamics of violence, prevention of
6 violence, including domestic or family violence; and

7 (B) Curricula for school counselors, health care
8 personnel, administrators and teachers concerning
9 domestic or family violence.

10 (2) Funding for selecting or developing the curricula
11 required under subdivision (1) of this section may not
12 exceed the amounts allocated for that purpose by the
13 spending unit from existing appropriations. No provision
14 of this section may be construed to require the Legislature
15 to make any appropriation.

16 (b) The curricula shall be selected or developed by the
17 state board of education in consultation with public and
18 private agencies that provide programs for conflict
19 resolution, violence prevention, victims of domestic or
20 family violence and programs of intervention for
21 perpetrators of domestic or family violence, advocates for
22 victims, organizations representing the interests of shelters,
23 persons who have demonstrated expertise and experience
24 in education and domestic or family violence and the
25 family protection services board.

**§48-2C-20. Continuing education for school personnel who
are required to report child abuse and neglect.**

1 (a)(1) Subject to the provisions of subdivision (2) of
2 this subsection, the state department of education shall
3 provide or require courses of continuing education
4 concerning domestic or family violence for employees
5 who are required by law to report child abuse or neglect.

6 (2) Funding for the continuing education provided or
7 required under subdivision (1) of this section may not
8 exceed the amounts allocated for that purpose by the
9 spending unit from existing appropriations. No provision
10 of this section may be construed to require the Legislature
11 to make any appropriation.

12 (b) The courses or requirements shall be prepared
13 and presented in consultation with public and private
14 agencies that provide programs for victims of domestic or
15 family violence, persons who have demonstrated expertise
16 in education and domestic or family violence, advocates
17 for victims, organizations representing the interests of
18 shelters and the family protection services board.

CHAPTER 125

(Com. Sub. for S. B. 533—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 14, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact section thirty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section ten, article nine-a, chapter eighteen of said code; to amend and reenact section fifteen, article nine-d of said chapter; and to amend and reenact section eighteen, article twenty-two, chapter twenty-nine of said code, all relating to a funding plan for continuing public school construction; deleting outdated language; continuing monthly state sales tax payments into the school major improvement fund by eliminating the termination date for such payments; continuing monthly state sales tax payments into the school construction fund by eliminating the termination date for such payments; providing for the payment of the annual difference between the allocation made in the one thousand nine hundred ninety-seven fiscal year and the amount of funds required for debt service on school improvement bonds under the better school building amendment for any succeeding current year to be deposited into the school construction fund; authorizing use of certain moneys for study and implementation of a charter school pilot program; providing that, upon retirement of school construction bonds secured through allocations from the school building capital improvements fund, certain moneys allocated for that purpose are to be deposited into the school construction fund; school building authority generally; distribution of funds; submission of construction designs for school building authority approval; and providing that, upon the retirement of the school improvement bonds secured by profits from the lottery and deposited in the school debt service fund, an annual amount of eighteen million dollars of such funds shall be deposited into the school construction fund.

Be it enacted by the Legislature of West Virginia:

That section thirty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section ten, article nine-a, chapter eighteen of said code be amended and reenacted; that section fifteen, article nine-d of said chapter be amended and reenacted; and that section eighteen, article twenty-two, chapter twenty-nine of said code be amended and reenacted, all to read as follows:

Chapter

11. Taxation.

18. Education.

29. Miscellaneous Boards and Officers.

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-30. Proceeds of tax; appropriation of certain revenues.

1 (a) The proceeds of the tax imposed by this article
2 shall be deposited in the general revenue fund of the state
3 except as otherwise expressly provided in this article.

4 (b) *School major improvement fund.* —

5 After the payment or commitment of the proceeds or
6 collections of this tax for the purposes set forth in sections
7 sixteen and eighteen of this article, on the first day of each
8 month, there shall be dedicated monthly from the
9 collections of this tax, the amount of four hundred sixteen
10 thousand six hundred sixty-seven dollars and the amount
11 dedicated shall be deposited on a monthly basis into the
12 school major improvement fund created pursuant to
13 section six, article nine-d, chapter eighteen of this code.

14 (c) *School construction fund.* —

15 After the payment or commitment of the proceeds or
16 collections of this tax for the purposes set forth in sections
17 sixteen and eighteen of this article:

18 (1) On the first day of each month, there shall be
19 dedicated monthly from the collections of this tax, the
20 amount of one million four hundred sixteen thousand six
21 hundred sixty-seven dollars and the amount dedicated
22 shall be deposited into the school construction fund

23 created pursuant to section six, article nine-d, chapter
24 eighteen of this code.

25 (2) Effective the first day of July, one thousand nine
26 hundred ninety-eight, there shall be dedicated from the
27 collections of this tax, an amount equal to any annual
28 difference that may occur between the debt service
29 payment for the one thousand nine hundred ninety-seven
30 fiscal year for school improvement bonds issued under the
31 better school building amendment under the provisions of
32 article nine-c, chapter eighteen of this code and the
33 amount of funds required for debt service on these school
34 improvement bonds in any current fiscal year thereafter.
35 This annual difference shall be prorated monthly, added
36 to the monthly deposit in subdivision (1) of this
37 subsection and deposited into the school construction
38 fund created pursuant to section six, article nine-d, chapter
39 eighteen of this code.

CHAPTER 18. EDUCATION.

Article

9A. Public School Support.

9D. School Building Authority.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

*§18-9A-10. Foundation allowance to improve instructional programs.

1 (a) For each school year beginning on the first day of
2 July, one thousand nine hundred ninety-eight, and
3 thereafter, the sum of the allocations shall be the amount
4 appropriated by the Legislature for those purposes:

5 (1) One hundred fifty thousand dollars shall be
6 allocated to each county;

7 (2) Distribution to the counties of the remainder of
8 these funds shall be made proportional to the average of
9 each county's average daily attendance for the preceding
10 year and the county's second month net enrollment.

*Clerk's Note: This section was also amended by HB 4306 (Chapter 126), which passed prior to this act.

11 Moneys allocated by provision of this section shall be
12 used to improve instructional programs according to a
13 plan for instructional improvement which the affected
14 county board shall file with the state board by the first day
15 of August of each year, to be approved by the state board
16 by the first day of September of that year if the plan
17 substantially complies with standards to be adopted by the
18 state board: *Provided*, That notwithstanding any other
19 provision of this code to the contrary, moneys allocated
20 by provision of this section may also be used in the
21 implementation and maintenance of the uniform
22 integrated regional computer information system.

23 (3) Up to twenty-five percent of this allocation may be
24 used to employ professional educators and service
25 personnel in counties after all applicable provisions of
26 sections four and five of this article have been fully
27 utilized.

28 Prior to the use of any funds from this section for
29 personnel costs, the county board must receive
30 authorization from the state superintendent of schools.
31 The state superintendent shall require the district board to
32 demonstrate: (1) The need for the allocation; (2)
33 efficiency and fiscal responsibility in staffing; and (3) the
34 sharing of services with adjoining counties and the
35 regional educational service agency for that county in the
36 use of the total local district board budget. District boards
37 shall make application for available funds for the next
38 fiscal year by the first day of May of each year. On or
39 before the first day of June, the state superintendent shall
40 review all applications and notify applying district boards
41 of the distribution of the allocation. The funds shall be
42 distributed during the fiscal year as appropriate. The state
43 superintendent shall require the county board to
44 demonstrate the need for an allocation for personnel
45 based upon the county's inability to meet the requirements
46 of state law or state board policy: *Provided*, That the
47 funds available for personnel under this section may not
48 be used to increase the total number of professional
49 noninstructional personnel in the central office beyond
50 four. The instructional improvement plan shall be made

51 available for distribution to the public at the office of each
52 affected county board.

53 (b) An amount not less than the amount required to
54 meet debt service requirements on any revenue bonds
55 issued prior to the first day of January, one thousand nine
56 hundred ninety-four, and the debt service requirements on
57 any revenue bonds issued for the purpose of refunding
58 revenue bonds issued prior to the first day of January, one
59 thousand nine hundred ninety-four, shall be paid into the
60 school building capital improvements fund created by
61 section six, article nine-d of this chapter, and shall be used
62 solely for the purposes of that article. The school
63 building capital improvements fund shall not be utilized to
64 meet the debt services requirement on any revenue bonds
65 or revenue refunding bonds for which moneys contained
66 within the school building debt service fund have been
67 pledged for repayment pursuant to that section.

68 When the school improvement bonds secured by
69 funds from the school building capital improvements fund
70 mature, the state board of education shall annually deposit
71 an amount equal to twenty-four million dollars from the
72 funds allocated in this section into the school construction
73 fund created pursuant to the provisions of section six,
74 article nine-d, chapter eighteen of this code to continue
75 funding school facility construction and improvements.

76 (c) Any project funded by the school building
77 authority shall be in accordance with a comprehensive
78 educational facility plan which must be approved by the
79 state board and the school building authority.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-15. Legislative intent; distribution of money.

1 (a) It is the intent of the Legislature to empower the
2 school building authority to facilitate and provide state
3 funds and to administer all federal funds provided for the
4 construction and major improvement of school facilities
5 so as to meet the educational needs of the people of this
6 state in an efficient and economical manner. The
7 authority shall make funding determinations in

8 accordance with the provisions of this article and shall
9 assess existing school facilities and each facility's school
10 major improvement plan in relation to the needs of the
11 individual student, the general school population, the
12 communities served by the facilities and facility needs
13 statewide.

14 (b) An amount that is no more than three percent of
15 the sum of moneys that are determined by the authority to
16 be available for distribution during the then current fiscal
17 year from: (1) Moneys paid into the school building
18 capital improvements fund pursuant to section ten, article
19 nine-a of this chapter; (2) the issuance of revenue bonds
20 for which moneys in the school building debt service fund
21 are pledged as security; (3) moneys paid into the school
22 construction fund pursuant to section six of this article;
23 and (4) any other moneys received by the authority,
24 except moneys paid into the school major improvement
25 fund pursuant to section six of this article, may be
26 allocated and may be expended by the authority for
27 projects that service the educational community statewide
28 or, upon application by the state board, for educational
29 programs that are under the jurisdiction of the state board.
30 In addition, upon application by the state board or the
31 administrative council of an area vocational educational
32 center established pursuant to article two-b of this chapter,
33 the authority may allocate and expend under this section
34 moneys for school major improvement projects proposed
35 by the state board or an administrative council for school
36 facilities under the direct supervision of the state board or
37 an administrative council, respectively: *Provided*, That the
38 authority may not expend any moneys for a school major
39 improvement project proposed by the state board or the
40 administrative council of an area vocational educational
41 center unless the state board or an administrative council
42 has submitted a ten-year school major improvement plan,
43 to be updated annually, pursuant to section sixteen of this
44 article: *Provided, however*, That the authority shall,
45 before allocating any moneys to the state board or the
46 administrative council of an area vocational educational
47 center for a school improvement project, consider all other
48 funding sources available for the project.

49 (c) An amount that is no more than two percent of the
50 moneys that are determined by the authority to be
51 available for distribution during the current fiscal year
52 from: (1) Moneys paid into the school building capital
53 improvements fund pursuant to section ten, article nine-a
54 of this chapter; (2) the issuance of revenue bonds for
55 which moneys in the school building debt service fund are
56 pledged as security; (3) moneys paid into the school
57 construction fund pursuant to section six of this article;
58 and (4) any other moneys received by the authority,
59 except moneys deposited into the school major
60 improvement fund, shall be set aside by the authority as an
61 emergency fund to be distributed in accordance with the
62 guidelines adopted by the authority.

63 (d) The remaining moneys determined by the
64 authority to be available for distribution during the then
65 current fiscal year from: (1) Moneys paid into the school
66 building capital improvements fund pursuant to section
67 ten, article nine-a of this chapter; (2) the issuance of
68 revenue bonds for which moneys in the school building
69 debt service fund are pledged as security; (3) moneys paid
70 into the school construction fund pursuant to section six
71 of this article; and (4) any other moneys received by the
72 authority, except moneys deposited into the school major
73 improvement fund, shall be allocated and expended on the
74 basis of need and efficient use of resources, the basis to be
75 determined by the authority in accordance with the
76 provisions of section sixteen of this article.

77 (e) If a county board of education proposes to finance
78 a project that is approved pursuant to section sixteen of
79 this article through a lease with an option to purchase
80 leased premises upon the expiration of the total lease
81 period pursuant to an investment contract, the authority
82 may allocate no moneys to the county board in
83 connection with the project: *Provided*, That the authority
84 may transfer moneys to the state board of education,
85 which, with the authority, shall lend the amount transferred
86 to the county board to be used only for a one-time
87 payment due at the beginning of the lease term, made for
88 the purpose of reducing annual lease payments under the
89 investment contract, subject to the following conditions:

90 (1) The loan shall be secured in the manner required
91 by the authority, in consultation with the state board, and
92 shall be repaid in a period and bear interest at a rate as
93 determined by the state board and the authority and shall
94 have such terms and conditions as are required by the
95 authority, all of which shall be set forth in a loan
96 agreement among the authority, the state board and the
97 county board;

98 (2) The loan agreement shall provide for the state
99 board and the authority to defer the payment of principal
100 and interest upon any loan made to the county board
101 during the term of the investment contract, and annual
102 renewals of the investment contract, among the state board,
103 the authority, the county board and a lessor: *Provided*,
104 That in the event a county board, which has received a
105 loan from the authority for a one-time payment at the
106 beginning of the lease term, does not renew the subject
107 lease annually until performance of the investment
108 contract in its entirety is completed, the county board is in
109 default and the principal of the loan, together with all
110 unpaid interest accrued to the date of the default, shall at
111 the option of the authority, in consultation with the state
112 board, become due and payable immediately or subject to
113 renegotiation among the state board, the authority and the
114 county board: *Provided, however*, That if a county board
115 renews the lease annually through the performance of the
116 investment contract in its entirety, the county board shall
117 exercise its option to purchase the leased premises:
118 *Provided further*, That the failure of the county board to
119 make a scheduled payment pursuant to the investment
120 contract constitutes an event of default under the loan
121 agreement: *And provided further*, That upon a default by
122 a county board, the principal of the loan, together with all
123 unpaid interest accrued to the date of the default, shall at
124 the option of the authority, in consultation with the state
125 board, become due and payable immediately or subject to
126 renegotiation among the state board, the authority and the
127 county board: *And provided further*, That if the loan
128 becomes due and payable immediately, the authority, in
129 consultation with the state board, shall use all means
130 available under the loan agreement and law to collect the

131 outstanding principal balance of the loan, together with all
132 unpaid interest accrued to the date of payment of the
133 outstanding principal balance; and

134 (3) The loan agreement shall provide for the state
135 board and the authority to forgive all principal and
136 interest of the loan upon the county board purchasing the
137 leased premises pursuant to the investment contract and
138 performance of the investment contract in its entirety.

139 (f) To encourage county boards to proceed promptly
140 with facilities planning and to prepare for the expenditure
141 of any state moneys derived from the sources described in
142 this subsection, any county board failing to expend
143 money within three years of the allocation to the county
144 board shall forfeit the allocation and thereafter is
145 ineligible for further allocations pursuant to this
146 subsection until the county board is ready to expend
147 funds in accordance with an approved facilities plan:
148 *Provided*, That the authority may authorize an extension
149 beyond the three-year forfeiture period not to exceed an
150 additional two years. Any amount forfeited shall be
151 added to the total funds available in the school
152 construction fund of the authority for future allocation
153 and distribution.

154 (g) The remaining moneys that are determined by the
155 authority to be available for distribution during the then
156 current fiscal year from moneys paid into the school
157 major improvement fund pursuant to section six of this
158 article shall be allocated and distributed on the basis of
159 need and efficient use of resources, the basis to be
160 determined by the authority in accordance with the
161 provisions of section sixteen of this article: *Provided*,
162 That the moneys may not be distributed to any county
163 board that does not have an approved school major
164 improvement plan or to any county board that is not
165 prepared to commence expenditures of the funds during
166 the fiscal year in which the moneys are distributed:
167 *Provided, however*, That any moneys allocated to a
168 county board and not distributed to that county board
169 shall be deposited in an account to the credit of that
170 county board, the principal amount to remain to the credit

171 of and available to the county board for a period of two
172 years. Any moneys which are unexpended after a two-
173 year period shall be redistributed on the basis of need
174 from the school major improvement fund in that fiscal
175 year.

176 (h) No local matching funds may be required under
177 the provisions of this section. However, the responsibilities
178 of the county boards of education to maintain school
179 facilities are not negated by the provisions of this article.
180 To be eligible to receive an allocation of school major
181 improvement funds from the authority, a county board
182 must have expended in the previous fiscal year an amount
183 of county moneys equal to or exceeding the lowest
184 average amount of money included in the county board's
185 maintenance budget over any three of the previous five
186 years and must have budgeted an amount equal to or
187 greater than the average in the current fiscal year:
188 *Provided*, That the state board of education shall
189 promulgate rules relating to county boards' maintenance
190 budgets, including items which shall be included in the
191 budgets.

192 (i) Any county board may use moneys provided by
193 the authority under this article in conjunction with local
194 funds derived from bonding, special levy or other sources.
195 Distribution to a county board, or to the state board or the
196 administrative council of an area vocational educational
197 center pursuant to subsection (b) of this section, may be in
198 a lump sum or in accordance with a schedule of payments
199 adopted by the authority pursuant to guidelines adopted
200 by the authority.

201 (j) Funds in the school construction fund shall first be
202 transferred and expended as follows:

203 Any funds deposited in the school construction fund
204 shall be expended first in accordance with an
205 appropriation by the Legislature. To the extent that funds
206 are available in the school construction fund in excess of
207 that amount appropriated in any fiscal year, the excess
208 funds may be expended in accordance with the provisions
209 of this article. Any projects which the authority identified
210 and announced for funding on or before the first day of

211 August, one thousand nine hundred ninety-five, or
212 identified and announced for funding on or before the
213 thirty-first day of December, one thousand nine hundred
214 ninety-five, shall be funded by the authority in an amount
215 which is not less than the amount specified when the
216 project was identified and announced.

217 (k) It is the intent of the Legislature to encourage
218 county boards to explore and consider arrangements with
219 other counties that may facilitate the highest and best use
220 of all available funds, which may result in improved
221 transportation arrangements for students, or which
222 otherwise may create efficiencies for county boards and
223 the students. In order to address the intent of the
224 Legislature contained in this subsection, the authority shall
225 grant preference to those projects which involve multi-
226 county arrangements as the authority shall determine
227 reasonable and proper.

228 (l) County boards shall submit all designs for
229 construction of new school buildings to the school
230 building authority for review and approval prior to
231 preparation of final bid documents.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18. State lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; state lottery education fund; state lottery senior citizens fund; allocation and appropriation of net profits.

1 (a) There is hereby continued a special revenue fund
2 in the state treasury which shall be designated and known
3 as the "state lottery fund". The fund shall consist of all
4 appropriations to the fund and all interest earned from
5 investment of the fund and any gifts, grants or
6 contributions received by the fund. All revenues received

7 from the sale of lottery tickets, materials and games shall
8 be deposited with the state treasurer and placed into the
9 "state lottery fund". The revenue shall be disbursed in the
10 manner provided in this section for the purposes stated in
11 this section and shall not be treated by the auditor and
12 treasurer as part of the general revenue of the state.

13 (b) No appropriation, loan or other transfer of state
14 funds may be made to the commission or lottery fund
15 after the initial appropriation.

16 (c) A minimum annual average of forty-five percent
17 of the gross amount received from each lottery shall be
18 allocated and disbursed as prizes.

19 (d) Not more than fifteen percent of the gross amount
20 received from each lottery shall be allocated to and may
21 be disbursed as necessary for fund operation and
22 administration expenses.

23 (e) The excess of the aggregate of the gross amount
24 received from all lotteries over the sum of the amounts
25 allocated by subsections (c) and (d) of this section shall be
26 allocated as net profit. In the event that the percentage
27 allotted for operations and administration generates a
28 surplus, the surplus shall be allowed to accumulate to an
29 amount not to exceed two hundred fifty thousand dollars.
30 On a monthly basis, the director shall report to the joint
31 committee on government and finance of the Legislature
32 any surplus in excess of two hundred fifty thousand
33 dollars and remit to the state treasurer the entire amount of
34 those surplus funds in excess of two hundred fifty
35 thousand dollars which shall be allocated as net profit.

36 (f) After first satisfying the requirements for funds
37 dedicated to the school building debt service fund in
38 subsection (h) of this section to retire the ten-year bonds
39 authorized to be issued pursuant to section eight, article
40 nine-d, chapter eighteen of this code, and then satisfying
41 the requirements for funds dedicated to the education, arts,
42 sciences and tourism debt service fund in subsection (i) of
43 this section to retire the bonds authorized to be issued
44 pursuant to section eleven-a, article six, chapter five of this
45 code, the Legislature shall annually appropriate all of the
46 remaining amounts allocated as net profits in subsection
47 (e) of this section, in such proportions as it considers

48 beneficial to the citizens of this state, to: (1) The lottery
49 education fund created in subsection (g) of this section;
50 (2) the school construction fund created in section six,
51 article nine-d, chapter eighteen of this code; (3) the lottery
52 senior citizens fund created in subsection (j) of this
53 section; and (4) the division of natural resources created in
54 section four, article five, chapter twenty of this code and
55 the West Virginia development office as created in section
56 one, article two, chapter five-b of this code, in accordance
57 with subsection (k) of this section. No transfer to any
58 account other than the school building debt service
59 account and the education, arts, sciences and tourism debt
60 service fund may be made in any period of time in which
61 a default exists in respect to debt service on bonds issued
62 by the school building authority and the state building
63 commission which are secured by lottery proceeds. No
64 additional transfer shall be made to any account other
65 than the school building debt service account and the
66 education, arts, sciences and tourism debt service fund
67 when net profits for the preceding twelve months are not
68 at least equal to one hundred fifty percent of debt service
69 on bonds issued by the school building authority and the
70 state building commission which are secured by net
71 profits.

72 (g) There is hereby continued a special revenue fund
73 in the state treasury which shall be designated and known
74 as the "lottery education fund". The fund shall consist of
75 the amounts allocated pursuant to subsection (f) of this
76 section, which shall be deposited into the lottery education
77 fund by the state treasurer. The lottery education fund
78 shall also consist of all interest earned from investment of
79 the lottery education fund and any other appropriations,
80 gifts, grants, contributions or moneys received by the
81 lottery education fund from any source. The revenues
82 received or earned by the lottery education fund shall be
83 disbursed in the manner provided below and shall not be
84 treated by the auditor and treasurer as part of the general
85 revenue of the state. Annually, the Legislature shall
86 appropriate the revenues received or earned by the lottery
87 education fund to the state system of public and higher
88 education for these educational programs it considers
89 beneficial to the citizens of this state.

90 (h) On or before the twenty-eighth day of each month
91 through the twentieth day of June, two thousand five, the
92 lottery director shall allocate to the school building debt
93 service fund created pursuant to the provisions of section
94 six, article nine-d, chapter eighteen of this code, as a first
95 priority from the net profits of the lottery for the
96 preceding month, an amount equal to one tenth of the
97 projected annual principal, interest and coverage ratio
98 requirements on any and all revenue bonds and refunding
99 bonds issued, or to be issued, on or after the first day of
100 April, one thousand nine hundred ninety-four, as certified
101 to the lottery director in accordance with the provisions of
102 section six, article nine-d, chapter eighteen of this code.
103 In no event shall the monthly amount allocated exceed
104 one million eight hundred thousand dollars, nor shall the
105 total allocation of the net profits to be paid into the school
106 building debt service fund, as provided in this section, in
107 any fiscal year exceed the lesser of the principal and
108 interest requirements certified to the lottery director or
109 eighteen million dollars. In the event there are insufficient
110 funds available in any month to transfer the amount
111 required to be transferred pursuant to this subsection to
112 the school debt service fund, the deficiency shall be added
113 to the amount transferred in the next succeeding month in
114 which revenues are available to transfer the deficiency. A
115 lien on the proceeds of the state lottery fund up to a
116 maximum amount equal to the projected annual principal,
117 interest and coverage ratio requirements, not to exceed
118 twenty-seven million dollars annually, may be granted by
119 the school building authority in favor of the bonds it
120 issues which are secured by the net lottery profits.

121 When the school improvement bonds, secured by
122 profits from the lottery and deposited in the school debt
123 service fund, mature, the lottery director shall allocate
124 monthly, from the net profits of the lottery for the
125 preceding month, an amount equal to one million five
126 hundred thousand dollars into the school construction
127 fund created pursuant to the provisions of section six,
128 article nine-d, chapter eighteen of this code.

129 (i) On or before the twenty-eighth day of each month
130 through the twenty-eighth day of June, two thousand
131 twenty-one, the lottery director shall allocate to the
132 education, arts, sciences and tourism debt service fund

133 created pursuant to the provisions of section eleven-a,
134 article six, chapter five of this code, as a second priority
135 from the net profits of the lottery for the preceding
136 month, an amount equal to one tenth of the projected
137 annual principal, interest and coverage ratio requirements
138 on any and all revenue bonds and refunding bonds issued,
139 or to be issued, on or after the first day of April, one
140 thousand nine hundred ninety-six, as certified to the
141 lottery director in accordance with the provisions of that
142 section. In no event shall the monthly amount allocated
143 exceed one million dollars nor shall the total allocation
144 paid into the education, arts, sciences and tourism debt
145 service fund, as provided in this section, in any fiscal year
146 exceed the lesser of the principal and interest requirements
147 certified to the lottery director or ten million dollars. In
148 the event there are insufficient funds available in any
149 month to transfer the amount required pursuant to this
150 subsection to the education, arts, sciences and tourism debt
151 service fund, the deficiency shall be added to the amount
152 transferred in the next succeeding month in which
153 revenues are available to transfer the deficiency. A
154 second-in-priority lien on the proceeds of the state lottery
155 fund up to a maximum amount equal to the projected
156 annual principal, interest and coverage ratio requirements,
157 not to exceed fifteen million dollars annually, may be
158 granted by the state building commission in favor of the
159 bonds it issues which are secured by the net lottery profits.

160 (j) There is hereby continued a special revenue fund
161 in the state treasury which shall be designated and known
162 as the "lottery senior citizens fund". The fund shall consist
163 of the amounts allocated pursuant to subsection (f) of this
164 section, which shall be deposited into the lottery senior
165 citizens fund by the state treasurer. The lottery senior
166 citizens fund shall also consist of all interest earned from
167 investment of the lottery senior citizens fund and any
168 other appropriations, gifts, grants, contributions or moneys
169 received by the lottery senior citizens fund from any
170 source. The revenues received or earned by the lottery
171 senior citizens fund shall not be treated by the auditor or
172 treasurer as part of the general revenue of the state.
173 Annually, the Legislature shall appropriate the revenues
174 received or earned by the lottery senior citizens fund to
175 such senior citizens medical care and other programs as it
176 considers beneficial to the citizens of this state.

177 (k) The division of natural resources and the West
178 Virginia development office, as appropriated by the
179 Legislature, may use the amounts allocated to them
180 pursuant to subsection (f) of this section for one or more
181 of the following purposes: (1) The payment of any or all
182 of the costs incurred in the development, construction,
183 reconstruction, maintenance or repair of any project or
184 recreational facility, as these terms are defined in section
185 four, article five, chapter twenty of this code, pursuant to
186 the authority granted to it under article five, chapter
187 twenty of this code; (2) the payment, funding or
188 refunding of the principal of, interest on or redemption
189 premiums on any bonds, security interests or notes issued
190 by the parks and recreation section of the division of
191 natural resources under article five, chapter twenty of this
192 code; or (3) the payment of any advertising and
193 marketing expenses for the promotion and development
194 of tourism or any tourist facility or attraction in this state.

CHAPTER 126

(Com. Sub. for H. B. 4306—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 13, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-six, article two of said chapter; to amend said article by adding thereto two new sections, designated sections twenty-three-a and thirty-two; to amend and reenact sections one-a and five, article two-e of said chapter; to amend said article by adding thereto a new section, designated section three-c; to amend said chapter by adding thereto a new article, designated article two-i; to amend and reenact sections seven and ten, article nine-a of said chapter; to amend and reenact section two-c, article three, chapter

eighteen-a; and to amend and reenact sections one, two, two-a, two-b and three, article three-a of said chapter, all relating to requiring the state board to establish goals for professional development and providing a process to coordinate program delivery through the state department of education, regional educational service agencies and the center for professional development; creating the strategic staff development fund with funds that accrue in the general revenue fund; requiring the state board to develop an assessment program and an accountability program; requiring the state board to establish the reading excellence accelerates deserving students program; establishing a process for improving education; establishing a system of education performance audits; creating the office of education performance audits; designating certain school systems with more than a casual deficit as having nonapproval status; requiring the appointment of a team of improvement consultants before the state board may intervene in the operation of a county school system; providing for the targeting of resources to improve the teaching and learning process; creating the West Virginia staff development advisory council; creating regional staff development councils in each regional educational service agency; and increasing the allowance for transportation costs.

Be it enacted by the Legislature of West Virginia:

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

Chapter

18. Education.

18A. School Personnel.

CHAPTER 18. EDUCATION.

Article

1. Definitions; Limitations of Chapter; Goals for Education.

2. State Board of Education.

2E. High Quality Educational Programs.

2I. Staff Development Councils.

9A. Public School Support.

ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER; GOALS FOR EDUCATION.

§18-1-1. Definitions.

1 The following words used in this chapter and in any
2 proceedings pursuant thereto shall, unless the context
3 clearly indicates a different meaning, be construed as
4 follows:

5 (a) "School" means the pupils and teacher or
6 teachers assembled in one or more buildings, organized as
7 a unit;

8 (b) "District" means county school district;

9 (c) "State board" means the West Virginia board of
10 education;

11 (d) "Board" means the county board of education;

12 (e) "State superintendent" means the state
13 superintendent of free schools;

14 (f) "Superintendent" means the county
15 superintendent of schools;

16 (g) "Teacher" means teacher, supervisor, principal,
17 superintendent, public school librarian; registered
18 professional nurse, licensed by the West Virginia board of
19 examiners for registered professional nurses and
20 employed by a county board of education, who has a
21 baccalaureate degree; or any other person regularly

22 employed for instructional purposes in a public school in
23 this state;

24 (h) "Service personnel" means all nonteaching
25 school employees not included in the above definition of
26 "teacher";

27 (i) "Regular full-time employee" means any person
28 employed by a county board of education who has a
29 regular position or job throughout his employment term,
30 without regard to hours or method of pay;

31 (j) "Career clusters" means broad groupings of
32 related occupations;

33 (k) "Work-based learning" means a structured
34 activity that correlates with and is mutually supportive of
35 the school-based learning of the student and includes
36 specific objectives to be learned by the student as a result
37 of the activity;

38 (l) "School-age juveniles" means any individual who
39 is entitled to attend or who, if not placed in a residential
40 facility, would be entitled to attend public schools, in
41 accordance with: (1) Section five, article two of this
42 chapter; (2) sections fifteen and eighteen, article five of
43 this chapter; or (3) section one, article twenty of this
44 chapter;

45 (m) "Student with a disability" means an exceptional
46 child, other than gifted, pursuant to section one, article
47 twenty of this chapter;

48 (n) "Low density county" means a county whose
49 ratio of student population to square miles is less than or
50 equal to the state average ratio as computed by the state
51 department of education;

52 (o) "High density county" means a county whose
53 ratio of student population to square miles is greater than
54 the state average ratio as computed by the state department
55 of education; and

56 (p) "Casual deficit" means a deficit of not more than
57 three percent of the approved levy estimate or a deficit
58 that is nonrecurring from year to year.

ARTICLE 2. STATE BOARD OF EDUCATION.

- §18-2-23a. Annual professional development goals established by state board; coordination of professional development programs; program development, approval and evaluation.
- §18-2-26. Establishment of multicounty regional educational service agencies; purposes; authority to implement regional services.
- §18-2-32. Strategic staff development fund.

§18-2-23a. Annual professional development goals established by state board; coordination of professional development programs; program development, approval and evaluation.

1 (a) The intent of this section is to provide for the
2 coordination of professional development programs by
3 the state board to promote high quality instructional
4 delivery and management practices for a thorough and
5 efficient system of schools. The state board annually shall
6 establish goals for professional development in the public
7 schools of the state. The state board shall submit the goals
8 to the state department of education, the center for
9 professional development, the regional educational service
10 agencies, the state college and university systems and the
11 legislative oversight commission on education
12 accountability on or before the first day of October, each
13 year. The goals shall include measures by which the
14 effectiveness of professional development programs will
15 be evaluated. The professional development goals may
16 include separate goals for teachers, principals, service
17 personnel and others in the public schools. In establishing
18 the goals, the state board shall review reports that may
19 indicate a need for staff development. At a minimum in
20 establishing the goals for professional development, the
21 state board shall consider the report of the staff
22 development advisory council set forth in section four,
23 article two-i, chapter eighteen of this code, student test
24 scores on the statewide student assessment program, the
25 measures of student and school performance for
26 accreditation purposes, school and school district report
27 cards, and its plans for the use of funds in the strategic
28 staff development fund pursuant to section thirty-two,
29 article two, chapter eighteen of this code.

30 (b) The center for professional development and the
31 regional educational service agencies shall each design a
32 proposed professional development program plan to
33 achieve the goals of the state board which are within their
34 purview pursuant to provisions set forth in this code and
35 rules of the state board: *Provided*, That the state board
36 may establish as a goal for the center for professional
37 development, the delivery of a localized professional
38 development program to address school, county or
39 regional problems. The center for professional
40 development and the regional educational service agencies
41 shall each submit their respective proposed plans to the
42 state board on or before the fifteenth day of November,
43 each year. The proposed plans shall include a plan for
44 evaluating the effectiveness of the professional
45 development delivered through the program and a cost
46 estimate. A copy of each proposed plan shall also be
47 submitted by the respective agencies to the legislative
48 oversight commission on education accountability. The
49 state board shall review the proposed plans and shall
50 return the proposed plans to the respective agencies on or
51 before the first day of January, each year, noting whether
52 the proposed plan is approved or is not approved in whole
53 or in part. If a proposed plan is not approved in whole, the
54 state board shall note its objections to the proposed plan
55 or to the parts of the proposed plan not approved and may
56 suggest improvements or specific modifications, additions
57 or deletions to more fully address the goals or eliminate
58 duplication. An agency whose proposed plan is not
59 wholly approved shall revise the plan to satisfy the
60 objections of the state board or state the reasons why
61 revisions cannot be made to satisfy any or all of the
62 objections and resubmit the proposal to the state board as
63 soon as possible. State board approval of the professional
64 development plans of the center for professional
65 development and the regional educational service agencies
66 is required prior to implementation of the plans.

67 (c) The state board shall submit a proposed master
68 plan for professional development to the legislative
69 oversight commission on education accountability on the
70 first day of February, each year. The proposed master

71 plan shall include the state board approved plans of the
72 state department of education, the center for professional
73 development and the regional educational service agencies
74 to meet the professional development goals of the state
75 board. The proposed master plan also shall include a plan
76 for evaluating the effectiveness of the professional
77 development delivered through the programs, a cost
78 estimate, a description of any proposals pending approval
79 of the state board and any reasons why a goal or goals of
80 the state board will not be met.

81 (d) An approved master plan for professional
82 development shall be established by the state board not
83 later than the fifteenth day of March, each year. The
84 approved master plan shall include the state board
85 approved professional development plans of the state
86 department of education, the center for professional
87 development and the regional educational service
88 agencies. The approved master plan shall serve as a guide
89 for the delivery of coordinated professional development
90 programs by the state department of education, the center
91 for professional development and the regional educational
92 service agencies beginning on the first day of June in the
93 year in which the master plan was approved through the
94 thirtieth day of May in the following year.

**§18-2-26. Establishment of multicounty regional educational
service agencies; purposes; authority to imple-
ment regional services.**

1 (a) In order to consolidate and administer more
2 effectively existing educational programs and services so
3 individual districts will have more discretionary moneys
4 for educational improvement and in order to equalize and
5 extend educational opportunities, the state board of
6 education shall establish multicounty regional educational
7 service agencies for the purpose of providing high quality,
8 cost effective educational programs and services to the
9 county school systems, and shall make such rules as may
10 be necessary for the effective administration and operation
11 of such agencies: *Provided*, That the legislative oversight
12 commission on education accountability shall commission
13 a comprehensive feasibility study of the regional

14 educational service agencies which shall be completed and
15 reported to the legislative oversight commission on
16 education accountability no later than the tenth day of
17 January, one thousand nine hundred ninety-five.

18 (b) In furtherance of these purposes, it is the duty of
19 the board of directors of each regional educational service
20 agency to continually explore possibilities for the delivery
21 of services on a regional basis which will facilitate equality
22 in the educational offerings among counties in its service
23 area, permit the delivery of high quality educational
24 programs at a lower per student cost, strengthen the cost
25 effectiveness of education funding resources, reduce
26 administrative and/or operational costs, including the
27 consolidation of administrative, coordinating and other
28 county level functions into region level functions, and
29 promote the efficient administration and operation of the
30 public school systems generally.

31 Technical, operational, programmatic or professional
32 services would be among the types of services appropriate
33 for delivery on a regional basis.

34 (c) In addition to performing the services and
35 functions required by the provisions of this or any other
36 section of this code, a regional educational service agency
37 may implement regional programs and services by a
38 majority vote of its board of directors. When said vote is
39 not unanimous, the board of directors shall file a plan for
40 the service or program delivery with the state board
41 describing the program or service, the manner of delivery
42 and the projected savings and/or the improved quality of
43 the program or service. The state board shall promulgate
44 rules requiring a county board that declines to participate
45 in such programs or services to show just cause for not
46 participating and the estimated savings accruing to that
47 county therefrom. If a county board fails to show that
48 savings will accrue to the county or that the quality of the
49 program will be significantly and positively affected as a
50 result of its decision not to participate, the state board shall
51 withhold from the county's foundation allowance for
52 administrative cost the lesser of the amount of the

53 estimated savings or the allocation for the county's
54 foundation allowance for administrative cost.

55 (d) The state board, in conjunction with the various
56 regional educational service agencies, shall develop an
57 effective model for the regional delivery of instruction in
58 subjects where there exists low student enrollment or a
59 shortage of certified teachers or where such delivery
60 method substantially improves the quality of an
61 instructional program. Such model shall incorporate an
62 interactive electronic classroom approach to instruction.
63 To the extent funds are appropriated or otherwise
64 available, county boards or regional educational service
65 agencies may adopt and utilize the model for the delivery
66 of such instruction.

67 (e) Each regional educational service agency shall
68 conduct a study setting forth how the following services
69 and functions may be performed by the agency for public
70 schools and school districts within the region without
71 terminating the employment of personnel employed by
72 school districts prior to the effective date of this
73 subsection: Accounting, purchasing, food service,
74 transportation, delivery of high cost services to low
75 incidence student populations, audiovisual material
76 distribution, facilities planning, federal program
77 coordination, personnel recruiting and an integrated
78 regional computer information system. On or before the
79 tenth day of January, one thousand nine hundred ninety,
80 each regional educational service agency shall submit the
81 study to the state board, to the standing committees on
82 education and finance of the West Virginia Senate and
83 House of Delegates and to the secretary of education and
84 the arts: *Provided*, That in the event such study is
85 implemented those individuals employed prior to the
86 effective date thereof shall not have their employment
87 terminated as a result of the study.

88 (f) Each regional educational service agency shall
89 commence implementation of a uniform integrated
90 regional computer information system as recommended
91 by the state board of education on or before the first day
92 of January, one thousand nine hundred ninety-one. Each

93 county board of education shall use the computer
94 information system for data collection and reporting to
95 the state department of education beginning no later than
96 the first day of July, one thousand nine hundred ninety-
97 four. County boards of education shall bear the cost of
98 and fully participate in the implementation of the system
99 by: (1) Acquiring necessary, compatible equipment to
100 participate in the regional computer information system;
101 or (2) following receipt of a waiver from the state
102 superintendent, operating a comparable management
103 information system at a lower cost which provides at least
104 all uniform integrated regional computer information
105 system software modules and allows on-line, interactive
106 access for schools and the county board of education
107 office onto the statewide communications network. All
108 data formats shall be the same as for the uniform
109 integrated regional information system and will reside at
110 the regional computer. Any county granted a waiver shall
111 receive periodic notification of any incompatibility or
112 deficiency in its system. Continued inability of any
113 county to meet the above criteria shall, upon notification
114 to the county no later than the first day of April, one
115 thousand nine hundred ninety-five, require the county to
116 use the uniform integrated regional computer information
117 system no later than the first day of July, one thousand
118 nine hundred ninety-five. No county shall expand any
119 system either through the purchase of additional software
120 or hardware that does not advance the goals and
121 implementation of the uniform integrated regional
122 computer information system as recommended by the
123 state board: *Provided*, That nothing contained herein
124 shall prevent the state superintendent from granting a
125 one-year extension to those counties projected to have
126 budget deficits for the school year beginning on the first
127 day of July, one thousand nine hundred ninety-four.

128 (g) Each regional educational service agency shall
129 submit a report and evaluation of the services provided
130 and utilized by the schools within each respective region.
131 Furthermore, each school shall submit an evaluation of the
132 services provided by the regional educational service
133 agency, which shall include an evaluation of the regional

134 educational service agency program, suggestions as to how
 135 to improve utilization and the individual school's plan as
 136 to development of new programs and enhancement of
 137 existing programs. The reports shall be due by the first
 138 day of January of each year commencing with the year
 139 one thousand nine hundred ninety-one and shall be made
 140 available to the state board of education, standing
 141 committees on education of the West Virginia Senate and
 142 House of Delegates and to the secretary of education and
 143 the arts.

144 (h) A regional board shall be empowered to receive
 145 and disburse funds from the state and federal
 146 governments, member counties, gifts and grants.

147 (i) Notwithstanding any other provision of the code to
 148 the contrary, employees of regional educational service
 149 agencies shall be reimbursed for travel, meals and lodging
 150 at the same rate as state employees under the travel
 151 management office of the department of administration.

152 (j) Regional educational service agencies shall hold at
 153 least one half of their regular meetings during hours other
 154 than those of a regular school day.

155 (k) Regional educational service agencies shall serve as
 156 the lead agency for computer installation, maintenance
 157 and repair for the basic skills computer program. By the
 158 first day of October, one thousand nine hundred ninety-
 159 five, and quarterly thereafter, each regional educational
 160 service agency shall submit a status report on turn around
 161 time for computer installation, maintenance and repair to
 162 the state superintendent of schools who shall then submit a
 163 report to the legislative oversight commission on
 164 education accountability. The above-mentioned status
 165 report for turn around time for computer installation,
 166 maintenance and repair shall be based on the following
 167 suggested time schedules:

- 168 Network File Servers forty-eight hours
- 169 Local Area Networks forty-eight hours
- 170 West Virginia Education
- 171 Information System twenty-four hours

172 Computer Workstations three to five days

173 Printers three to five days

174 Other Peripherals three to five days

175 Regional educational service agencies shall also submit an
176 audit report to the legislative oversight commission on
177 education accountability each year.

178 (l) Pursuant to the processes and provisions of section
179 twenty-three-a, article two, chapter eighteen of this code,
180 each regional educational service agency shall provide
181 coordinated professional development programs within its
182 region to meet the professional development goals
183 established by the state board.

§18-2-32. Strategic staff development fund.

1 (a) There is hereby created an account within the state
2 board titled the strategic staff development fund. The
3 allocation of balances which accrue in the general school
4 fund shall be transferred to the strategic staff development
5 fund each year when the balances become available. Any
6 remaining funds transferred to the strategic staff
7 development fund during the fiscal year shall be carried
8 over for use in the same manner the next fiscal year and
9 shall be separate and apart from, and in addition to, the
10 transfer of funds from the general school fund for the
11 next fiscal year.

12 (b) The money in the strategic staff development fund
13 shall be used by the state board to provide staff
14 development in schools, counties or both that the state
15 board determines need additional resources. Additionally,
16 the state board shall use a reasonable amount of the
17 money from the strategic staff development fund to
18 contract with an independent evaluator chosen by the state
19 board to evaluate the effectiveness with which the money
20 was used for staff development. The state board is
21 required to report to the legislative oversight commission
22 on education accountability before the first day of
23 December of each year:

24 (1) The amount of each expenditure;

- 25 (2) The purpose of each expenditure; and
26 (3) The effectiveness of the staff development
27 resulting from each expenditure.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

- §18-2E-1a. Assessment and accountability programs; duties of the state board.
§18-2E-3c. Summer school READS grant program created; legislative findings and purpose of section.
§18-2E-5. Process for improving education; office of education performance audits; education standards; school accreditation and school system approval; intervention to correct impairments.

§18-2E-1a. Assessment and accountability programs; duties of the state board.

1 (a) In order to further the purposes of this article, on
2 or before the first day of January, one thousand nine
3 hundred ninety-nine, the state board shall develop and
4 recommend to the legislative oversight commission on
5 education accountability an assessment program to
6 measure the progress of public school students in attaining
7 a high quality education. In addition, to further the
8 purposes of this article, on or before the first day of
9 January, one thousand nine hundred ninety-nine, the state
10 board shall develop and recommend to the legislative
11 oversight commission on education accountability an
12 accountability program to help ensure a thorough and
13 efficient system of schools. In developing the assessment
14 program and the accountability program, the state board
15 shall take into consideration recommendations arising
16 from any legislative interim study undertaken at the
17 direction of the joint committee on government and
18 finance and also shall take into consideration any
19 recommendations made by the legislative oversight
20 commission on education accountability.

21 (b) As part of their on-going responsibility for
22 developing and implementing a program of assessments
23 and a program of accountability, the state board shall
24 perform the following functions:

25 (1) Review assessment tools, including tests of student
26 performance and measures of school and school system
27 performance, and determine when any improvements or
28 additions are necessary;

29 (2) Consider multiple assessments, including, but not
30 limited to, a state testing program developed in
31 conjunction with the state's professional educators with
32 assistance from such knowledgeable consultants as may be
33 necessary, which may include criterion referenced tests;

34 (3) Review all accountability measures, such as the
35 accreditation and personnel evaluation systems and
36 consider any improvements or additions deemed
37 necessary; and

38 (4) Ensure that all statewide assessments of student
39 performance are secure.

**§18-2E-3c. Summer school READS grant program created;
legislative findings and purpose of section.**

1 (a) The Legislature hereby finds and acknowledges
2 that, if remediation is necessary, it should be provided
3 when students are younger and before patterns of failure
4 are established. The Legislature further acknowledges that
5 the people of West Virginia would be better served if the
6 state acted to ensure that all public school students were
7 able to read at or above grade level upon exiting grade
8 four, that county boards are in the best position to
9 determine if remediation is necessary for students in
10 kindergarten through grade four and that the counties
11 should have the option of providing summer school for
12 students and may consider student attendance as a factor
13 in determining whether a child is eligible to be promoted
14 to the next grade.

15 The Legislature further finds that not all students are
16 financially able to pay for summer school, nor do all
17 county schools hold summer school. It is, therefore, the
18 purpose of this section to help the county boards to
19 provide, either individually or cooperatively, free summer
20 school and summer school transportation for those
21 students in kindergarten through grade four who did not

22 perform at grade level during the regular school year. It
23 also is the purpose of this section to help students in
24 kindergarten through grade four who are identified as
25 being in danger of failing to read at grade level by the end
26 of the school year to receive intensive reading instruction
27 during their regularly scheduled reading time throughout
28 the regular school year.

29 (b) Subject to appropriation by the Legislature
30 therefor, the state board shall establish a competitive grant
31 program as set forth in this section to provide reading
32 programs for students in kindergarten through grade four
33 who are not performing at grade level. The program shall
34 be designated and known as the "Reading Excellence
35 Accelerates Deserving Students" program and, along with
36 such designation, may be referred to as "West Virginia
37 READS".

38 Priorities for awarding the grants shall include, but are
39 not limited to:

40 (1) Schools that have test scores below the state
41 standards; and

42 (2) Schools that receive federal funds for the
43 improvement of reading.

44 Competitive grant applications must be submitted by
45 the county boards, or by a community collaborative with
46 the county board as a partner with leadership
47 responsibility, and shall describe how the program will:

48 (1) Employ strategies and proven methods for student
49 learning, teaching and school management that are based
50 on reliable research and effective practices and can be
51 replicated in other schools to improve the reading skills of
52 students;

53 (2) Contain measurable goals for the improvement of
54 student reading skills and benchmarks for meeting those
55 goals;

56 (3) Include a plan for the evaluation of student
57 progress toward achieving the state's high standards;

58 (4) Identify how other federal, state, local and private
59 resources, including volunteers, will be utilized to further
60 the intent of this section;

61 (5) Link summer reading improvement programs with
62 reading instruction and remediation throughout the school
63 year;

64 (6) Determine feasibility of collaborating with colleges
65 of education for the purpose of providing educational
66 experiences for prospective teachers; and

67 (7) Accomplish other objectives as deemed necessary
68 by the state board.

69 (c) Any county receiving a grant should encourage
70 students in kindergarten through grade four who did not
71 perform at grade level during the regular school year to
72 attend summer school and may consider summer school
73 attendance as a factor in determining whether a child is
74 eligible to be promoted to the next grade. The county
75 board shall provide intensive reading instruction during
76 regularly scheduled reading time throughout the regular
77 school year to students in kindergarten through grade
78 four who are identified by the classroom teacher as being
79 in danger of failing to read at grade level by the end of
80 the school year. Nothing in this section shall prohibit
81 county boards from permitting students to participate in
82 reading programs on a student fee basis.

83 (d) The state board shall approve procedures for the
84 implementation of this section. To assist the state board in
85 developing procedures for the implementation of this
86 section, including the grant application and the grant
87 review and selection process, the state board shall appoint
88 an advisory board consisting of the federal programs
89 director and the title I reading coordinator/specialist, both
90 from the state department of education, a representative
91 from the department of education and the arts
92 representing the library commission and the community
93 schools initiative, a college or university professor of
94 reading, two or more representatives from local school
95 systems, the West Virginia coordinator of the read aloud
96 program, the energy express project director, and a

97 representative of mission West Virginia, or representatives
98 of like successor organizations should these named
99 organizations cease to exist. The procedures shall provide
100 for:

101 (1) The appointment of a grant review and selection
102 panel by the state board consisting of persons with
103 expertise and practical experience in delivering programs
104 to increase the reading skills of young students, not more
105 than one half of whom may be employees of the state
106 department of education, or the state board may designate
107 the advisory board as the grant review and selection panel;

108 (2) Notice to all schools of the grant competition and
109 the availability of applications on or before the thirtieth
110 day of September, in each fiscal year for which grant
111 funds are available;

112 (3) A grant application deadline postmarked on or
113 before the fifteenth day of December, in each fiscal year
114 for which grant funds are available;

115 (4) Notice of grant awards on or before the first day
116 of March, in each fiscal year for which grant funds are
117 available; and

118 (5) Other such requirements as deemed necessary by
119 the state board.

120 (e) The state board may fund, from any other funds
121 available for such purposes, the programs required by this
122 section for students in kindergarten through grade four
123 and any programs required by state board rules such as,
124 but not limited to, the following:

125 (1) Tutoring;

126 (2) Summer school educational services;

127 (3) Additional certified personnel to provide intensive
128 instruction in reading throughout the school year;

129 (4) Staff development for teachers; and

130 (5) Hot meal programs.

131 (f) Nothing in this section shall supersede the
132 individualized education program (IEP) of any student.

133 (g) Nothing in this section may be construed to
134 require any specific level of funding by the Legislature.

§18-2E-5. Process for improving education; office of education performance audits; education standards; school accreditation and school system approval; intervention to correct impairments.

1 (a) *Legislative intent.* — The purpose of this section is
2 to establish a process for improving education that
3 includes standards, assessment, accountability and capacity
4 building to provide assurances that a thorough and
5 efficient system of schools is being provided for all West
6 Virginia public school students on an equal education
7 opportunity basis and that the high quality standards are,
8 at a minimum, being met.

9 (b) *State board rules.* — The state board shall
10 promulgate rules in accordance with article three-b,
11 chapter twenty-nine-a of this code establishing a unified
12 county improvement plan for each county board and a
13 unified school improvement plan for each public school
14 in this state. The state board is not required to promulgate
15 new rules if legislative rules meeting the requirements of
16 article three-b, chapter twenty-nine-a of this code have
17 been filed with the office of the secretary of state before
18 the effective date of this section.

19 (c) *High quality education standards.* — The state
20 board shall, in accordance with the provisions of article
21 three-b, chapter twenty-nine-a of this code, adopt and
22 periodically review and update high quality education
23 standards for student, school and school system
24 performance and processes in the following areas:

- 25 (1) Curriculum;
- 26 (2) Workplace readiness skills;
- 27 (3) Finance;
- 28 (4) Transportation;

- 29 (5) Special education;
- 30 (6) Facilities;
- 31 (7) Administrative practices;
- 32 (8) Training of county board members and
33 administrators;
- 34 (9) Personnel qualifications;
- 35 (10) Professional development and evaluation;
- 36 (11) Student and school performance;
- 37 (12) A code of conduct for students and employees;
- 38 and
- 39 (13) Any other such areas as determined by the state
40 board.

41 (d) *Performance measures.* — The standards shall
42 assure that all graduates are prepared for gainful
43 employment or for continuing post secondary education
44 and training and that schools and school districts are
45 making progress in achieving the education goals of the
46 state.

47 The standards shall include measures of student
48 performance to indicate when a thorough and efficient
49 system of schools is being provided and of school and
50 school system performance and processes that enable
51 student performance. The measures of student
52 performance and school and school system performance
53 and processes shall include, but are not limited to, the
54 following:

- 55 (1) The acquisition of student proficiencies as
56 indicated by student performance by grade level
57 measured, where possible, by a uniform statewide
58 assessment program;
- 59 (2) School attendance rates;
- 60 (3) Student dropout rate;
- 61 (4) Percent of students promoted to next grade;

- 62 (5) Graduation rate;
- 63 (6) Average class size;
- 64 (7) Pupil-teacher ratio and number of exceptions to
65 ratio requested by county boards and number granted;
- 66 (8) Number of split-grade classrooms;
- 67 (9) Percentage of graduates who enrolled in college;
68 the percentage of graduates who enrolled in other post-
69 secondary education; and the percentage of graduates who
70 become fully employed within one year of high school
71 graduation all as reported by the graduates on the
72 assessment form attached to their individualized student
73 transition plan, pursuant to section eight of this article and
74 the percentage of graduates reporting;
- 75 (10) Pupil-administrator ratio;
- 76 (11) Parent involvement;
- 77 (12) Parent, teacher and student satisfaction;
- 78 (13) Operating expenditures per pupil;
- 79 (14) Percentage of graduates who attain the minimum
80 level of performance in the basic skills recognized by the
81 state board as laying the foundation for further learning
82 and skill development for success in college, other post-
83 secondary education and gainful employment and the
84 grade level distribution in which the minimum level of
85 performance was met;
- 86 (15) Percentage of graduates who received additional
87 certification of their skills, competence and readiness for
88 college, other post secondary education or employment
89 above the minimum foundation level of basic skills; and
- 90 (16) Effective school system participation with their
91 assigned regional education service agency.
- 92 (e) *Assessment and accountability of school and*
93 *school system performance and processes.* — The state
94 board shall establish by rule in accordance with the
95 provisions of article three-b, chapter twenty-nine-a of this
96 code, a system of education performance audits which

197 measures the quality of education and the preparation of
198 students based on the standards and measures of student,
199 school and school system performance and processes,
200 including, but not limited to, the standards and measures
201 set forth in subsections (c) and (d) of this section. The
202 system of education performance audits shall assist the
203 state board in ensuring that the standards and measures
204 established pursuant to this section are, at a minimum,
205 being met and that a thorough and efficient system of
206 schools is being provided. The system of education
207 performance audits shall include: (1) The assessment of
208 student, school and school system performance and the
209 processes in place in schools and school systems which
210 enable student performance; (2) the review of school and
211 school system unified improvement plans; and (3) the
212 periodic, random unannounced on-site review of school
213 and school system performance and compliance with the
214 standards.

215 (f) *Uses of school and school system assessment*
216 *information.* — The state board shall use information
217 from the system of education performance audits to assist
218 it in ensuring that a thorough and efficient system of
219 schools is being provided and to improve student, school
220 and school system performance, including, but not limited
221 to, the following: (1) Determining school accreditation
222 and school system approval status; (2) holding schools
223 and school systems accountable for the efficient use of
224 existing resources to meet or exceed the standards; and (3)
225 targeting additional resources when necessary to improve
226 performance. Primary emphasis in determining school
227 accreditation and school system approval status will be
228 based on student, school and school system performance
229 on measures selected by the state board. The state board
230 shall make accreditation information available to the
231 Legislature; the governor; and to the general public and
232 any individuals who request such information, subject to
233 the provisions of any act, rule or regulation restricting the
234 release of information. Based on the assessment of
235 student, school and school system performance, the state
236 board shall establish early detection and intervention
237 programs to assist underachieving schools and school

138 systems in improving performance before conditions
139 become so grave as to warrant more substantive state
140 intervention, including, but not limited to, making
141 additional technical assistance, programmatic, monetary
142 and staffing resources available where appropriate.

143 (g) *Office of education performance audits.* — To
144 assist the state board in the operation of the system of
145 education performance audits and in making
146 determinations regarding the accreditation status of
147 schools and the approval status of school systems, the state
148 board shall establish an office of education performance
149 audits which shall be operated under the direction of the
150 state board independently of the functions and supervision
151 of the state department of education and state
152 superintendent. The office of education performance
153 audits shall report directly to and be responsible to the
154 state board in carrying out its duties under the provisions
155 of this section. The office shall be headed by a director
156 who shall be appointed by the state board and shall serve
157 at the will and pleasure of the state board. The salary of
158 the director shall not exceed the salary of the state
159 superintendent of schools. The state board shall organize
160 and sufficiently staff the office to fulfill the duties
161 assigned to it by this section and the state board.
162 Employees of the state department of education who are
163 transferred to the office of education performance audits
164 shall retain their benefit and seniority status with the
165 department of education. Under the direction of the state
166 board, the office of education performance audits shall
167 receive from the West Virginia education information
168 system staff research and analysis data on the performance
169 of students, schools and school systems, and shall receive
170 assistance from staff at the state department of education
171 and the state school building authority to carry out the
172 duties assigned to the office. In addition to other duties
173 which may be assigned to it by the state board or by
174 statute, the office of education performance audits also
175 shall:

176 (1) Assure that all statewide assessments of student
177 performance are secure as required in section one-a,
178 article two-e of this chapter;

179 (2) Administer all accountability measures as assigned
180 by the state board, including, but not limited to, processes
181 for the accreditation of schools and the approval of school
182 systems, and recommend to the state board appropriate
183 action, including, but not limited to, accreditation and
184 approval action;

185 (3) Determine, in conjunction with the assessment and
186 accountability processes, what capacity may be needed by
187 schools and school systems to meet the standards
188 established by the Legislature and the state board, and
189 recommend to the school, school system and state board,
190 plans to establish those needed capacities;

191 (4) Determine, in conjunction with the assessment and
192 accountability processes, whether statewide system
193 deficiencies exist in the capacity to establish and maintain
194 a thorough and efficient system of schools, including the
195 identification of trends and the need for continuing
196 improvements in education, and report those deficiencies
197 and trends to the state board;

198 (5) Determine, in conjunction with the assessment and
199 accountability processes, staff development needs of
200 schools and school systems to meet the standards
201 established by the Legislature and the state board, and
202 make recommendations to the state board, the center for
203 professional development, regional education service
204 agencies, higher education governing boards and county
205 boards; and

206 (6) Identify, in conjunction with the assessment and
207 accountability processes, exemplary schools and school
208 systems and best practices that improve student, school
209 and school system performance, and make
210 recommendations to the state board for recognizing and
211 rewarding exemplary schools and school systems and
212 promoting the use of best practices. The state board shall
213 provide information on best practices to county school
214 systems and shall use information identified through the
215 assessment and accountability processes to select schools
216 of excellence.

217 (h) *On-site reviews.* — At the direction of the state
218 board or by weighted, random selection by the office of
219 education performance audits, an unannounced on-site
220 review shall be conducted by the office of education
221 performance audits of any school or school system for
222 purposes, including, but not limited to, the following: (1)
223 Verifying data reported by the school or county board;
224 (2) documenting compliance with policies and laws; (3)
225 evaluating the effectiveness and implementation status of
226 school and school system unified improvement plans; (4)
227 investigating official complaints submitted to the state
228 board that allege serious impairments in the quality of
229 education in schools or school systems; and (5)
230 investigating official complaints submitted to the state
231 board that allege that a school or county board is in
232 violation of policies or laws under which schools and
233 county boards operate. The random selection of schools
234 and school systems for an on-site review shall use a
235 weighted random sample so that those with lower
236 performance indicators and those that have not had a
237 recent on-site review have a greater likelihood of being
238 selected. Under the direction of the state board, the office
239 of education performance audits shall appoint an
240 education standards compliance review team to assist it in
241 conducting on-site reviews. The teams shall be composed
242 of an adequate number of persons who possess the
243 necessary knowledge, skills and experience to make an
244 accurate assessment of education programs and who are
245 drawn from a trained cadre established by the office of
246 education performance audits. The state board shall have
247 discretion in determining the number of persons to serve
248 on a standards compliance review team based on the size
249 of the school or school system as applicable. The teams
250 shall be led by a member of the office of education
251 performance audits. County boards shall be reimbursed
252 for the costs of substitutes required to replace county
253 board employees while they are serving on an education
254 standards compliance review team. The office of
255 education performance audits shall report the findings of
256 the on-site reviews to the state board for inclusion in the
257 evaluation and determination of a school's or county
258 board's accreditation or approval status as applicable.

259 (i) *School accreditation.* — The state board annually
260 shall review the information from the system of education
261 performance audits submitted for each school and shall
262 issue to every school: Full accreditation status, temporary
263 accreditation status, conditional accreditation status, or
264 shall declare the education programs at the school to be
265 seriously impaired.

266 (1) Full accreditation status shall be given to a school
267 when the school's performance on the standards adopted
268 by the state board pursuant to subsections (c) and (d) of
269 this section is at a level which would be expected when all
270 of the high quality education standards are being met.

271 (2) Temporary accreditation status shall be given to a
272 school when the measure of the school's performance is
273 below the level required for full accreditation status.
274 Whenever a school is given temporary accreditation status,
275 the county board shall ensure that the school's unified
276 improvement plan is revised to increase the performance
277 of the school to a full accreditation status level. The
278 revised unified school improvement plan shall include
279 objectives, a time line, a plan for evaluation of the success
280 of the improvements, cost estimates, and a date certain for
281 achieving full accreditation. The revised plan shall be
282 submitted to the state board for approval.

283 (3) Conditional accreditation status shall be given to a
284 school when the school's performance on the standards
285 adopted by the state board is below the level required for
286 full accreditation, but the school's unified improvement
287 plan has been revised to achieve full accreditation status
288 by a date certain, the plan has been approved by the state
289 board and the school is meeting the objectives and time
290 line specified in the revised plan.

291 (4) The state board shall establish and adopt standards
292 of performance to identify seriously impaired schools and
293 the state board may declare a school seriously impaired
294 whenever extraordinary circumstances exist as defined by
295 the state board. These circumstances shall include, but are
296 not limited to, the failure of a school on temporary
297 accreditation status to obtain approval of its revised
298 unified school improvement plan within a reasonable time

299 period as defined by the state board and the failure of a
300 school on conditional accreditation status to meet the
301 objectives and time line of its revised unified school
302 improvement plan or to achieve full accreditation by the
303 date specified in the revised plan. Whenever the state
304 board determines that the quality of education in a school
305 is seriously impaired, the state board, shall appoint a team
306 of improvement consultants to make recommendations
307 within sixty days of appointment for correction of the
308 impairment. Upon approval of the recommendations by
309 the state board, the recommendations shall be made to the
310 county board. If progress in correcting the impairment as
311 determined by the state board is not made within six
312 months from the time the county board receives the
313 recommendations, the state board shall place the county
314 board on temporary approval status and provide
315 consultation and assistance to the county board to: (i)
316 Improve personnel management; (ii) establish more
317 efficient financial management practices; (iii) improve
318 instructional programs and rules; or (iv) make such other
319 improvements as may be necessary to correct the
320 impairment. If the impairment is not corrected by a date
321 certain set by the state board, the county board shall be
322 given nonapproval status.

323 (j) *Transfers from seriously impaired schools.* —
324 Whenever a school is determined to be seriously impaired
325 and fails to improve its status within one year, any student
326 attending such school may transfer once to the nearest
327 fully accredited school, subject to approval of the fully
328 accredited school and at the expense of the school from
329 which the student transferred.

330 (k) *School system approval.* — The state board
331 annually shall review the information submitted for each
332 school system from the system of education performance
333 audits and issue one of the following approval levels to
334 each county board: Full approval, temporary approval,
335 conditional approval, or nonapproval.

336 (1) Full approval shall be given to a county board
337 whose education system meets or exceeds all of the high
338 quality standards for student, school and school system

339 performance and processes adopted by the state board and
340 whose schools have all been given full, temporary or
341 conditional accreditation status.

342 (2) Temporary approval shall be given to a county
343 board whose education system is below the level required
344 for full approval. Whenever a county board is given
345 temporary approval status, the county board shall revise its
346 unified county improvement plan to increase the
347 performance of the school system to a full approval status
348 level. The revised plan shall include objectives, a time line,
349 a plan for evaluation of the success of the improvements, a
350 cost estimate, and a date certain for achieving full
351 approval. The revised plan shall be submitted to the state
352 board for approval.

353 (3) Conditional approval shall be given to a county
354 board whose education system is below the level required
355 for full approval, but whose unified county improvement
356 plan meets the following criteria: (i) The plan has been
357 revised to achieve full approval status by a date certain; (ii)
358 the plan has been approved by the state board; and (iii)
359 the county board is meeting the objectives and time line
360 specified in the revised plan.

361 (4) Nonapproval status shall be given to a county
362 board which fails to submit and gain approval for its
363 unified county improvement plan or revised unified
364 county improvement plan within a reasonable time period
365 as defined by the state board or fails to meet the objectives
366 and time line of its revised unified county improvement
367 plan or fails to achieve full approval by the date specified
368 in the revised plan. The state board shall establish and
369 adopt additional standards to identify school systems in
370 which the program may be nonapproved and the state
371 board may issue nonapproval status whenever
372 extraordinary circumstances exist as defined by the state
373 board. Furthermore, whenever a county board has more
374 than a casual deficit, as defined in section one, article one
375 of this chapter, the county board shall submit a plan to the
376 state board specifying the county board's strategy for
377 eliminating the casual deficit. The state board either shall
378 approve or reject the plan. If the plan is rejected, the state

379 board shall communicate to the county board the reason
380 or reasons for the rejection of the plan. The county board
381 may resubmit the plan any number of times. However,
382 any county board that fails to submit a plan and gain
383 approval for the plan from the state board before the end
384 of the fiscal year after a deficit greater than a casual deficit
385 occurred or any county board which, in the opinion of the
386 state board, fails to comply with an approved plan may be
387 designated as having nonapproval status. Whenever
388 nonapproval status is given to a school system, the state
389 board shall declare a state of emergency in the school
390 system and shall appoint a team of improvement
391 consultants to make recommendations within sixty days of
392 appointment for correcting the emergency. Upon
393 approval of the recommendations by the state board, the
394 recommendations shall be made to the county board. If
395 progress in correcting the emergency, as determined by
396 the state board, is not made within six months from the
397 time the county board receives the recommendations, the
398 state board shall intervene in the operation of the school
399 system to cause improvements to be made that will provide
400 assurances that a thorough and efficient system of schools
401 will be provided. This intervention may include, but is not
402 limited to, the following: (i) Limiting the authority of the
403 county superintendent and county board as to the
404 expenditure of funds, the employment and dismissal of
405 personnel, the establishment and operation of the school
406 calendar, the establishment of instructional programs and
407 rules and such other areas as may be designated by the
408 state board by rule; (ii) taking such direct action as may
409 be necessary to correct the emergency; and (iii) declaring
410 that the office of the county superintendent is vacant.

411 (1) *Capacity*. — The process for improving education
412 includes a process for targeting resources strategically to
413 improve the teaching and learning process. Development
414 of unified school and school system improvement plans,
415 pursuant to subsection (b) of this section, is intended, in
416 part, to provide mechanisms to target resources
417 strategically to the teaching and learning process to
418 improve student, school and school system performance.
419 When deficiencies are detected through the assessment and

420 accountability processes, the revision and approval of
421 school and school system unified improvement plans shall
422 ensure that schools and school systems are efficiently
423 using existing resources to correct the deficiencies. When
424 the state board determines that schools and school systems
425 do not have the capacity to correct deficiencies, the state
426 board shall work with the county board to develop or
427 secure the resources necessary to increase the capacity of
428 schools and school systems to meet the standards and,
429 when necessary, seek additional resources in consultation
430 with the Legislature and the governor.

431 The state board shall recommend to the appropriate
432 body including, but not limited to, the Legislature, county
433 boards, schools and communities methods for targeting
434 resources strategically to eliminate deficiencies identified
435 in the assessment and accountability processes by:

436 (1) Examining reports and unified improvement plans
437 regarding the performance of students, schools and school
438 systems relative to the standards and identifying the areas
439 in which improvement is needed;

440 (2) Determining the areas of weakness that appear to
441 have contributed to the substandard performance of
442 students or the deficiencies of the school or school system;

443 (3) Determining the areas of strength that appear to
444 have contributed to exceptional student, school and school
445 system performance and promoting their emulation
446 throughout the system;

447 (4) Requesting technical assistance from the school
448 building authority in assessing or designing
449 comprehensive educational facilities plans;

450 (5) Recommending priority funding from the school
451 building authority based on identified needs;

452 (6) Requesting special staff development programs
453 from the center for professional development, higher
454 education, regional education service agencies and county
455 boards based on identified needs;

456 (7) Submitting requests to the Legislature for
 457 appropriations to meet the identified needs for improving
 458 education;

459 (8) Directing county boards to target their funds
 460 strategically toward alleviating deficiencies;

461 (9) Ensuring that the need for facilities in counties
 462 with increased enrollment are appropriately reflected and
 463 recommended for funding;

464 (10) Ensuring that the appropriate person or entity is
 465 held accountable for eliminating deficiencies; and

466 (11) Ensuring that the needed capacity is available
 467 from the state and local level to assist the school or school
 468 system in achieving the standards and alleviating the
 469 deficiencies.

470 Amendments to this section adopted by the
 471 Legislature in regular session in the year one thousand
 472 nine hundred ninety-eight shall be effective on the first
 473 day of July, one thousand nine hundred ninety-eight.

ARTICLE 2I. STAFF DEVELOPMENT COUNCILS.

§18-2I-1. Legislative purpose.

§18-2I-2. Legislative findings.

§18-2I-3. Creation of West Virginia staff development advisory council;
 members; and functions.

§18-2I-4. Functions of the West Virginia staff development advisory council.

§18-2I-5. Creation of regional staff development councils; members; and
 functions.

§18-2I-6. Functions of the regional staff development councils.

§18-2I-7. Limitations on funding of councils.

§18-2I-1. Legislative purpose.

1 The purpose of this article is to create the West
 2 Virginia staff development advisory council and eight
 3 regional staff development councils to coordinate the
 4 delivery of staff development programs for professional
 5 education in West Virginia.

§18-2I-2. Legislative findings.

1 The Legislature finds that there is presently an
2 inadequate and inefficient delivery of staff development
3 programs for professional education in West Virginia.
4 The Legislature further finds that the creation of a West
5 Virginia staff development advisory council and regional
6 staff development councils will assure the efficient
7 delivery of high quality staff training programs and will
8 further assure that duplication of efforts will be
9 minimized. The Legislature further finds that the
10 functions of the West Virginia staff development advisory
11 council and regional staff development councils will
12 assure that key personnel will be fully aware of identified
13 needs and programmatic services, that all stakeholders will
14 be appropriately involved in planning and implementing
15 programs to meet requisite needs and that high quality
16 staff development programs will be provided to public
17 school educators of West Virginia in the most efficient
18 manner.

**§18-2I-3. Creation of West Virginia staff development
advisory council; members; and functions.**

1 (a) There shall be a West Virginia staff development
2 advisory council which shall consist of the following
3 members:

4 (1) The chairpersons of each of the eight regional
5 staff development councils established in section five of
6 this article;

7 (2) The coordinators of each of the eight regional
8 educational service agency staff development councils;

9 (3) The associate superintendent for the division of
10 research, technology and professional services of the state
11 department of education;

12 (4) The assistant superintendent for the division of
13 instructional and student services of the state department
14 of education;

15 (5) The assistant superintendent for the division of
16 technical and adult education services of the state
17 department of education;

18 (6) The assistant superintendent for the division of
19 administrative services of the state department of
20 education;

21 (7) The secretary of education and the arts or his or
22 her designee;

23 (8) The chancellor of the university system of West
24 Virginia or his or her designee;

25 (9) The chancellor of the state college system of West
26 Virginia or his or her designee;

27 (10) The executive director of the West Virginia
28 education fund or his or her designee;

29 (11) The executive director of the West Virginia center
30 for professional development or his or her designee;

31 (12) The president of the West Virginia education
32 association or his or her designee;

33 (13) The president of the West Virginia federation of
34 teachers or his or her designee;

35 (14) The president of the West Virginia professional
36 educators or his or her designee;

37 (15) The president of the West Virginia association of
38 school administrators or his or her designee;

39 (16) The president of the West Virginia association of
40 elementary and middle school principals or his or her
41 designee; and

42 (17) The president of the West Virginia association of
43 secondary school principals or his or her designee.

44 (b) Any member of the advisory council may be
45 reimbursed by his or her employing agency for the cost
46 of reasonable and necessary expenses actually incurred in
47 the performance of their duties under this article as
48 determined by the employing agency.

**§18-2I-4. Functions of the West Virginia staff development
advisory council.**

1 The council shall:

- 2 (a) Identify and prioritize statewide staff development
3 needs;
- 4 (b) Identify effective staff development programs to
5 meet identified needs;
- 6 (c) Communicate staff development information and
7 findings to the regional staff development councils, the
8 state board and the legislative oversight commission on
9 education accountability by the first day of September of
10 each year;
- 11 (d) Convene regular meetings on a semiannual basis to
12 effectuate the requirements in subsections (a), (b) and (c)
13 of this section; and
- 14 (e) Elect a chairman who shall serve two years.

**§18-2I-5. Creation of regional staff development councils;
members; and functions.**

- 1 (a) There shall be a regional staff development council
2 in each of the eight regional educational service agencies
3 located within the state. Each regional staff development
4 council shall consist of the following members:
- 5 (1) The chairperson of each of the county
6 professional staff development councils located in each
7 county contained in the applicable region;
- 8 (2) The county staff development coordinator from
9 each of the counties located within the region: *Provided,*
10 That if the county does not have a staff development
11 coordinator, then the superintendent shall designate a
12 person to serve on the regional staff development council;
- 13 (3) The regional educational service agencies staff
14 development coordinator who shall serve as an ex officio
15 member;
- 16 (4) The executive director of the regional educational
17 service agencies who shall serve as an ex officio member;
- 18 (5) The designee of the chancellor of the university
19 system of West Virginia who shall serve as an ex officio
20 member; and

21 (6) The designee of the chancellor of the state college
22 system of West Virginia who shall serve as an ex officio
23 member.

24 (b) Any member of the regional staff development
25 council may be reimbursed by his or her employing
26 agency for the cost of reasonable and necessary expenses
27 actually incurred in the performance of their duties under
28 this article as determined by the employing agency.

§18-2I-6. Functions of the regional staff development councils.

1 The regional councils shall:

2 (a) Identify and prioritize regional staff development
3 needs;

4 (b) Identify effective staff development programs;

5 (c) Where requested by the regional educational
6 service agency, establish the budget for multicounty staff
7 development programs and oversee effective use of the
8 budget;

9 (d) Where requested by the regional educational
10 service agency, coordinate staff development at the
11 regional level;

12 (e) Facilitate communications among and between
13 personnel responsible for staff development at the state,
14 local and regional levels;

15 (f) Convene regular meetings on a quarterly basis to
16 effectuate the requirements in subsections (a), (b), (c), (d)
17 and (e) of this section;

18 (g) Elect a chairman who shall serve two years; and

19 (h) Report information and findings related to staff
20 development to the West Virginia staff development
21 advisory council.

§18-2I-7. Limitations on funding of councils.

1 Nothing in this article may be construed to require
2 any specific level of funding by the Legislature.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-7. Foundation allowance for transportation cost.

§18-9A-10. Foundation allowance to improve instructional programs.

§18-9A-7. Foundation allowance for transportation cost.

1 The allowance in the foundation school program for
2 each county for transportation shall be the sum of the
3 following computations:

4 (1) Eighty-five percent of the transportation cost
5 within each high density county and ninety percent of the
6 transportation cost within each low density county for
7 maintenance, operation and related costs, exclusive of all
8 salaries: *Provided*, That for the school year beginning the
9 first day of July, one thousand nine hundred ninety-eight,
10 and thereafter, in the event a county uses an alternative
11 fuel such as compressed natural gas or other acceptable
12 alternative fuel for the operation of all or any portion of
13 its school bus system, then the allowance in the foundation
14 school program for each such county for that portion of
15 its school bus system shall be ninety-five percent of the
16 transportation cost for maintenance, operation and related
17 costs, exclusive of all salaries, incurred by the use of the
18 alternatively fueled school buses: *Provided, however*,
19 That any county using an alternative fuel and qualifying
20 for the additional allowance shall submit a plan regarding
21 the intended future use of alternatively fueled school
22 buses;

23 (2) The total cost, within each county, of insurance
24 premiums on buses, buildings and equipment used in
25 transportation: *Provided*, That such premiums were
26 procured through competitive bidding;

27 (3) For the school year beginning the first day of July,
28 one thousand nine hundred eighty-nine, and thereafter, an
29 amount equal to ten percent of the current replacement
30 value of the bus fleet within each county as determined by
31 the state board, such amount to be used only for the
32 replacement of buses. In addition, in any school year in
33 which its net enrollment increases when compared to the
34 net enrollment the year immediately preceding, a school
35 district may apply to the state superintendent for funding
36 for an additional bus. The state superintendent shall make

37 a decision regarding each application based upon an
38 analysis of the individual school district's net enrollment
39 history and transportation needs: *Provided*, That the
40 superintendent shall not consider any application which
41 fails to document that the county has applied for federal
42 funding for additional buses. If the state superintendent
43 finds that a need exists, a request for funding shall be
44 included in the budget request submitted by the state
45 board for the upcoming fiscal year;

46 (4) Eighty-five percent of the cost of contracted
47 transportation services and public utility transportation
48 within each high density county and ninety percent of the
49 cost of contracted transportation services and public utility
50 transportation within each low density county;

51 (5) Aid in lieu of transportation equal to the state
52 average amount per pupil for each pupil receiving such
53 aid within each county; and

54 (6) Ninety-five percent of the transportation cost for
55 maintenance, operation and related costs, exclusive of all
56 salaries, for transporting students to and from classes at a
57 multicounty vocational center.

58 The total state share for this purpose shall be the sum
59 of the county shares: *Provided*, That no county shall
60 receive an allowance which is greater than one third above
61 the computed state average allowance per transportation
62 mile multiplied by the total transportation mileage in the
63 county: *Provided, however*, That one half of one percent
64 of the transportation allowance distributed to each county
65 shall be for the purpose of trips related to academic
66 classroom curriculum and not related to any
67 extracurricular activity: *Provided further*, That any
68 remaining funds credited to a county for the purpose of
69 trips related to academic classroom curriculum during the
70 fiscal year shall be carried over for use in the same
71 manner the next fiscal year and shall be separate and apart
72 from, and in addition to, the appropriation for the next
73 fiscal year: *And provided further*, That the state board may
74 request a county to document the use of funds for trips
75 related to academic classroom curriculum if the board
76 deems it necessary.

77 The state department of education shall cause a
78 comprehensive study to be made relating to student
79 transportation. The study shall examine, but is not limited
80 to, the issues of funding, timeliness of data used for
81 formula distribution, service personnel needed, inter-
82 county service, regionalization of services, bus routes,
83 amount of time students spend on buses, maintenance,
84 safety training, and alternative transportation systems.
85 The state department of education shall submit a report of
86 the study to the legislative oversight commission on
87 education accountability by the fifteenth day of January,
88 one thousand nine hundred ninety-nine.

***§18-9A-10. Foundation allowance to improve instructional programs.**

1 (a) For the school year beginning on the first day of
2 July, one thousand nine hundred ninety-eight, and
3 thereafter, the sum of the allocations shall be the amount
4 appropriated by the Legislature for such purposes:

5 (1) One hundred fifty thousand dollars shall be
6 allocated to each county;

7 (2) Distribution to the counties of the remainder of
8 these funds shall be made proportional to the average of
9 each county's average daily attendance for the preceding
10 year and the county's second month net enrollment.
11 Moneys allocated by provision of this section shall be
12 used to improve instructional programs according to a
13 plan for instructional improvement which the affected
14 county board shall file with the state board by the first day
15 of August of each year, to be approved by the state board
16 by the first day of September of that year if such plan
17 substantially complies with standards to be adopted by the
18 state board: *Provided*, That notwithstanding any other
19 provision of this code to the contrary, moneys allocated
20 by provision of this section may also be used in the
21 implementation and maintenance of the uniform
22 integrated regional computer information system; and

*Clerk's Note: This section was also amended by SB 533 (Chapter 125), which passed subsequent to this act.

23 (3) Up to twenty-five percent of this allocation may be
24 used to employ professional educators and/or service
25 personnel in counties after all applicable provisions of
26 sections four and five of this article have been fully
27 utilized: *Provided*, That for the school year beginning on
28 the first day of July, one thousand nine hundred ninety-
29 six, only, up to an additional twenty-five percent of this
30 allocation may be used to employ classroom teachers, as
31 defined in section one, article one, chapter eighteen-a of
32 this code, and/or service personnel in counties after all
33 applicable provisions of sections four and five of this
34 article have been fully utilized: *Provided, however*, That
35 service personnel employed with the additional twenty-five
36 percent for the school year beginning on the first day of
37 July, one thousand nine hundred ninety-six, only, may not
38 include directors, coordinators or supervisors.

39 Prior to the use of any funds from this section for
40 personnel costs, the county board must receive
41 authorization from the state superintendent of schools.
42 The state superintendent shall require the district board to
43 demonstrate: (1) The need for the allocation; (2)
44 efficiency and fiscal responsibility in staffing; and (3)
45 sharing of services with adjoining counties and the
46 regional educational service agency for that county in the
47 use of the total local district board budget. District boards
48 shall make application for available funds for the next
49 fiscal year by the first day of May of each year. On or
50 before the first day of June, the state superintendent shall
51 review all applications and notify applying district boards
52 of the distribution of the allocation: *Provided*, That for
53 the school year beginning on the first day of July, one
54 thousand nine hundred ninety-three, only, the state
55 superintendent shall review all applications and notify
56 applying district boards of the distribution of the
57 allocation on or before the first day of July, one thousand
58 nine hundred ninety-three. Such funds shall be
59 distributed during the fiscal year as appropriate. The state
60 superintendent shall require the county board to
61 demonstrate the need for an allocation for personnel
62 based upon the county's inability to meet the
63 requirements of state law or state board policy: *Provided*,

64 *however*, That the funds available for personnel under this
65 section may not be used to increase the total number of
66 professional noninstructional personnel in the central
67 office beyond four. Such instructional improvement plan
68 shall be made available for distribution to the public at the
69 office of each affected county board.

70 (b) Commencing with the school year beginning on
71 the first day of July, one thousand nine hundred ninety-
72 three, an amount not less than the amount required to
73 meet debt service requirements on any revenue bonds
74 issued prior to the first day of January, one thousand nine
75 hundred ninety-four, and the debt service requirements on
76 any revenue bonds issued for the purpose of refunding
77 revenue bonds issued prior to the first day of January, one
78 thousand nine hundred ninety-four, shall be paid into the
79 school building capital improvements fund created by
80 section six, article nine-d of this chapter, and shall be used
81 solely for the purposes of said article. The school
82 building capital improvements fund shall not be utilized to
83 meet the debt services requirement on any revenue bonds
84 or revenue refunding bonds for which moneys contained
85 within the school building debt service fund have been
86 pledged for repayment pursuant to said section.

CHAPTER 18A. SCHOOL PERSONNEL.

Article.

3. Training, Certification, Licensing, Professional Development.
- 3A. Center for Professional Development.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-2c. Training through the principals academy.

- 1 (a) *Principal training required.* — After the first day
2 of January, one thousand nine hundred ninety-seven, and
3 subject to the provisions of subsection (c) of this section,
4 every principal shall complete a training program through
5 the principals academy at least once every four years.

6 (b) *Admission to academy.* — The academy and the
7 persons attending such academy shall adhere to the
8 following guidelines for admission to the academy:

9 (1) All persons assigned as a principal for the first
10 time in a West Virginia school after the first day of March,
11 one thousand nine hundred ninety-six, shall complete
12 training through the academy: *Provided*, That if training
13 through the academy is scheduled to begin within ninety
14 days from the date of assignment, such person may
15 complete the next scheduled training through the
16 academy;

17 (2) All principals of schools which have received from
18 the state board temporary or conditional accreditation
19 status or whose schools have been designated as seriously
20 impaired, in accordance with section five, article two-e,
21 chapter eighteen of this code, shall complete the next
22 regularly scheduled training through the academy
23 following the date of such designation: *Provided*, That if
24 training through the academy is scheduled to begin within
25 thirty days from the date of such designation, such
26 principal may complete the next scheduled training
27 through the academy: *Provided, however*, That principals
28 whose schools have received conditional accreditation
29 status, whose plan for correcting the deficiency which
30 resulted in conditional accreditation status exceeds one
31 year and whose schools are meeting the requirements of
32 the plan, shall not be required to attend the academy in
33 each successive year;

34 (3) All principals who are subject to an improvement
35 plan, in accordance with section twelve, article two of this
36 chapter, shall complete the next regularly scheduled
37 training through the academy: *Provided*, That if training
38 through the academy is scheduled to begin within thirty
39 days from the date the principal is first subject to the
40 improvement plan, then such principal may complete the
41 next scheduled training through the academy;

42 (4) All principals who transfer to a school with a
43 significantly different grade configuration shall complete
44 the next regularly scheduled training through the
45 academy: *Provided*, That if training through the academy

46 is scheduled to begin within ninety days from the date
47 such principal is transferred, then such principal may
48 complete the next scheduled training through the
49 academy; and

50 (5) All persons serving as school principals who are
51 not described in subdivisions (1) through (4) of this
52 subsection shall complete training through the academy at
53 least once every four years from and after the first day of
54 January, one thousand nine hundred ninety-seven.

55 (c) *Academy and attendance subject to funding.* —
56 The requirement that principals attend the academy shall
57 be subject to the availability of funds for the principals
58 academy from legislative appropriation or from other
59 sources. If such funds are insufficient to provide for the
60 total cost of admission to the academy for those required
61 to complete training, then the academy shall admit the
62 persons described in subdivisions (1) through (5),
63 subsection (b) of this section according to the priority in
64 which the subdivisions appear in said subsection. If such
65 funds are insufficient to provide for the admission of all
66 the persons described in one or more of subdivisions (1)
67 through (5), subsection (b) of this section, the academy is
68 authorized to determine which persons described within
69 the said subdivision or subdivisions shall be admitted and
70 which shall not be admitted: *Provided*, That the principals
71 academy shall make every effort to ensure that all
72 principals attend once every four years from and after
73 the first day of January, one thousand nine hundred
74 ninety-seven: *Provided, however*, That nothing in this
75 section shall be construed to require any specific level of
76 funding by the Legislature.

77 (d) *Principals standards advisory council.* — To assist
78 the state board in the performance of the duties described
79 in subsection (e) of this section, there is hereby created a
80 "Principals Standards Advisory Council", which shall
81 consist of nine persons, as follows: The executive director,
82 or designee, of the center for professional development,
83 who shall serve as the ex officio chair; three principals,
84 one from an elementary school, one from a middle school,
85 or a junior high school, and one from a high school, and

86 one county school superintendent, nominated by the state
87 board and appointed by the governor; two representatives
88 from higher education who teach in principal preparation
89 programs, nominated by the chancellor of the state
90 university system and appointed by the governor; and two
91 citizen representatives who are knowledgeable on issues
92 addressed in this section, appointed by the governor. Of
93 the initial appointments, three of the members appointed
94 shall serve for a term of three years, three members shall
95 serve for a term of two years, and two members shall serve
96 for a term of one year. All successive appointments shall
97 be for a term of three years. Members of the council who
98 are public employees shall be granted release time from
99 their employment for attending meetings of the council.
100 Members may be reimbursed for reasonable and
101 necessary expenses actually incurred in the performance
102 of their official duties by the center for professional
103 development.

104 (e) *Establishment of standards.* — On or before the
105 first day of October, one thousand nine hundred ninety-
106 six, the state board shall approve and promulgate rules
107 regarding the minimum qualities, proficiencies and skills
108 that will be required of principals after the first day of
109 January, one thousand nine hundred ninety-seven. The
110 state board shall promulgate such rules after consultation
111 with the principals standards advisory council created in
112 subsection (d) of this section. The rule developed by the
113 state board shall address at least the following:

114 (1) Staff relations, including, but not limited to, the
115 development and use of skills necessary to make a positive
116 use of faculty senates, to manage faculty and staff with
117 courtesy and mutual respect, coach and motivate
118 employees and to build consensus as a means of
119 management;

120 (2) School community leadership qualities, including,
121 but not limited to, the ability to organize and leverage
122 community initiative, communicate effectively, work
123 effectively with local school improvement councils,
124 manage change, resolve conflict and reflect the highest
125 personal values;

126 (3) Educational proficiencies, including, but not
127 limited to, knowledge of curriculum, instructional
128 techniques, student learning styles, student assessment
129 criteria, school personnel performance, evaluation skills
130 and family issues; and

131 (4) Administrative skills, including, but not limited to,
132 organizational, fiscal, public policy and total quality
133 management skills and techniques.

134 (f) *Waivers.* — Any person desiring to be relieved of
135 the requirements of all or any part of this section may
136 apply in writing to the state board for a waiver. Upon a
137 showing of reasonable cause why relief should be granted,
138 the state board may grant a waiver, upon such terms and
139 conditions as the state board shall determine proper, as to
140 all or any part of this section.

141 (g) *Failure to comply.* — Any person who fails or
142 refuses to complete training through the academy, as
143 required by the provisions of this section, and who fails to
144 obtain a waiver, as described in subsection (f) of this
145 section, shall be ineligible to be employed as, or serve in
146 the capacity of, a principal.

147 (h) *Tracking of requirement.* — On or before the first
148 day of January, one thousand nine hundred ninety-seven,
149 the state board shall establish a system to track the
150 progress of each person required to complete training
151 through the academy and shall regularly advise such
152 persons of their progress.

153 (i) *Payment of reasonable and necessary expenses and*
154 *stipends.* — The center for professional development may
155 reimburse persons attending the academy for reasonable
156 and necessary expenses. Additionally, any person whose
157 attendance occurs outside his or her employment term, as
158 defined in section fifteen, article five, chapter eighteen of
159 this code, may be entitled to a stipend to be determined by
160 and paid by the center for professional development:
161 *Provided,* That nothing in this section shall be construed
162 to require any specific level of funding by the Legislature.

ARTICLE 3A. CENTER FOR PROFESSIONAL DEVELOPMENT.

§18A-3A-1. Center for professional development continued; intent; advisory council.

§18A-3A-2. Professional development project.

§18A-3A-2a. Development training project.

§18A-3A-2b. The principals academy.

§18A-3A-3. Professional personnel evaluation project.

§18A-3A-1. Center for professional development continued; intent; advisory council.

1 (a) Teaching is a profession that directly correlates to
2 the social and economic well-being of a society and its
3 citizens. Superior teaching is essential to a well educated
4 and productive populace. Strong academic leadership
5 provided by principals and administrators skilled in
6 modern management principles is also essential. The
7 intent of this article is to recognize the value of
8 professional involvement by experienced educators,
9 principals and administrators in building and maintaining
0 a superior force of professional educators and to establish
1 avenues for applying such involvement.

2 The general mission of the center is to study matters
13 relating to the quality of teaching and management in the
14 schools of West Virginia and to promote the
15 implementation primarily of statewide programs and
16 practices as recommended by the state board to assure the
17 highest quality in teaching and management. The center
18 also may implement local programs if the state board, in
19 its agenda set pursuant to section twenty-three-a, article
20 two, chapter eighteen of this code, determines that there is
21 a specific local need for the programs. Additionally, the
22 center shall perform such duties as are assigned to it by
23 law.

24 Nothing in this article shall be construed to require
25 any specific level of funding by the Legislature.

26 (b) The center board shall consist of eleven persons as
27 follows: The secretary of education and the arts, ex
28 officio, and the state superintendent of schools, ex officio,
29 both of whom shall be entitled to vote; three members of
30 the state board, elected by the state board; three
31 experienced educators, of whom two shall be working

32 classroom teachers and one of whom shall be a school or
33 county administrator, appointed by the governor by and
34 with the advice and consent of the Senate; and three
35 citizens of the state who are knowledgeable in matters
36 relevant to the issues addressed by the center, including,
37 but not limited to, professional development and
38 management principles, appointed by the governor by and
39 with the advice and consent of the Senate. Not more than
40 two appointees shall be residents within the same
41 congressional district. The center board shall elect a
42 board chair.

43 Of the initial members from the state board, one shall
44 be elected for a term of one year and two shall be elected
45 for terms of two years. All successive elections shall be
46 for two-year terms. The state board shall elect another
47 member to fill the unexpired term of any person so
48 elected who subsequently vacates state board membership.
49 Of the initial appointed members, three shall be appointed
50 for one-year terms and three shall be appointed for two-
51 year terms. All successive appointments shall be for two-
52 year terms. The governor shall appoint a new member to
53 fill the unexpired term of any vacancy in the appointed
54 membership.

55 The center for professional development board shall
56 meet at least quarterly and the appointed members shall be
57 reimbursed for reasonable and necessary expenses
58 actually incurred in the performance of their official
59 duties from funds appropriated or otherwise made
60 available for such purposes upon submission of an
61 itemized statement therefor.

62 The board chair, with the advice of the center board,
63 from appropriations to the center for professional
64 development, may employ and fix the compensation of an
65 executive director with knowledge and experience in
66 professional development and management principles and
67 such other persons as may be necessary to carry out the
68 mission and duties of the center. When practical,
69 personnel employed by state higher education agencies
70 and state, regional and county public education agencies

71 shall be made available to the center to assist in the
72 operation of projects of limited duration.

73 The center shall assist in the delivery of programs and
74 activities pursuant to this article to meet statewide, and if
75 needed as determined by the goals set by the state board
76 pursuant to section twenty-three-a, article two, chapter
77 eighteen of this code, the local professional development
78 needs of teachers, principals and administrators and may
79 contract with existing agencies or agencies created after
80 the effective date of this section or others to provide
81 training programs in the most efficient manner. Existing
82 programs currently based in agencies of the state shall be
83 continued in the agency of their origin unless the center
84 establishes a compelling need to transfer or cancel the
85 existing program. The center shall recommend to the
86 governor the transfer of funds to the providing agency, if
87 needed, to provide programs approved by the center.

88 Pursuant to the provisions of article ten, chapter four
89 of this code, the center for professional development
90 board shall continue to exist until the first day of July, two
91 thousand one.

92 (c) On or before the first day of January, one
93 thousand nine hundred ninety-eight, the center for
94 professional development shall develop and communicate
95 to the state board a curriculum for the principals academy.
96 The curriculum shall be based upon the minimum
97 qualities, proficiencies and skills necessary for principals
98 and recommended by the state board, pursuant to the
99 terms of section two-c, article three of this chapter.

100 (d) In accordance with section two-c, article three of
101 this chapter, the center shall be responsible for paying
102 reasonable and necessary expenses for persons attending
103 the principals academy: *Provided*, That nothing in this
104 section shall be construed to require any specific level of
105 funding by the Legislature.

106 (e) Persons attending the professional development
107 offerings of the center and such other courses as shall be
108 offered by the center for professional development, except
109 the principals academy, shall be assessed fees which shall

110 be less than the full cost of attendance. There is hereby
111 created in the state treasury a special revenue account
112 known as the "center for professional development
113 fund". All moneys collected by the center shall be
114 deposited in the fund for expenditure by the center board
115 for the purposes specified in this section. Moneys
116 remaining in the fund at the end of the fiscal year are
117 subject to reappropriation by the Legislature.

§18A-3A-2. Professional development project.

1 Subject to the provisions of section twenty-three-a,
2 article two, chapter eighteen of this code, through this
3 project the center shall:

4 (1) Identify, coordinate, arrange and otherwise assist in
5 the delivery of professional development programs and
6 activities that help professional educators acquire the
7 knowledge, skills, attitudes, practices and other such
8 pertinent complements deemed essential for an individual
9 to demonstrate appropriate performance as a professional
10 personnel in the public schools of West Virginia. The
11 basis for such performance shall be the laws, policies and
12 regulations adopted for the public schools of West
13 Virginia, and amendments thereto. The center also may
14 permit and encourage school personnel such as classroom
15 aides, higher education teacher education faculty and
16 higher education faculty in programs such as articulated
17 tech prep associate degree and other programs to
18 participate in appropriate professional development
19 programs and activities with public school professional
20 educators;

21 (2) Identify, coordinate, arrange and otherwise assist in
22 the delivery of professional development programs and
23 activities that help principals and administrators acquire
24 knowledge, skills, attitudes and practices in academic
25 leadership and management principles for principals and
26 administrators and such other pertinent complements
27 deemed essential for principals and administrators to
28 demonstrate appropriate performance in the public
29 schools of West Virginia. The basis for such performance
30 shall be the laws, policies and regulations adopted for the
31 public schools of West Virginia, and amendments thereto;

32 (3) Serve in a coordinating capacity to assure that the
33 knowledge, skills, attitude and other pertinent
34 complements of appropriate professional performance
35 which evolve over time in the public school environment
36 are appropriately reflected in the programs approved for
37 the education of professional personnel, including, but not
38 limited to, advising the teacher education programs of
39 major statutory and policy changes in the public schools
40 which affect the job performance requirements of
41 professional educators, including principals and
42 administrators;

43 (4) Provide for the routine updating of professional
44 skills of professional educators, including principals and
45 administrators, through in-service and other programs.
46 Such routine updating may be provided by the center
47 through statewide or regional institutes which may require
48 a registration fee; and

49 (5) Provide consultation and assistance to county staff
50 development councils established under the provisions of
51 section eight, article three of this chapter in planning,
52 designing, coordinating, arranging for and delivering
53 professional development programs to meet the needs of
54 the professional educators of their district. From
55 legislative appropriations to the center for professional
56 development, exclusive of such amounts required for the
57 expenses of the principals academy, the center shall, unless
58 otherwise directed by the Legislature, provide assistance in
59 the delivery of programs and activities to meet the
60 expressed needs of the school districts for professional
61 development to help teachers, principals and
62 administrators demonstrate appropriate performance
63 based on the laws, policies and regulations adopted for the
64 public schools of West Virginia.

§18A-3A-2a. Development training project.

1 Subject to the provisions of section twenty-three-a,
2 article two, chapter eighteen of this code, through this
3 project the center shall develop training in the area of
4 developmental instruction with an emphasis in grades
5 kindergarten through grade four.

§18A-3A-2b. The principals academy.

1 There is hereby established within the center for
2 professional development the "Principals Academy".
3 Training through the principals academy shall include at
4 least the following:

5 (a) Training designed to build within principals the
6 minimum qualities, proficiencies and skills that will be
7 required of all principals pursuant to the rules of the state
8 board;

9 (b) Intensive summer training institutes; and

10 (c) Specialized training and professional development
11 programs for all principals, with special programs for the
12 following principals:

13 (1) Newly appointed principals;

14 (2) Principals of schools which have received from
15 the state board temporary or conditional accreditation
16 status or whose schools have been designated as seriously
17 impaired;

18 (3) Principals subject to improvement plans; and

19 (4) Principals of schools with significantly different
20 grade level configurations.

§18A-3A-3. Professional personnel evaluation project.

1 Subject to the provisions of section twenty-three-a,
2 article two, chapter eighteen of this code, through this
3 project the center shall:

4 (1) Establish programs that provide education and
5 training in evaluation skills to administrative personnel
6 who will evaluate the employment performance of
7 professional personnel pursuant to the provisions of
8 section twelve, article two of this chapter; and

9 (2) Establish programs that provide instruction to
10 classroom teachers who will serve as beginning teacher
11 mentors in accordance with the provisions of section
12 two-b, article three of this chapter.

CHAPTER 127

(H. B. 4697—By Delegates Manuel, Beach, Williams, Anderson,
Stemple, Osborne and Hubbard)

[Passed March 13, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nine-e, relating to air quality in new school construction; short title; definitions; standards; tests; and school building authority guidelines and report to legislative oversight commission on education accountability.

Be it enacted by the Legislature of West Virginia:

That chapter eighteen 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-e, to read as follows:

ARTICLE 9E. AIR QUALITY IN NEW SCHOOLS ACT.

§18-9E-1. Short title.

§18-9E-2. Definitions.

§18-9E-3. Air quality in new schools.

§18-9E-1. Short title.

- 1 This article is titled and may be cited as the “Air
- 2 Quality in New Schools Act of 1998.”

§18-9E-2. Definitions.

- 1 For the purposes of this article, “new school
- 2 building” means any public school in the state for which
- 3 design and construction begin after the first day of July,
- 4 one thousand nine hundred ninety-eight, for the education
- 5 of students in grades kindergarten through twelfth.

§18-9E-3. Air quality in new schools.

1 (a) In an effort to create well ventilated school
2 environments, and notwithstanding any other provision of
3 this code to the contrary, any new school building
4 designed and constructed in the state by a county board
5 after the first day of July, one thousand nine hundred
6 ninety-eight, regardless of the funding source, shall be
7 designed and constructed in compliance with the current
8 standards of the American society of heating, refrigerating
9 and air conditioning engineers handbook (ASHRAE), the
10 national fire protection association code (NFPA) and the
11 code of the building officials and code administrators
12 (BOCA).

13 Prior to construction of any new school building in
14 this state, tests, as required by the school building
15 authority rules promulgated under the provisions of
16 subsection (b) of this section, shall be conducted to
17 determine if radon is present at the proposed construction
18 site. If radon is detected, additional tests shall be
19 performed within thirty days to confirm the results. If it is
20 determined that radon is present in amounts greater than
21 the amount determined to be acceptable by the rules
22 promulgated by the school building authority, pursuant to
23 subsection (b) of this section, during both tests, any new
24 school building constructed on that site shall incorporate
25 an active soil depressurization system to divert radon from
26 the building site, or utilize any other industry accepted
27 mitigation technique to minimize exposure to radon.

28 (b) The school building authority shall promulgate
29 rules pursuant to article three-a, chapter twenty-nine-a of
30 this code to assure that any new school building designed
31 after the effective date of this article is designed and
32 constructed in accordance with the ASHRAE, NFPA and
33 BOCA standards. The school building authority shall
34 promulgate rules, pursuant to article three-a, chapter
35 twenty-nine-a of this code that establish standards for safe
36 levels of radon for public school buildings. The school
37 building authority shall submit the rules for approval to
38 the legislative oversight commission on education
39 accountability on or before the first day of July, one
40 thousand nine hundred ninety-eight. The rules shall
41 include the requirement that county boards submit all
42 designs to the school building authority for review and
43 approval prior to preparation of final bid documents.

CHAPTER 128

(Com. Sub. for S. B. 409—By Senators Hunter, Helmick and Ross)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-j, relating to requiring that the individualized education program of each blind or visually impaired child include provisions for instruction in braille and the use of braille appropriate to the child's current and future literacy needs; establishing standards of proficiency and instruction; providing materials in a computer-accessible format capable of braille reproduction; and requiring the certification of teachers in accordance with braille literacy standards.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10J. BLIND PERSONS' LITERACY RIGHTS AND EDUCATION ACT.

§18-10J-1. Short title.

§18-10J-2. Definitions.

§18-10J-3. Individualized education program.

§18-10J-4. Standards of competency and instruction.

§18-10J-5. Instructional materials.

§18-10J-6. Teacher certification and training.

§18-10J-1. Short title.

1 This article may be cited as the "Blind Persons'
2 Literacy Rights and Education Act".

§18-10J-2. Definitions.

1 The following words used in this article shall be
2 construed as follows:

3 (a) "Blind or visually impaired child" means an
4 individual who is eligible for special education services
5 and who:

6 (1) Has a visual acuity of 20/200 or less in the better
7 eye with correcting lenses or has a limited field of vision
8 such that the widest diameter subtends an angular distance
9 of no greater than twenty degrees; or

10 (2) Has a medically indicated expectation of visual
11 deterioration.

12 (b) "Braille" means the system of reading and writing
13 through touch commonly known as standard English
14 braille.

15 (c) "Individualized education program" and "IEP
16 team" have the meanings provided in Section 614(d) of
17 the Individuals with Disabilities Education Act (20 U.S.C.
18 Section 1414(d)).

19 (d) "Textbooks and other instructional materials"
20 means any literary or nonliterary works obtained for use
21 in a course of study.

§18-10J-3. Individualized education program.

1 In developing the individualized education program
2 for a child who is blind or visually impaired, the
3 individualized education program team shall provide for
4 the child to receive instruction in braille and the use of
5 braille unless the individualized education program team
6 determines, after an evaluation of the child's reading and
7 writing skills, needs, and appropriate reading and writing
8 media (including an evaluation of the child's future needs
9 for instruction in braille or the use of braille), that the
10 instruction or use is not appropriate for the child.
11 Nothing in this section requires the exclusive use of braille
12 if other special education services are appropriate to the
13 child's educational needs. The provision of other
14 appropriate services shall not preclude braille use or
15 instruction.

§18-10J-4. Standards of competency and instruction.

1 Instruction in braille reading and writing shall be
2 provided with the goal of enabling each blind or visually

3 impaired child to communicate effectively and efficiently
4 with the same level of proficiency expected of the child's
5 peers of comparable ability and grade level. The child's
6 individualized education program shall specify:

7 (a) The results obtained from the evaluations required
8 under section three of this article;

9 (b) How braille will be implemented as the primary
10 mode for learning through integration with other
11 classroom activities;

12 (c) The date on which braille instruction will
13 commence;

14 (d) The length of the period of instruction and the
15 frequency and duration of each instructional session;

16 (e) The level of competency in braille reading and
17 writing to be achieved by the end of the period and the
18 objective assessment measures to be used; and

19 (f) If a decision has been made under section two of
20 this article, that braille instruction or use is not required
21 for the child:

22 (1) Documentation that the decision was reached after
23 a review of pertinent literature describing the educational
24 benefits of braille instruction and use; and

25 (2) A specification of the evidence used to determine
26 that the child's ability to read and write effectively without
27 braille instruction is not impaired.

§18-10J-5. Instructional materials.

1 All publishers of textbooks or other instructional
2 materials sold to the state or any local education agency
3 (including post-secondary institutions) shall furnish
4 computer diskettes for literary subjects in the American
5 standard code for information interchange from which
6 braille versions can be produced. Further, the publishers
7 shall furnish computer diskettes in American standard
8 code for information interchange for nonliterary subjects,
9 including natural sciences, computer science, mathematics
10 and music, when braille specialty code translation software
11 is available.

§18-10J-6. Teacher certification and training.

1 As part of the professional certification process,
2 teachers seeking to become certified in the education of
3 blind and visually impaired children shall demonstrate
4 competence in reading and writing braille. Before issuing
5 a professional certificate to teach the blind and visually
6 impaired, the West Virginia department of education shall
7 require that the applicant demonstrate, based upon
8 standards adopted by the national library service for the
9 blind and physically handicapped, library of congress,
10 Washington, D.C., that he or she is proficient in reading
11 and writing braille. This requirement becomes effective
12 the first day of July, two thousand. Teachers already
13 certified in the education of blind and visually impaired
14 children are not required to demonstrate that proficiency
15 in order to retain their certification. Further, the West
16 Virginia department of education shall, on a schedule of at
17 least once every three years, make available to all teachers
18 of blind and visually impaired children a continuing
19 education class in reading or writing braille or a college
20 credit course in reading and writing braille, or both. In
21 order to achieve successful completion of a course, a
22 teacher shall demonstrate proficiency in reading and
23 writing braille at a level commensurate with the standards
24 adopted by the national library service for the blind and
25 physically handicapped, library of congress.

CHAPTER 129

(Com. Sub. for S. B. 365—By Senators Jackson, Craigo, Wooton, Kessler,
Anderson, Snyder, White, Prezioso, Dittmar, Schoonover, Ball, Hunter, Sprouse,
Sharpe, McKenzie, Ross, Bailey, Chafin, Fanning, Helmick, Love, Walker and
Tomblin, Mr. President)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, five, six and eight, article thirty, chapter eighteen 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 six-a and eleven, all relating to the West Virginia prepaid tuition trust fund; clarifying name of board; legislative findings; expanding definitions; board of trustees; board powers; authorizing savings program for fees, room and board; permitting obligation of state general revenue funds if authorized by the Legislature; administrative account; expanding report and audit requirements; requiring an actuarial surplus; confidentiality of certain information; permitting board to promulgate emergency rules when changes in federal tax code or regulations require; and ensuring audit compliance with the state audit.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six and eight, article thirty, chapter eighteen 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 six-a and eleven, all to read as follows:

ARTICLE 30. WEST VIRGINIA PREPAID TUITION TRUST ACT.

- §18-30-2. Legislative findings and purpose.
- §18-30-3. Definitions.
- §18-30-4. Appointment of board of trustees; terms; compensation; proceedings generally.
- §18-30-5. Powers of the board.
- §18-30-6. West Virginia prepaid tuition trust created.
- §18-30-6a. Prepaid tuition trust fund administrative account.
- §18-30-8. Report and account; annual audit.
- §18-30-11. Confidentiality.

§18-30-2. Legislative findings and purpose.

- 1 The Legislature hereby finds and determines that the
- 2 advancement and improvement of higher education in the
- 3 state of West Virginia is a proper governmental function
- 4 and purpose of the state. The Legislature also finds that
- 5 the creation of a prepaid tuition trust fund, to assist
- 6 qualified students and their families in financing a portion
- 7 of the costs of attending an accredited higher education
- 8 institution or program in the state of West Virginia will
- 9 increase the number of qualified students who will seek to

10 attend the accredited higher education institutions and
11 programs, which will be of benefit to students, families and
12 to the accredited higher education institutions and
13 programs, and will therefore advance and improve higher
14 education in the state of West Virginia. It is, therefore, the
15 legislative intent of this article to establish a prepaid tuition
16 trust fund to assist qualified students to pay in advance the
17 costs of attending accredited higher education institutions
18 and programs and thereby to encourage the qualified
19 students to attend accredited higher education institutions
20 and programs in the state of West Virginia. The
21 Legislature finds and declares that prepaid tuition trust
22 fund contracts neither contain nor obligate any general
23 revenue funds.

§18-30-3. Definitions.

1 For the purpose of this article, the following terms
2 have the meanings ascribed to them, unless the context
3 clearly indicates otherwise:

4 (a) "Accredited higher education institution or
5 program" means any accredited higher education
6 institution or accredited higher education program offered
7 through an accredited provider.

8 (b) "Beneficiary" means any intended or unintended
9 beneficiary of the prepaid tuition contract between the
10 purchaser and the board, including any beneficiary
11 designated by the purchaser, his or her agent or his or her
12 estate in the event that the intended beneficiary is unable
13 or unwilling to benefit under the terms of the trust fund.

14 (c) "Board" means the board of trustees of the prepaid
15 tuition trust fund as provided in section four of this article.

16 (d) "Outside tuition fee" means the amount of tuition
17 or fees, or both, payable to an accredited higher education
18 institution or program outside the state or independent
19 state institutions or programs upon the election by a
20 beneficiary to attend those institutions or programs. This
21 fee shall generally be the amount of the average public
22 tuition costs or fees, or both, of state institutions of higher
23 learning as determined by the board of trustees on an
24 annual basis.

25 (e) "Prepaid tuition contract" means a contract entered
26 into by the board of the trust fund and a purchaser
27 pursuant to this article.

28 (f) "Purchaser" means an individual, corporation or
29 other entity who makes or is obligated to make payments
30 in accordance with a prepaid tuition contract entered into
31 pursuant to this article.

32 (g) "Room and board" means the charges for
33 lodging and food incurred by a beneficiary while
34 attending an accredited higher education institution or
35 program.

36 (h) "Trust fund" means the prepaid tuition trust fund.

37 (i) "Tuition" means the quarter, semester or term
38 charges imposed by an accredited higher education
39 institution or program and all mandatory fees required as
40 a condition of enrollment by all students.

§18-30-4. Appointment of board of trustees; terms; compensation; proceedings generally.

1 (a) The board of the prepaid tuition trust fund
2 consists of nine members and shall include the secretary
3 of education and the arts and the state treasurer, who shall
4 serve as ex officio voting members of the board, and seven
5 other members with knowledge, skill and experience in an
6 academic, business or financial field. The seven appointed
7 members shall be residents of the state. One member shall
8 be a representative of the university of West Virginia
9 board of trustees selected by the board of trustees from its
10 members as defined in section one, article two, chapter
11 eighteen-b of this code and one member shall be a
12 representative of the board of directors of the state college
13 system selected by the board of directors from its
14 members as defined in section one, article three, chapter
15 eighteen-b of this code. The governor shall appoint three
16 members from nominations as follows: One member shall
17 be a private citizen not employed by, or an officer of, the
18 state or any political subdivision of the state appointed
19 from one or more nominees of the speaker of the House
20 of Delegates; one member shall be a private citizen not
21 employed by, or an officer of, the state or any political
22 subdivision of the state appointed from one or more

23 nominees of the president of the Senate; and one member
24 shall represent the interests of private institutions of higher
25 education located in this state who shall be appointed from
26 one or more nominees of the West Virginia association of
27 private colleges. The governor also shall appoint two
28 members who are representatives of the public. The
29 public members and the member representing the interests
30 of private institutions of higher education shall be
31 appointed by the governor with the advice and consent of
32 the Senate.

33 (b) Appointed members shall serve a term of five
34 years and may be reappointed at the expiration of their
35 terms. In the event of a vacancy among appointed
36 members, the governor shall appoint a person representing
37 the same interests to fill the unexpired term. Of the initial
38 appointments, the governor shall appoint one member to a
39 one-year term, one member to a two-year term, one
40 member to a three-year term, one member to a four-year
41 term and one member to a five-year term. Thereafter, all
42 terms shall be for five years.

43 (c) Members of the board of trustees shall serve
44 without compensation, but for the first twelve months after
45 the effective date of this section members shall be
46 reimbursed by the state treasurer's office for expenses,
47 including travel expenses, actually incurred by a member
48 in the official conduct of the business of the board at the
49 same rate as is paid the employees of the state. Thereafter,
50 the state treasurer may charge back to the trust fund as
51 administrative expenses all expenses, including travel
52 expenses, actually incurred and paid to board members
53 for the conduct of their official duties.

54 (d) The state treasurer is the trustee chairman and
55 presiding officer of the board, and may appoint such
56 other employees as the board considers advisable or
57 necessary. A majority of the members of the board
58 constitute a quorum for the transaction of the business of
59 the trust fund.

§18-30-5. Powers of the board.

1 In addition to the powers granted by any other
2 provision of this article, the board has the powers
3 necessary or convenient to carry out the purposes and

4 provisions of this article, the purposes and objectives of
5 the trust and the powers delegated by any other law of the
6 state or any executive order of the state including, but not
7 limited to, the following express powers:

8 (a) To adopt and amend bylaws;

9 (b) To propose legislative rules for promulgation in
10 accordance with the provisions of article three-a, chapter
11 twenty-nine-a of this code to effectuate the purposes of
12 this article: *Provided*, That the board may promulgate
13 emergency rules only when changes in the federal tax
14 code or changes in federal regulations contravene the
15 current rules of the prepaid tuition trust fund board of
16 trustees;

17 (c) To invest any of its funds at the board's
18 discretion, with the West Virginia investment management
19 board in accordance with the provisions of article six,
20 chapter twelve of this code. Any investments made under
21 this article shall be made with the care, skill, prudence and
22 diligence under the circumstances then prevailing that a
23 prudent person acting in a like capacity and familiar with
24 such matters would use in the conduct of an enterprise of
25 a like character and with like aims. Fiduciaries shall
26 diversify plan investments to the extent permitted by law
27 so as to minimize the risk of large losses, unless under the
28 circumstances it is clearly prudent not to do so;

29 (d) To execute contracts and other necessary
30 instruments;

31 (e) To enter into prepaid tuition contracts;

32 (f) To impose reasonable limits on the number of
33 prepaid tuition contract purchasers participating in the
34 trust fund at any given period of time;

35 (g) To impose reasonable requirements for residency
36 for qualified beneficiaries at the time of purchase of the
37 prepaid tuition contract. However, nothing in this
38 subdivision may be construed to establish residency
39 requirements for matriculation at state institutions of
40 higher education;

41 (h) To contract for necessary goods and services, to
42 employ necessary personnel and to engage the services of

43 private persons for administrative and technical assistance
44 in carrying out the responsibilities of the trust fund;

45 (i) To solicit and accept gifts, including bequests or
46 other testamentary gifts made by will, trust or other
47 disposition, grants, loans and other aids from any source
48 or to participate in any other way in any federal, state or
49 local governmental programs in carrying out the purposes
50 of this article;

51 (j) To define the terms and conditions under which
52 payments may be withdrawn from the trust fund and
53 impose reasonable charges for the withdrawal: *Provided,*
54 That payments made by employers on behalf of
55 beneficiaries selected by their employees are considered
56 fully vested in the employees from time of receipt of the
57 payments by the board;

58 (k) To devise and offer to purchasers other
59 educational savings programs, such as the purchase of
60 books, fees, room and board and other educational
61 supplies;

62 (l) To impose reasonable time limits on the use of the
63 benefits provided by the program;

64 (m) To provide for the receipt of contributions to the
65 trust fund in lump sums or installment payments; and

66 (n) To establish other policies, procedures and criteria
67 necessary to implement and administer the provisions of
68 this article.

§18-30-6. West Virginia prepaid tuition trust created.

1 (a) There is continued within the accounts held by the
2 state treasurer the prepaid tuition trust fund account to be
3 administered by the board until and unless the Legislature
4 determines otherwise, and titled the "Prepaid Tuition Trust
5 Fund".

6 (b) The location of the trust fund is the state
7 treasurer's office, and the facilities of the state treasurer
8 shall be used and employed in the administration of the
9 trust fund including, but without limitation thereto, the
10 keeping of records, the management of bank accounts and

11 other investments, the transfer of funds and the
12 safekeeping of securities evidencing investments.

13 (c) Payments received by the board from purchasers
14 on behalf of beneficiaries or from any other source,
15 public or private, shall be placed in the trust fund.

16 (d) The corpus, assets and income of the trust fund do
17 not constitute public funds of the state.

18 (e) The trust fund, through the trustee chairman, is
19 authorized to receive any gift or transfer of property, real
20 or personal of any nature, from any source as may be
21 approved by the board, or any terms and conditions as
22 may be imposed by the board: *Provided*, That all
23 property received by the trust shall be converted into cash
24 within ninety days of receipt.

25 (f) The board shall cause an actuarial study to be
26 periodically performed to ensure that sufficient funds are
27 being deposited to the fund to meet the obligations of the
28 trust fund. Specifically, the board shall annually evaluate
29 or cause to be evaluated, the actuarial soundness of the
30 trust fund. If the board finds that additional contributions
31 are needed in order to preserve the actuarial soundness of
32 the fund, it may adjust the terms of preexisting and
33 subsequent prepaid tuition contracts to ensure the fund's
34 soundness: *Provided*, That any necessary adjustment to
35 preexisting contracts may only be assessed on future
36 payments and not retroactively upon previous payments
37 made by the purchaser or donors to the trust fund. There
38 may be no obligation of state general revenue funds to the
39 trust fund for any purpose whatsoever, unless authorized
40 by the Legislature.

41 (g) The board shall build and maintain in the prepaid
42 tuition trust fund an actuarial surplus, at a level
43 recommended by the actuaries, to ensure appropriate
44 funding for the trust fund.

45 (h) In order to fulfill the charitable and public
46 purposes of this article, neither the income nor the
47 property of the trust fund is subject to taxation by the state
48 or any of its political subdivisions.

49 (i) The board may propose rules to provide for the
50 withdrawal and disbursement of contract funds on an
51 actuarially sound basis. The board may propose rules to

52 provide a tuition guarantee for beneficiaries attending
53 state institutions of higher education: *Provided*, That this
54 rule may not be promulgated as an emergency rule
55 subject to oversight by the legislative oversight
56 commission on education accountability as provided by
57 section eleven, article three-a, chapter twenty-nine-a of this
58 code.

§18-30-6a. Prepaid tuition trust fund administrative account.

1 There is hereby created a separate account within the
2 state treasurer's office to be known as the prepaid tuition
3 trust fund administrative account for the purposes of
4 implementing and maintaining the trust fund accounts
5 pursuant to this article. The board may charge against the
6 fees collected and interest earned from the trust fund
7 accounts, amounts as are reasonable and customary for the
8 state treasurer to fund the administrative costs of
9 maintaining the trust fund accounts. The charges shall be
10 deposited into the prepaid tuition trust fund administrative
11 account. The charges shall be disclosed quarterly,
12 beginning the first day of January, one thousand nine
13 hundred ninety-nine, to the joint committee on
14 government and finance and the legislative oversight
15 commission on education accountability. Expenditures
16 from the fund are authorized from collections subject to
17 appropriations made by the Legislature.

§18-30-8. Report and account; annual audit.

1 (a) In addition to any other requirements of this
2 article, the board shall:

3 (1) Provide annually summary information on the
4 financial condition of the trust fund to all purchasers of
5 prepaid tuition contracts;

6 (2) Prepare, or cause to be prepared, a quarterly report
7 on the status of the program and provide a copy of the
8 report to the joint committee on government and finance
9 and the legislative oversight commission on education
10 accountability;

11 (3) Prepare, or cause to be prepared, an annual
12 accounting and actuarial report of the trust fund and
13 transmit a copy of the report to the governor, the president
14 of the Senate, the speaker of the House of Delegates and
15 the legislative oversight commission on education
16 accountability; and

17 (4) Make all necessary and appropriate arrangements
 18 with accredited higher education institutions and programs
 19 in order to fulfill its obligations under the prepaid tuition
 20 contracts. The arrangements shall include the satisfaction
 21 by the trust fund of current applicable tuition and fee
 22 charges on behalf of a beneficiary to the accredited higher
 23 education institution or program.

24 (b) All accounts of the board, including the trust fund
 25 accounts, are subject to an annual external audit by an
 26 accounting firm, selected by the board, of which all
 27 members or partners assigned to head the audit are
 28 members of the American institute of certified public
 29 accountants. The audit shall comply with the
 30 requirements of section thirty-three, article two, chapter
 31 five-a of this code.

§18-30-11. Confidentiality.

1 Any information that would tend to disclose the
 2 identity of a beneficiary, purchaser or donor is exempt
 3 from the provisions of chapter twenty-nine-b of this code.

CHAPTER 130

(S. B. 551—By Senators Jackson, Craigo, Plymale, Bailey, Prezioso,
 Dugan, Kessler, Ball, Schoonover, Hunter, Sprouse, Ross,
 Sharpe, Anderson, Fanning, Helmick, White, Walker,
 Bowman, Wooton, Snyder, Love and Tomblin, Mr. President)

[Passed March 11, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article thirty, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten, relating to legislative rules; and authorizing specific rules relating to the West Virginia prepaid tuition trust fund act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 30. WEST VIRGINIA PREPAID TUITION TRUST ACT.**§18-30-10. Board of trustees; authorization of rules.**

1 The legislative rules filed in the state register on the
2 thirtieth day of September, one thousand nine hundred
3 ninety-seven, modified by the board of trustees of the
4 West Virginia prepaid tuition trust fund to meet the
5 objections of the legislative oversight commission on
6 education accountability and refiled in the state register on
7 the thirtieth day of January, one thousand nine hundred
8 ninety-eight, relating to the West Virginia prepaid tuition
9 trust fund (rules for the West Virginia prepaid tuition trust
10 fund), are authorized.

CHAPTER 131

(H. B. 4547—By Delegates Dempsey, Williams, C. White, Osborne,
Ennis, Yeager and Henderson)

[Passed March 11, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact section five, article nine, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to raising classified employee salaries by changing the experience increment from thirty-six dollars to fifty dollars.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.**§18B-9-5. Classified employee salary.**

1 (a) Each classified employee shall receive for the same
2 employment at the same pay grade, subject to an
3 appropriation by the Legislature, and in addition to the

4 experience increment increase provided for in subsection
5 (b) of this section, a monthly salary which is at least one
6 hundred twenty-five dollars more than the final base
7 monthly salary paid the classified employee for the fiscal
8 year commencing on the first day of July, one thousand
9 nine hundred ninety-two, to be paid in equal installments
10 within the regular pay periods and to be prorated for
11 classified employees working less than thirty-seven and
12 one-half hours per week.

13 (b) Commencing with the fiscal year beginning on the
14 first day of July, one thousand nine hundred ninety-eight,
15 and each fiscal year thereafter, each classified employee
16 with three or more years of experience shall receive an
17 annual salary increase equal to fifty dollars times the
18 employee's years of experience: *Provided*, That the
19 annual salary increase may not exceed the amount granted
20 for the maximum of twenty years of experience. These
21 incremental increases are in lieu of any salary increase
22 received pursuant to section two, article five, chapter five
23 of this code; are in addition to any across-the-board, cost-
24 of-living or percentage salary increases which may be
25 granted in any fiscal year by the Legislature; and shall be
26 paid in like manner as the annual payment to eligible state
27 employees of the incremental salary increases based on
28 years of service under the provisions of section two, article
29 five, chapter five of this code.

30 (c) Any classified employee may receive merit
31 increases and salary adjustments in accordance with
32 policies established by the board: *Provided*, That funds
33 for the increases and adjustments shall be distributed in
34 accordance with rules of the appropriate governing board
35 and shall be available to all state institutions of higher
36 education on an equitable basis.

37 (d) The current annual salary of any classified
38 employee may not be reduced by the provisions of this
39 article nor by any other action inconsistent with the
40 provisions of this article, and nothing in this article may be
41 construed to prohibit promotion of any classified
42 employee to a job title carrying a higher pay grade if the
43 promotion is in accordance with the provisions of this
44 article and the personnel classification system established
45 by the appropriate governing board.

CHAPTER 132

(S. B. 565—By Senators Jackson, Craigo, Plymale, Bailey, Prezioso, Dugan, Oliverio, Ross, Sharpe, McKenzie, Schoonover, Ball, Dittmar, Anderson, Kessler, Bowman, Wooton, Fanning, Sprouse, Hunter, Kimble, Scott, Boley, Minear and Tomblin, Mr. President)

[Passed March 11, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article seventeen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to legislative rules; and authorizing specific rules relating to the Underwood-Smith teacher scholarship program.

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

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

13 (c) The legislative rules filed in the state register on the
14 eighth day of September, one thousand nine hundred
15 ninety-two, relating to the board of trustees (holidays), are
16 authorized.

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

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

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

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

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

45 (i) The legislative rules filed in the state register on the
46 fourth day of December, one thousand nine hundred
47 ninety-five, modified by the board of trustees to meet the
48 objections of the legislative oversight commission on
49 education accountability and refiled in the state register on
50 the fifteenth day of February, one thousand nine hundred
51 ninety-six, relating to the board of trustees (higher
52 education report card), are authorized.

53 (j) The legislative rules filed in the state register on the
54 nineteenth day of December, one thousand nine hundred
55 ninety-seven, relating to the board of trustees
56 (Underwood-Smith Teacher Scholarship Program), are
57 authorized.

§18B-17-3. Board of directors.

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

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

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

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

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

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

32 (g) The legislative rules filed in the state register on
33 the eighth day of December, one thousand nine hundred

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

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

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

57 (j) The legislative rules filed in the state register on the
58 eighteenth day of April, one thousand nine hundred
59 ninety-five, relating to the board of directors (contracts
60 and consortium agreements with public schools, private
61 schools or private industry), are authorized.

62 (k) The legislative rules filed in the state register on
63 the seventeenth day of November, one thousand nine
64 hundred ninety-five, modified by the board of directors to
65 meet the objections of the legislative oversight commission
66 on education accountability and refiled in the state register
67 on the fourth day of January, one thousand nine hundred
68 ninety-six, relating to the board of directors (higher
69 education report cards), are authorized.

70 (l) The legislative rules filed in the state register on the
71 nineteenth day of December, one thousand nine hundred
72 ninety-seven, relating to the board of directors
73 (Underwood-Smith Teacher Scholarship Program), are
74 authorized.

CHAPTER 133

(S. B. 397—By Senators Wooton, Ball, Bowman, Dittmar, Hunter,
Kessler, Oliverio, Ross, Schoonover, Snyder,
White, Deem and Scott)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing certain replacement poll workers to vote emergency absentee ballots.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-1. Persons eligible to vote absentee ballots.

1 (a) Duly registered and otherwise qualified voters of
2 the county who for authorized reasons as provided in this
3 article are unable to vote in person at the polling place on
4 the day of a primary, general or special election may vote
5 an absentee ballot according to the provisions of this
6 article.

7 (b) Voters in the following circumstances shall be
8 authorized to vote an absentee ballot and shall be required
9 to vote that absentee ballot in person in the office of the
10 clerk of the circuit court during the period of regular
11 absentee voting in person:

12 (1) Any voter who is within the county and physically
13 able to vote in person during regular business hours of the
14 clerk's office during the prescribed period for absentee
15 voting but is unable to vote in person on election day

16 because of: (A) Anticipated or scheduled commitment to
17 a hospital, institution or other confinement for medical
18 reasons; (B) absence from the county during the entire
19 time the polls are open; (C) appointment as an election
20 official in a precinct other than the one in which the voter
21 is registered; or (D) the inaccessibility of the polling place
22 to the voter because of his or her physical disability; and

23 (2) Any voter who is a member of a religious
24 denomination with an established history of observing
25 Saturday as the Sabbath, when the election is scheduled to
26 be held on Saturday.

27 (c) Voters in the following circumstances shall be
28 authorized to vote an absentee ballot under special
29 affidavit and shall be required to vote that absentee ballot
30 in person in the office of the clerk of the circuit court
31 during the period of special absentee voting in person:

32 Any voter who will be absent from the county
33 throughout the regular period and available hours for
34 voting in person at the polls or at the clerk's office because
35 of personal or business travel or employment, who will be
36 unable to receive an absentee ballot by mail at an address
37 outside the county during that absence, and who will be
38 present within the county between the forty-second day
39 before the election and the fifteenth day before the
40 election.

41 (d) Voters in the following circumstances shall be
42 authorized to vote an absentee ballot by mail:

43 (1) Any voter who is confined to a specific location
44 and prevented from voting in person throughout the
45 period of voting in person because of: (A) Illness, injury
46 or other medical reason; (B) physical disability or
47 immobility due to extreme advanced age; or (C)
48 incarceration or home detention when not under
49 conviction of a felony, treason or bribery in an election;

50 (2) Any voter who is absent from the county
51 throughout the period and available hours for voting in
52 person because of: (A) Personal or business travel; (B)
53 attendance at a college, university or other place of
54 education or training; or (C) employment which because
55 of hours worked and distance from the county seat make
56 voting in person impossible;

57 (3) Any voter absent from the county throughout the
58 period and available hours for voting in person and who is
59 an absent uniformed services voter or overseas voter, as
60 defined by the Uniformed and Overseas Citizens Absentee
61 Voting Act of 1986 (Public Law 99-410, 42 U.S.C. 1973,
62 et seq.). Members of the uniformed services on active
63 duty, members of the merchant marine, spouses and
64 dependents of those members on active duty, and persons
65 who reside outside the United States and are qualified to
66 vote in the last place in which the person was domiciled
67 before leaving the United States are included in the above
68 definition;

69 (4) Any voter who is required to dwell temporarily
70 outside the county and is absent from the county
71 throughout the time for voting in person because of: (A)
72 Serving as an elected or appointed federal or state officer;
73 or (B) serving in any other documented employment
74 assignment of specific duration of four years or less; and

75 (5) Any voter for whom both the office of the circuit
76 clerk and the polling place are inaccessible to the voter
77 because of his or her physical disability.

78 (e) Voters in the following circumstances shall be
79 authorized to vote an emergency absentee ballot, subject
80 to the availability of the services as provided in this article:

81 (1) Any voter who is admitted for emergency medical
82 treatment on or after the seventh day next preceding the
83 election and who anticipates continued confinement in a
84 hospital or other duly licensed health care within the
85 county of residence or other authorized area, as provided
86 in this article;

87 (2) Any voter who resides in a nursing home within
88 the county of residence and would be otherwise unable to
89 vote in person, providing the county commission has
90 authorized such services; and

91 (3) Any voter who is working as a replacement poll
92 worker and is assigned a precinct out of his or her voting
93 district, if the assignment was made after the period for
94 voting an absentee ballot in person has expired.

CHAPTER 134

(S. B. 599—By Senators Wooton, Ball, Dittmar, Hunter, Kessler, Ross,
Schoonover, Snyder, White, Deem and Scott)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article three, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the transmission of certain absent voter applications by facsimile.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-5. Voting an absentee ballot by mail; penalties.

1 (a) Upon oral or written request, the clerk of the circuit
2 court shall provide to any voter of the county, in person,
3 by mail or by facsimile, if the clerk has access to facsimile
4 equipment, the appropriate application for voting absentee
5 by mail, as provided in this article. The voter shall
6 complete and sign the application in his or her own
7 handwriting or, if the voter is unable to complete the
8 application because of illiteracy or physical disability, the
9 person assisting the voter and witnessing the mark of the
10 voter shall sign his or her name in the space provided.

11 (b) Completed applications for voting an absentee
12 ballot by mail shall be accepted when received by the
13 clerk in person, by mail or by facsimile, if the clerk has
14 access to facsimile equipment, within the following times:

15 (1) For persons eligible to vote an absentee ballot
16 under the provisions of subdivision (3), subsection (d),
17 section one of this article, relating to absent uniformed
18 services and overseas voters, not earlier than the first day
19 of January of an election year, or eighty-four days
20 preceding the election, whichever is earlier, and not later
21 than the sixth day preceding the election, which
22 application shall, upon the voter's request, be accepted as
23 an application for the ballots for all elections in the
24 calendar year;

25 (2) For all other persons eligible to vote an absentee
26 ballot by mail, not earlier than eighty-four days preceding
27 the election and not later than the sixth day preceding the
28 election.

29 (c) Upon acceptance of a completed application, the
30 circuit clerk shall determine whether the following
31 requirements have been met:

32 (1) The application has been completed as required by
33 law;

34 (2) The applicant is duly registered to vote in the
35 precinct of his or her residence and, in a primary election,
36 is qualified to vote the ballot of the political party
37 requested;

38 (3) The applicant is authorized for the reasons given in
39 the application to vote an absentee ballot by mail;

40 (4) The address to which the ballot is to be mailed is
41 an address outside the county if the voter is applying to
42 vote by mail under the provisions of subdivision (2), (3)
43 or (4), subsection (d), section one of this article;

44 (5) The applicant is not making his or her first vote
45 after having registered by postcard registration under the
46 provisions of section forty-one, article two of this chapter
47 or, if the applicant is making the first vote under these
48 provisions, the applicant is exempt from these
49 requirements;

50 (6) No regular and repeated pattern of applications for
51 an absentee ballot by mail for the reason of being out of
52 the county during the entire period of voting in person
53 exists to suggest that the applicant is no longer a resident
54 of the county.

55 If the clerk determines the required conditions have
56 not been met, or has evidence that any of the information
57 contained in the application is not true, the clerk shall give
58 notice to the voter that the voter's absentee ballot will be
59 challenged as provided in this article, and shall enter that
60 challenge.

61 (d) Within one day after the clerk has both the
62 completed application and the ballot, the clerk shall mail
63 to the voter at the address given on the application the
64 following: (1) One of each type of official absentee ballot
65 the voter is eligible to vote, prepared according to law; (2)
66 one envelope, unsealed, which shall have no marks except
67 the designation "Absent Voter's Ballot Envelope No. 1"
68 and printed instructions to the voter; (3) one postage paid
69 envelope, unsealed, designated "Absent Voter's Ballot
70 Envelope No. 2" and printed as prescribed by the
71 secretary of state; (4) instructions for voting absentee by
72 mail; and (5) any other supplies required for voting in the
73 particular voting system.

74 (e) The voter shall mark the ballot alone: *Provided*,
75 That the voter may have assistance in voting according to
76 the provisions of section six of this article. After the voter
77 has voted the ballot or ballots, the voter shall: (1) Place
78 the ballot or ballots in envelope no. 1 and seal that
79 envelope; (2) place the sealed envelope no. 1 in envelope
80 no. 2 and seal that envelope; (3) complete and sign the
81 forms on envelope no. 2; and (4) return that envelope to
82 the clerk.

83 (f) Absentee ballots returned by United States mail or
84 other express shipping service shall be accepted if: (1)
85 The ballot is received by the clerk no later than the close
86 of the polls on election day; or (2) the ballot bears a
87 postmark of the United States postal service dated no later
88 than election day and the ballot is received by the clerk no
89 later than the hour at which the board of canvassers
90 convenes to begin the canvass.

91 Ballots received after the proper time which cannot be
92 accepted shall be placed unopened in an envelope marked
93 for the purpose and kept secure for twenty-two months
94 following the election, after which time they shall be
95 destroyed without being opened.

96 (g) Absentee ballots which are hand delivered to the
97 clerk shall be accepted if they are received by the circuit
98 clerk no later than the day preceding the election:
99 *Provided*, That no person may hand deliver more than two
100 absentee ballots in any election, and any person hand
101 delivering an absentee ballot shall be required to certify
102 that he or she has not examined or altered the ballot. Any
103 person who makes a false certification shall be in violation
104 of the penalty provisions of article nine of this chapter and
105 subject to those provisions.

106 (h) Upon receipt of the sealed envelope, the clerk
107 shall: (1) Enter onto the envelope any other required
108 information; (2) enter the challenge, if any, to the ballot;
109 (3) enter the required information into the permanent
110 record of persons applying for and voting an absentee
111 ballot in person; and (4) place the sealed envelope in a
112 secure location in the clerk's office, to remain until
113 delivered to the polling place or, in the case of a
114 challenged ballot, to the board of canvassers.

CHAPTER 135

(H. B. 2387—By Delegates Jenkins, Johnson,
Leach, Hubbard and Underwood)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article four-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to electronic voting systems and permitting the recording of ballots on a computer disc.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-2. Definitions.

- 1 As used in this article, unless otherwise specified:
- 2 (a) "Automatic tabulating equipment" means all
3 apparatus necessary to electronically count votes recorded
4 on ballots and tabulate the results;
- 5 (b) "Ballot" means a tabulating card or paper on which
6 votes may be recorded by means of perforating or
7 marking with electronically sensible ink or pencil;
- 8 (c) "Ballot labels" means the cards, papers, booklet,
9 pages or other material showing the names of offices and
10 candidates and the statements of measures to be voted on,
11 which are placed on the vote recording device used for
12 recording votes by means of perforating;
- 13 (d) "Central counting center" means a facility
14 equipped with suitable and necessary automatic tabulating
15 equipment, selected by the county commission, for the
16 electronic counting of votes recorded on ballots;
- 17 (e) "Electronic voting system" is a means of
18 conducting an election whereby votes are recorded on
19 ballots by means of an electronically sensible marking ink,
20 by perforating or are recorded on equipment that registers
21 votes on a computer disc, and votes are subsequently
22 counted by automatic tabulating equipment at the central
23 counting center;
- 24 (f) "Program deck" means the actual punch card deck
25 or decks, or a computer program disk, diskette, tape or
26 other programming media, containing the program for
27 counting and tabulating the votes, including the
28 "application program deck";

29 (g) "Application program deck" means the punch card
 30 deck or equivalent capacity in other program medias as
 31 provided, containing specific options used and necessary
 32 to modify the program of general application, to conduct
 33 and tabulate a specific election according to applicable
 34 law;

35 (h) "Standard validation test deck" means a group of
 36 ballots wherein all voting possibilities which can occur in
 37 an election are represented; and

38 (i) "Vote recording device" means equipment in which
 39 ballot labels and ballots are placed to allow a voter to
 40 record his or her vote by perforating.



CHAPTER 136

(Com. Sub. for S. B. 113—By Senator Bailey)



[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]



AN ACT to amend and reenact section seven, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the dates of filing certificates of announcements for candidacy in primary elections; establishing effective dates; and making certain technical revisions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-7. Filing announcements of candidacies; requirements; withdrawal of candidates when section applicable.

1 Any person who is eligible and seeks to hold an office
 2 or political party position to be filled by election in any
 3 primary or general election held under the provisions of
 4 this chapter shall file a certificate of announcement

5 declaring as a candidate for the nomination or election to
6 the office.

7 (a) The certificate of announcement shall be filed as
8 follows:

9 (1) With the secretary of state, if it be an office or
10 political position to be filled by the voters of more than
11 one county;

12 (2) With the clerk of the circuit court, if it be for an
13 office to be filled by the voters of a single county or of a
14 subdivision less than a county;

15 (3) With the recorder or city clerk if it be for an office
16 to be filled by the voters of a municipality.

17 The certificate of announcement shall be filed with the
18 proper officer not earlier than the second Monday in
19 January next preceding the primary election day, and not
20 later than the last Saturday in January next preceding the
21 primary election day, and must be received before
22 midnight, eastern standard time, of that day or, if mailed,
23 shall be postmarked by the United States postal service
24 before that hour.

25 (b) The certificate of announcement shall be in a form
26 prescribed by the secretary of state on which the candidate
27 shall make a sworn statement before a notary public or
28 other officer authorized to give oaths, containing the
29 following information:

30 (1) The date of the election in which the candidate
31 seeks to appear on the ballot;

32 (2) The name of the office sought; the district, if any;
33 and the division, if any;

34 (3) The legal name of the candidate, and the exact
35 name the candidate desires to appear on the ballot, subject
36 to limitations prescribed in section thirteen, article five of
37 this chapter;

38 (4) The county of residence and a statement that the
39 candidate is a legally qualified voter of that county; and
40 the magisterial district of residence for candidates elected
41 from magisterial districts or under magisterial district
42 limitations;

43 (5) The specific address designating the location at
44 which the candidate resides at the time of filing, including
45 number and street or rural route and box number, and
46 city, state and zip code;

47 (6) For partisan elections, the name of the candidate's
48 political party, and a statement that the candidate is a
49 member of and affiliated with that political party as is
50 evidenced by the candidate's current registration as a voter
51 affiliated with that party, and that the candidate has not
52 been registered as a voter affiliated with any other political
53 party for a period of sixty days before the date of filing
54 the announcement;

55 (7) For candidates for delegate to national convention,
56 the name of the presidential candidate to be listed on the
57 ballot as the preference of the candidate on the first
58 convention ballot; or, a statement that the candidate
59 prefers to remain "uncommitted";

60 (8) A statement that the person filing the certificate of
61 announcement is a candidate for the office in good faith;

62 (9) The words "subscribed and sworn to before me this
63 _____ day of _____, 19____," and a space for
64 the signature of the officer giving the oath.

65 The secretary of state or the board of ballot
66 commissioners, as the case may be, may refuse to certify
67 the candidacy or remove the certification of the candidacy
68 upon receipt of a certified copy of the voter's registration
69 record of the candidate evidencing that the candidate was
70 registered as a voter in a party other than the one named
71 in the certificate of announcement during the sixty days
72 immediately preceding the filing of the certificate:
73 *Provided*, That unless a signed formal complaint of
74 violation of this section and the certified copy of the
75 voter's registration record of the candidate be filed with
76 the officer receiving that candidate's certificate of
77 announcement no later than ten days following the close
78 of the filing period, the candidate shall not be refused
79 certification for this reason.

80 (c) The certificate of announcement shall be
81 subscribed and sworn to by the candidate before some
82 officer qualified to administer oaths, who shall certify the
83 same. Any person who knowingly provides false
84 information on the certificate is guilty of false swearing

85 and shall be punished as set forth in section three, article
86 nine of this chapter.

87 (d) Any candidate for delegate to a national
88 convention may change his or her statement of
89 presidential preference by notifying the secretary of state
90 by letter received by the secretary of state no later than the
91 third Tuesday following the close of candidate filing.
92 When the rules of the political party allow each
93 presidential candidate to approve or reject candidates for
94 delegate to convention who may appear on the ballot as
95 committed to that presidential candidate, the presidential
96 candidate or the candidate's committee on his or her
97 behalf may file a list of approved or rejected candidates
98 for delegate, and the secretary of state shall list as
99 "uncommitted" any candidate for delegate who is
100 disapproved by the presidential candidate.

101 (e) No person shall be a candidate for more than one
102 office or office division at any election: *Provided*, That a
103 candidate for an office may also be a candidate for
104 president of the United States, for membership on a
105 political party executive committee or for delegate to a
106 political party national convention. Notwithstanding the
107 provisions of this section, nothing shall prohibit a
108 candidate from jointly running for or holding the offices
109 of county clerk and circuit clerk in those counties which
110 operate a joint clerkship system.

111 (f) Any candidate who files a certificate of
112 announcement for more than one office or division and
113 does not withdraw, as provided by section eleven, article
114 five of this chapter, from all but one office prior to the
115 close of the filing period shall not be certified by the
116 secretary of state or placed on the ballot for any office by
117 the board of ballot commissioners.

118 The provisions of this section enacted during the
119 regular session of the Legislature in the year one thousand
120 nine hundred ninety-one shall apply to the primary
121 election held in the year one thousand nine hundred
122 ninety-two and every primary election held thereafter.
123 The provisions of this section enacted during the regular
124 session of the Legislature in the year one thousand nine
125 hundred ninety-eight shall apply to the primary election
126 held in the year two thousand and every primary election
127 held thereafter.

CHAPTER 137

(H. B. 4031—By Delegates Doyle and Manuel)

[Passed February 9, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the form and contents of ballots and ballot labels; and requiring that the office of county commissioner be listed by magisterial district to be filled in certain counties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-13. Form and contents of ballots and ballot labels.

1 The face of every primary election ballot shall
2 conform as nearly as practicable to that used at the general
3 election.

4 (a) The heading of every ballot shall be printed in
5 display type. The heading shall contain a ballot title, the
6 name of the county, the state, the words "Primary Election"
7 and the month, day and year of the election. The ballot
8 title of the political party ballots shall contain the words
9 "Official Ballot of the (Name) Party" and the official
10 symbol of the political party may be included in the
11 heading. The ballot title of any separate paper ballot or
12 portion of any electronic or voting machine ballot for the
13 board of education shall contain the words "Nonpartisan
14 Ballot of Election of Members of the _____
15 County Board of Education". The districts for which less
16 than two candidates may be elected and the number of
17 available seats shall be specified and the names of the
18 candidates shall be printed without reference to political

19 party affiliation, and without designation as to a particular
20 term of office. Any other ballot or portion of a ballot on
21 a question shall have a heading which clearly states the
22 purpose of the election, according to the statutory
23 requirements for that question.

24 (b) (1) For paper ballots, the heading of the ballot
25 shall be separated from the rest of the ballot by heavy
26 lines, and the offices shall be arranged in columns with the
27 following headings, from left to right across the ballot:
28 "National Ticket", "State Ticket", "County Ticket", and, in a
29 presidential election year, "National Convention", or, in a
30 nonpresidential election year "District Ticket". The
31 columns shall be separated by heavy lines. Within the
32 columns, the offices shall be arranged in the order
33 prescribed in section thirteen-a of this article.

34 (2) For voting machines, electronic voting devices and
35 any ballot tabulated by electronic means, the offices shall
36 appear in the same sequence as prescribed in section
37 thirteen-a, and under the same headings as prescribed in
38 subsection (a) of this section. The number of pages,
39 columns or rows, where applicable, may be modified to
40 meet the limitations of ballot size and composition
41 requirements, subject to approval by the secretary of state.

42 (3) The title of each office shall be separated from
43 preceding offices or candidates by a line, and shall be
44 printed in bold type, no smaller than eight point. Below
45 the office shall be printed the number of the district, if
46 any, the number of the division, if any, and the words
47 "Vote for _____" with the number to be nominated or
48 elected or "Vote For Not More Than _____" in
49 multicandidate elections. For offices in which there are
50 limitations relating to the number of candidates which
51 may be nominated, elected or appointed to or hold office
52 at one time from a political subdivision within the district
53 or county in which they are elected, there shall be a clear
54 explanation of such limitation, as prescribed by the
55 secretary of state, printed in bold type immediately
56 preceding the names of the candidates for those offices on
57 the ballot in every voting system. For counties in which
58 the number of county commissioners exceeds three and
59 the total number of members of the county commission is

60 equal to the number of magisterial districts within the
61 county, the office of county commission shall be listed
62 separately for each district to be filled, with the name of
63 the magisterial district and the words "Vote for One"
64 printed below the name of the office.

65 (c) The location for indicating the voter's choices on
66 the ballot shall be clearly shown. For paper ballots, other
67 than those tabulated electronically, the official primary
68 ballot shall contain a square formed in dark lines at the
69 left of each name on the ballot, arranged in a
70 perpendicular column of squares before each column of
71 names.

72 (d) (1) The name of every candidate certified by the
73 secretary of state or the board of ballot commissioners
74 shall be printed in capital letters in no smaller than eight
75 point type on the ballot for the appropriate precincts.
76 Subject to the rules promulgated by the secretary of state,
77 the name of each candidate shall appear in the form set
78 out by the candidate on the certificate of announcement,
79 but in no case may the name misrepresent the identity of
80 the candidate, nor may the name include any title,
81 position, rank, degree or nickname implying or inferring
82 any status as a member of a class or group or affiliation
83 with any system of belief.

84 (2) The city of residence of every candidate, the state
85 of residence of every candidate residing outside the state,
86 the county of residence of every candidate for an office
87 on the ballot in more than one county, and the magisterial
88 district of residence of every candidate for an office
89 subject to magisterial district limitations, shall be printed in
90 lower case letters beneath the names of the candidates.

91 (3) The arrangement of names within each office shall
92 be determined as prescribed in section thirteen-a of this
93 article.

94 (4) If the number of candidates for an office exceeds
95 the space available on a column or ballot label page and
96 requires that candidates for a single office be separated, to
97 the extent possible, the number of candidates for the
98 office on separate columns or pages shall be nearly equal,
99 and clear instructions given the voter that the candidates

100 for the office are continued on the following column or
101 page.

102 (e) When an insufficient number of candidates has
103 filed for a party to make the number of nominations
104 allowed for the office, or for the voters to elect sufficient
105 members to the board of education or to executive
106 committees, the vacant positions on the ballot shall be
107 filled with the words "No Candidate Filed": *Provided,*
108 That in paper ballot systems which allow for write-ins to
109 be made directly on the ballot, a blank line shall be placed
110 in any vacant position in the office of board of education
111 or for election to any party executive committee. A line
112 shall separate each candidate from every other candidate
113 for the same office.

114 (f) In presidential election years, the words "For
115 election in accordance with the plan adopted by the party
116 and filed with the secretary of state" shall be printed
117 following the names of all candidates for delegate to
118 national convention.

119 (g) All paper ballots shall be printed in black ink on
120 paper sufficiently thick so that the printing or marking
121 cannot be discernible from the back. Ballot cards and
122 paper for printing ballots using electronically sensible ink
123 shall meet minimum requirements of the tabulating
124 systems.

125 (h) Electronically tabulated ballots and ballot cards
126 shall contain perforated tabs at the top of the ballots and
127 shall be printed with unique sequential numbers from one
128 to the highest number representing the total number of
129 ballots or ballot cards printed. On paper ballots, the ballot
130 shall be bordered by a solid line at least one sixteenth of
131 an inch wide, and the ballot shall be trimmed to within
132 one-half inch of that border.

133 (i) On the back of every official ballot or ballot card,
134 there shall be printed the words "Official Ballot" with the
135 name of the county and the date of the election. Beneath
136 shall be two blank lines, followed by the words "Poll
137 Clerks".

138 (j) Absent voters' ballots shall be in all respects like
139 other official ballots, except that three blank lines shall be
140 printed on the back of the ballot or ballot card in the
141 lower left corner with the words "Ballot Commissioners"
142 printed underneath.

143 (k) The face of sample paper ballots and sample ballot
144 labels shall be like other official ballots or ballot labels,
145 except that the word "sample" shall be prominently printed
146 across the front of the ballot in such a way that the names
147 of candidates are not obscured, and the word "sample"
148 may be printed in red ink. No printing may be placed on
149 the back of the sample.

CHAPTER 138

(S. B. 473—By Senators Wooton, Ball, Bowman, Dittmar, Hunter, Ross,
Schoonover, Snyder, White, Buckalew and Scott)

[Passed March 10, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article six, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the disposition of certificates of election; requiring candidates to request copies of such certificates; providing for the filing of certificates with county clerks; and requiring county clerks to preserve and make certificates available to the general public and the media.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-11. Disposition of certificates.

1 The separate certificates of the board of canvassers,
2 made pursuant to section ten of this article, shall be
3 disposed of by the board of canvassers as follows: Of the
4 certificates respecting the election for delegate or
5 delegates in the Legislature, they shall, upon request of the
6 candidate, transmit a copy to any candidate, and shall file
7 a copy in the office of the clerk of the county commission
8 to be preserved and made available to the general public
9 and to the media. The clerk shall transmit a copy to the
10 secretary of state within thirty days from the date of the
11 election, except that in the case of a recount, within thirty
12 days from the date of the completion of the recount, who
13 shall submit the same to the House of Delegates, on the
14 first day of the next ensuing session, together with a list of
15 the persons appearing thereby to be elected. Of the
16 certificates respecting the election of state senator, they
17 shall, upon request of the candidate, transmit a copy to
18 any candidate, and shall file a copy in the office of the
19 clerk of the county commission to be preserved and made
20 available to the general public and to the media. The clerk
21 shall transmit a copy to the secretary of state within thirty
22 days from the date of the election, except that in the case
23 of a recount, within thirty days from the date of the
24 completion of the recount, to be submitted by the
25 secretary of state to the Senate, on the first day of the next
26 ensuing session, together with a list of persons appearing
27 thereby to be elected. Of the certificates respecting the
28 election of state officers, a copy for each officer, except
29 justice of the supreme court of appeals, shall be sealed and
30 transmitted by the commissioners to the secretary of state
31 within thirty days from the date of the election endorsed
32 on the envelope as follows: "Returns of the election for
33 state officers." Except in the case of a recount, the
34 certificates shall be transmitted within thirty days from the
35 date of the completion of the recount. The secretary of
36 state shall deliver the certificates to the speaker of the
37 House of Delegates on the first day of the next session of
38 the Legislature; and the speaker shall, immediately after
39 the organization of the House of Delegates and before

40 proceeding to other business, open and publish the
41 certificates in the presence of a majority of each house of
42 the Legislature, which bodies shall, for that purpose,
43 assemble in the hall of the House of Delegates. The
44 person having the highest number of votes for any one of
45 such offices shall be declared duly elected thereto; but if
46 two or more persons have the same and the highest
47 number of votes for the same office, the Legislature shall,
48 by a joint vote of the two houses, choose one of said
49 persons for the office; and one of each of the last-
50 mentioned certificates shall also be transmitted, under seal,
51 to the governor, who shall immediately tabulate the vote in
52 all the counties, for each office, and cause the results to be
53 printed in a newspaper published at the seat of
54 government. Of the certificates respecting the election for
55 United States senator, member of the House of
56 Representatives in the Congress of the United States,
57 justice of the supreme court of appeals, judge of a circuit
58 court, and president and vice president of the United
59 States, respectively, the commissioners shall, upon request
60 of the candidate, transmit a copy to any candidate, and a
61 copy to the governor within thirty days from the date of
62 the election; except that in the case of a recount, within
63 thirty days from the date of the completion of the recount;
64 and the governor shall ascertain who are elected and make
65 proclamation thereof. The commissioners shall also file a
66 copy of the certificates in the office of the clerk of the
67 county commission to be preserved and made available to
68 the general public and to the media. Of the certificates
69 respecting the election of all county and district officers,
70 the commissioners shall, upon request of the candidate,
71 transmit a copy to any candidate, and shall file a copy in
72 the office of the clerk of the county commission to be
73 preserved and made available to the general public and to
74 the media.

75 No county may be charged for the publication of any
76 certificates of election.

CHAPTER 139

(Com. Sub. for H. B. 4293—By Delegates Staton, Varner and Caputo)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article two, chapter two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter thirty-nine of said code by adding thereto a new article, designated article five, all relating generally to the authorization of electronic signatures where written signatures are currently required; establishing legislative findings; providing definitions; allowing for the acceptance of certain electronic signatures where a rule of law requires a signature; authorizing the secretary of state and the state auditor to propose legislative and emergency rules authorizing governmental electronic signatures; authorizing the secretary of state to be the digital key depository and authority and authorizing the secretary of state to contract with a private entity to serve as the digital key depository and authority; allowing all governmental entities to participate in the electronic and digital signature program with certain conditions and limitations; authorizing public use of electronic signatures with certain requirements; limitation of liability for the secretary of state; and providing for admissibility of electronic signatures and other electronic records legal proceeding as evidence.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 2. Common Law, Statutes, Legal Holidays, Definitions, and Legal Capacity.**
- 39. Records and Papers.**

CHAPTER 2. COMMON LAW, STATUTES, LEGAL HOLIDAYS, DEFINITIONS, AND LEGAL CAPACITY.

ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.

§2-2-10. Rules for construction of statutes.

1 The following rules shall be observed in the
2 construction of statutes, unless a different intent on the
3 part of the Legislature be apparent from the context:

4 (a) A word importing the singular number only may
5 be applied to several persons or things, as well as to one
6 person or thing; a word importing the plural number only
7 may be applied to one person or thing as well as to
8 several; and a word importing the masculine gender only
9 may be applied to females as well as males;

10 (b) Words purporting to give a joint authority to three
11 or more persons confer such authority upon a majority of
12 them, and not upon any less number;

13 (c) The words "written" or "in writing" include any
14 representation of words, letters or figures, whether by
15 printing, engraving, writing or otherwise. But when the
16 signature of any person is required, it must be in his or her
17 own proper handwriting, or his or her mark, attested,
18 proved or acknowledged: *Provided*, That unless a
19 provision of this code specifically provides otherwise, an
20 electronic signature satisfies this signature requirement if
21 the electronic signature meets the requirements of
22 subsection (a), section three, article five, chapter thirty nine
23 of this code;

24 (d) The words "preceding," "succeeding" or
25 "following" used in reference to any section or sections of
26 a chapter or statute, mean next preceding, next succeeding
27 or next following that in which such reference is made,
28 unless a different interpretation be required by the
29 context;

30 (e) An officer shall be deemed to have qualified when
31 he or she has done all that is required by law to be done

32 before proceeding to exercise the authority and discharge
33 the duties of his or her office;

34 (f) The words "the governor" are equivalent to "the
35 executive of the state" or "the person having the executive
36 power";

37 (g) "Justice" or "justices" as used in article one, chapter
38 fifty-one of this code and in other references to a member
39 or members of the supreme court of appeals shall mean
40 and apply to a judge or the judges of said court as
41 provided for in the constitution of the state. The word
42 "justice" in any other context is equivalent to the words
43 "justice of the peace," and the word "notary" is equivalent
44 to "notary public";

45 (h) The word "state," when applied to a part of the
46 United States and not restricted by the context, includes
47 the District of Columbia and the several territories, and the
48 words "United States" also include the said district and
49 territories;

50 (i) The word "person" or "whoever" shall include
51 corporations, societies, associations and partnerships, if not
52 restricted by the context;

53 (j) The words "personal representative" include the
54 executor of a will, the administrator of the estate of a
55 deceased person, the administrator of such estate with the
56 will annexed, the administrator de bonis non of such
57 estate, whether there be a will or not, the sheriff or other
58 officer lawfully charged with the administration of the
59 estate of a deceased person, and every other curator or
60 committee of a decedent's estate for or against whom suits
61 may be brought for causes of action which accrued to or
62 against such decedent;

63 (k) The word "will" embraces a testament, a codicil, an
64 appointment by will or writing in the nature of a will in
65 exercise of a power, also any other testamentary
66 disposition;

67 (l) The word "judgment" includes decrees and orders
68 for the payment of money or the conveyance or delivery

69 of land or personal property, or some interest therein, or
70 any undertaking, bond or recognizance which has the
71 legal effect of a judgment;

72 (m) The words "under disability" include persons
73 under the age of eighteen years, insane persons, and
74 convicts while confined in the penitentiary;

75 (n) The words "insane person" include everyone who
76 has mental illness as defined in section two, article one,
77 chapter twenty-seven of this code;

78 (o) The word "convict" means a person confined in the
79 penitentiary of this or any other state, or of the United
80 States;

81 (p) The word "land" or "lands" and the words "real
82 estate" or "real property" include lands, tenements and
83 hereditaments, all rights thereto and interests therein
84 except chattel interests;

85 (q) The words "personal estate" or "personal property"
86 include goods, chattels, real and personal, money, credits,
87 investments and the evidences thereof;

88 (r) The word "property" or "estate" embraces both real
89 and personal estate;

90 (s) The word "offense" includes every act or omission
91 for which a fine, forfeiture or punishment is imposed by
92 law;

93 (t) The expression "laws of the state" includes the
94 constitution of the state and the constitution of the United
95 States, and treaties and laws made in pursuance thereof;

96 (u) The word "town" includes a city, village or town,
97 and the word "council," any body or board, whether
98 composed of one or more branches, who are authorized to
99 make ordinances for the government of a city, town or
100 village;

101 (v) When a council of a town, city or village, or any
102 board, number of persons or corporations, are authorized
103 to make ordinances, bylaws, rules, regulations or orders, it

104 shall be understood that the same must be consistent with
105 the laws of this state;

106 (w) The words "county court" include any existing
107 tribunal created in lieu of a county court; the words
108 "commissioner of the county court" and "county
109 commissioner" mean, and have reference to, the
110 commissioners, or one of them, composing the county
111 court, in pursuance of section twenty-two, article eight of
112 the constitution, as amended, or any existing tribunal
113 created in lieu of a county court;

114 (x) The word "horse" embraces a stallion, a mare and a
115 gelding;

116 (y) The words "railroad" and "railway" shall be
117 construed by the courts of this state to mean the same
118 thing in law; and, in any proceeding wherein a railroad
119 company or a railway company is a party, it shall not be
120 deemed error to call a railroad company a railway
121 company or vice versa; nor shall any demurrer, plea or
122 any other defense be set up to a motion, pleading or
123 indictment in consequence of such misdescription;

124 (z) The sectional headings or headlines of the several
125 sections of this code printed in black-faced type are
126 intended as mere catchwords to indicate the contents of
127 the section and shall not be deemed or taken to be titles of
128 such sections, or as any part of the statute, and, unless
129 expressly so provided, they shall not be so deemed when
130 any of such sections, including the headlines, are amended
131 or reenacted;

132 (aa) The words "infant" and "minor" mean persons
133 under the age of eighteen years as such words are used in
134 this code or in rules and regulations promulgated by the
135 supreme court of appeals;

136 (bb) A statute is presumed to be prospective in its
137 operation unless expressly made retrospective;

138 (cc) Unless there is a provision in a section, article or
139 chapter of this code specifying that the provisions thereof
140 shall not be severable, the provisions of every section,

141 article or chapter of this code, whether enacted before or
142 subsequent to the effective date of this subdivision, shall
143 be severable so that if any provision of any such section,
144 article or chapter is held to be unconstitutional or void, the
145 remaining provisions of such section, article or chapter
146 shall remain valid, unless the court finds the valid
147 provisions are so essentially and inseparably connected
148 with, and so dependent upon, the unconstitutional or void
149 provision that the court cannot presume the Legislature
150 would have enacted the remaining valid provisions without
151 the unconstitutional or void one, or unless the court finds
152 the remaining valid provisions, standing alone, are
153 incomplete and are incapable of being executed in
154 accordance with the legislative intent: *Provided*, That if
155 any such section, article or chapter of this code has its own
156 severability clause, then such severability clause shall
157 govern and control with respect to such section, article or
158 chapter in lieu of the provisions of this subdivision. The
159 provisions of this subdivision shall be fully applicable to
160 all future amendments or additions to this code, with like
161 effect as if the provisions of this subdivision were set forth
162 in extenso in every such amendment or addition and were
163 reenacted as a part thereof, unless such amendment or
164 addition contains its own severability clause;

165 (dd) A reference to any section, article or chapter of
166 this code applies to all reenactments, revisions or
167 amendments thereof;

168 (ee) If a statute refers to a series of numbers or letters,
169 the first and the last numbers or letters in the series are
170 deemed to be included;

171 (ff) The words "board of regents," wherever they
172 appear in the code, means the board of trustees created by
173 section one, article one, chapter eighteen-b of this code
174 and the board of directors created by section one, article
175 one, chapter eighteen-b of this code unless the term is
176 used in relation to activities conducted solely by an
177 institution or institutions governed by article two, chapter
178 eighteen-b of this code in which case it only means the
179 board of trustees, or where the term is used in relation to
180 activities conducted solely by an institution or institutions

181 governed by article three, chapter eighteen-b of the code
182 in which case it only means the board of directors.

CHAPTER 39. RECORDS AND PAPERS.

ARTICLE 5. ELECTRONIC SIGNATURES AUTHORIZATION ACT.

§39-5-1. Legislative findings; statement of purpose.

§39-5-2. Definitions.

§39-5-3. Acceptance of electronic signatures generally.

§39-5-4. Duties of the secretary of state and state auditor; state agencies use of electronic signatures.

§39-5-5. Acceptance of electronic signature by governmental entities in satisfaction of signature requirement.

§39-5-6. Acceptance of electronic signatures by persons other than governmental entities.

§39-5-7. Secretary of state; liability.

§39-5-8. Admissibility into evidence.

§39-5-1. Legislative findings; statement of purpose.

1 The Legislature finds that the rapid and secure
2 conveyance of signed written transactions, messages and
3 official documents is essential to effective and economical
4 conduct of commercial, governmental and personal
5 affairs; and that technology is available to allow
6 instantaneous transmission of documents and to provide
7 secure means of authorization through electronic
8 signatures. Therefore, it is the purpose of this act to
9 facilitate and promote electronic commerce and online
10 government by clarifying the legal status of electronic
11 records and electronic signatures in the context of writing
12 and signing requirements imposed by law; to permit and
13 encourage the continued expansion of electronic
14 commerce and online government through the operation
15 of free market forces rather than proscriptive legislation;
16 to promote public confidence in the validity, integrity and
17 reliability of electronic commerce and online government;
18 and to promote the development of the legal and business
19 infrastructure necessary to support and encourage
20 electronic commerce and online government.

§39-5-2. Definitions.

1 As used in this article, the following words shall have
2 the following meanings:

3 (a)“Certificate” means a computer-based record that:

4 (1) Identifies the certification authority issuing it;

5 (2) Names or identifies its subscriber;

6 (3) Contains the subscriber’s public key; and

7 (4) Is digitally signed by the certification authority
8 issuing it.

9 (b)“Certification authority” means a person who
10 issues a certificate.

11 (c) “Electronic” means electrical, digital, magnetic,
12 optical, electromagnetic, or any other technology that is
13 similar to these technologies.

14 (d) “Electronic record” means a record generated,
15 communicated, received, or stored by electronic means.

16 (e) “Electronic signature” means any identifier or
17 authentication technique attached to or logically
18 associated with an electronic record that is intended by the
19 person using it to have the same force and effect as a
20 manual signature. Electronic signatures include, but are
21 not limited to the following:

22 (1) A “digitized signature” which consists of a
23 handwritten signature entered on a recording device
24 utilizing electronic recording software which
25 simultaneously converts the image created to a digital
26 record and attaches it to the electronic document to which
27 it relates;

28 (2) A “digital mark” which consists of an electronic
29 code indicating approval or confirmation which is entered
30 into a protected digital record following access protocols
31 which identify the user and require a password, personal
32 identification number, encrypted card or other security
33 device which restricts access to one or more authorized
34 individuals; and

35 (3) A “digital signature” which consists of a message
36 transformed using an asymmetric cryptosystem so that a
37 person having the initial message and the signer’s public
38 key can accurately determine:

39 (A) Whether the transformed message was created
40 using the private key that corresponds to the signer’s
41 public key; and

42 (B) Whether the initial message has been altered since
43 the message was transformed.

44 (f) “Record” means information that is inscribed on a
45 tangible medium or that is stored in an electronic or other
46 medium and is retrievable in perceivable form.

§39-5-3. Acceptance of electronic signatures generally.

1 (a) Where a rule of law requires a signature, or
2 provides for certain consequences in the absence of a
3 signature, that rule may be satisfied by an electronic
4 signature, if:

5 (1) The type of electronic signature provided is
6 authorized according to the provisions of this article by
7 the person or governmental entity receiving the message;

8 (2) The original digitized signature, digital mark or
9 digital signature was affixed by the signer with the
10 intention of signing the message, or the facsimile digitized
11 signature was affixed by the signer’s designee with the
12 authority of the signer; and

13 (3) The recipient has no knowledge or notice that the
14 signer either:

15 (A) Breached a duty; or

16 (B) Does not rightfully hold the access code used to
17 affix the digital mark or the private key used to affix the
18 digital signature.

19 (b) Nothing in this article:

20 (1) Precludes an electronic signature from being valid
21 as a signature under other applicable law;

22 (2) May be construed to obligate a recipient or any
23 other person asked to rely on an electronic signature to
24 accept an electronic signature or to respond to an
25 electronic message containing an electronic signature; or

26 (3) Precludes the recipient of an electronic signature
27 or an electronic message containing an electronic
28 signature from establishing the conditions under which the
29 recipient will accept an electronic signature.

§39-5-4. Duties of the secretary of state and state auditor; state agencies use of electronic signatures.

1 (a) The secretary of state and state auditor shall
2 propose joint legislative rules for promulgation in
3 accordance with the provisions of article three, chapter
4 twenty-nine-a of this code to establish standards and
5 processes to facilitate the use of electronic signatures in all
6 governmental transactions by state agencies subject to
7 chapter twenty-nine-a of this code. These rules shall
8 include minimum standards for secure transactions to
9 assure confidence and efficiency in legally binding
10 electronic document transactions. These rules may be
11 amended from time to time to keep the rules current with
12 new developments in technology and improvements in
13 secured transaction processes. The Legislature also
14 authorizes these rules to be initially promulgated as
15 emergency rules pursuant to article three, chapter twenty-
16 nine-a of this code.

17 (b) The secretary of state is also designated the
18 certification authority and repository for all governmental
19 agencies which are subject to chapter twenty-nine-a of this
20 code, and shall regulate transactions and digital signature
21 verifications. The secretary may enter into reciprocity
22 agreements with all state and federal governmental entities
23 to promote the efficient governmental use of electronic
24 transactions. The secretary of state may also propose
25 legislative rules for issuing certificates that bind public

26 keys to individuals, and other electronic transaction
27 authentication devices as provided for in section three.
28 The secretary of state is further authorized to contract with
29 a private entity to serve as certification authority for the
30 state of West Virginia. This private certification authority
31 may contract with persons to provide certification service.
32 Any contract entered into must assure the certification
33 authority will meet the requirements of this act and any
34 rules promulgated pursuant to this subsection.

35 (c) Nothing contained in this act shall be construed to
36 mandate any specific form of technology, process or
37 standard to be the only technology, process or standard
38 which may be utilized by state entities, nor shall limit the
39 secretary of state and state auditor in adopting by
40 legislative rule, alternative technologies to authorize
41 electronic signatures.

**§39-5-5. Acceptance of electronic signature by governmental
entities in satisfaction of signature requirement.**

1 (a) Any governmental entity may, by appropriate
2 official action, authorize the acceptance of electronic
3 signatures in lieu of original signatures on messages or
4 filings requiring one or more original signatures, subject
5 to the requirements and limitations of section three of this
6 article.

7 (b) Any governmental entity may elect to participate
8 and utilize the secretary of state's digital signature
9 authority and registry. Upon acceptance of and
10 registration with the secretary of state's digital signature
11 authority and registry, the governmental entity's
12 electronic transactions are bound to the regulation of the
13 authority and registry and those rules promulgated
14 thereunder. Any governmental entity not required to
15 participate, but which elects to participate, may withdrawal
16 at any time from the program, upon notification of the
17 secretary of state and all others who utilize that entity's
18 digital signature program.

19 (c) Any governmental entities may adopt, in the
20 manner provided by law, an ordinance, rule or official
21 policy designating the documents on which electronic
22 signatures are authorized, and the type or types of
23 electronic signatures which may be accepted for each type
24 of document. Those governmental entities not subject to
25 the provisions of chapter twenty-nine-a of this code, which
26 proposes to authorize the acceptance of electronic
27 signatures on documents filed with that entity shall give
28 public notice of the proposed adoption in an manner
29 prescribed by law, an ordinance, rule or official policy, but
30 in no case for less than thirty days before adoption.

31 (d) Any governmental entity which intends to extend,
32 modify or revoke the authority to accept electronic
33 signatures shall do so by the same means and with the
34 same notice as required in this section for adoption.

§39-5-6. Acceptance of electronic signatures by persons other than governmental entities.

1 (a) Where a commercial or other transaction between
2 persons other than governmental entities consists in part of
3 a message which requires the signature of one or more
4 parties to the transaction, an electronic signature shall be a
5 valid signature if authorized and accepted by the receiving
6 party and made in good faith by the signing party or
7 parties.

8 (b) The receiving party may determine the type or
9 types of electronic signatures which will be accepted for
10 particular types of messages or transactions.

11 (1) The receiving party shall give notice to the
12 prospective signing party of the type or types of electronic
13 signatures which will be accepted for the particular type of
14 message or transaction; and

15 (2) The receiving party may confirm to the signer the
16 receipt and acceptance of an electronic message
17 containing an electronic signature.

§39-5-7. Secretary of state; liability.

1 The secretary of state, serving as authority and
2 repository for governmental entities for signature keys
3 shall revoke any signature key when the secretary has
4 reason to believe that the digital signature key has been
5 stolen, fraudulently used or otherwise compromised. This
6 article creates no liability upon the secretary of state for
7 any transaction compromised by any illegal act or
8 inappropriate uses associated with electronic signatures.

§39-5-8. Admissibility into evidence.

1 In any legal proceeding, nothing in the application or
2 the rules of evidence shall apply so as to deny the
3 admissibility of an electronic record or electronic
4 signature into evidence solely on the ground that it is an
5 electronic record or electronic signature, or, on the
6 grounds that it is not in its original form or is not an
7 original.

CHAPTER 140

(Com. Sub. for H. B. 4043—By Delegates Beane, Cann, Thompson, Compton,
Faircloth, Amores and Hutchins)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-one, article one, chapter thirty-three of said code; to amend article fifteen of said chapter by adding thereto a new section, designated section twenty-one; to amend and reenact section three-i, article sixteen of said chapter; to amend and reenact section seven-e, article twenty-four of said chapter; to amend and reenact section eight-d, article twenty-five of said chapter; and to amend and reenact section eight-d, article twenty-five-a of said chapter, all relating to defining emergency medical services and emergency medical condition; requiring coverage for medical screenings and stabilization of emergency medical

conditions; and directing that services be covered for prudent layperson; and requiring reporting to the legislative oversight commission on health and human resources accountability.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 5. General Powers And Authority Of The Governor, Secretary Of State And Attorney General; Board Of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.**
- 33. Insurance.**

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-8. Conditions of insurance program.

- 1 The insurance plans provided for in this article shall
- 2 be designed by the public employees insurance agency:
- 3 (1) To provide a reasonable relationship between the
- 4 hospital, surgical, medical and prescription drug benefits
- 5 to be included and the expected reasonable and customary
- 6 hospital, surgical, medical and prescription drug expenses
- 7 as established by the director to be incurred by the

8 affected employee, his or her spouse and his or her
9 dependents. The establishment of reasonable and
10 customary expenses by the public employees insurance
11 agency pursuant to the preceding sentence is not subject
12 to the state administrative procedures act in chapter
13 twenty-nine-a of this code;

14 (2) To include reasonable controls which may include
15 deductible and coinsurance provisions applicable to some
16 or all of the benefits, and shall include other provisions,
17 including, but not limited to, copayments, preadmission
18 certification, case management programs and preferred
19 provider arrangements;

20 (3) To prevent unnecessary utilization of the various
21 hospital, surgical, medical and prescription drug services
22 available;

23 (4) To provide reasonable assurance of stability in
24 future years for the plans;

25 (5) To provide major medical insurance for the
26 employees covered under this article;

27 (6) To provide certain group life and accidental death
28 insurance for the employees covered under this article;

29 (7) To include provisions for the coordination of
30 benefits payable by the terms of the plans with the benefits
31 to which the employee, or his or her spouse or his or her
32 dependents may be entitled by the provisions of any other
33 group hospital, surgical, medical, major medical, or
34 prescription drug insurance or any combination thereof;

35 (8) To provide a cash incentive plan for employees,
36 spouses and dependents to increase utilization of, and to
37 encourage the use of, lower cost alternative health care
38 facilities, health care providers and generic drugs. The
39 plan shall be reviewed annually by the director and the
40 advisory board;

41 (9) To provide "wellness" programs and activities
42 which will include, but not be limited to, benefit plan
43 incentives to discourage tobacco, alcohol and chemical
44 abuse and an educational program to encourage proper

45 diet and exercise. In establishing "wellness" programs,
46 the division of vocational rehabilitation shall cooperate
47 with the public employees insurance agency in
48 establishing statewide wellness programs. The director of
49 the public employees insurance agency shall contract with
50 county boards of education for the use of facilities,
51 equipment or any service related to that purpose. Boards
52 of education may charge only the cost of janitorial service
53 and increased utilities for the use of the gymnasium and
54 related equipment. The cost of the exercise program shall
55 be paid by county boards of education, the public
56 employees insurance agency, or participating employees,
57 their spouses or dependents. All exercise programs shall
58 be made available to all employees, their spouses or
59 dependents and shall not be limited to employees of
60 county boards of education;

61 (10) To provide a program, to be administered by the
62 director, for a patient audit plan with reimbursement up to
63 a maximum of one thousand dollars annually, to
64 employees for discovery of health care provider or
65 hospital overcharges when the affected employee brings
66 the overcharge to the attention of the plan. The hospital
67 or health care provider shall certify to the director that it
68 has provided, prior to or simultaneously with the
69 submission of the statement of charges for payments, an
70 itemized statement of the charges to the employee
71 participant for which payment is requested of the plan;

72 (11) To require that all employers give written notice
73 to each covered employee prior to institution of any
74 changes in benefits to employees, and to include
75 appropriate penalty for any employer not providing the
76 required information to any employee; and

77 (12) To provide coverage for emergency services
78 under offered plans. For the purposes of this subsection,
79 "emergency services" means services provided in or by a
80 hospital emergency facility, an ambulance providing
81 related services under the provisions of article four-c,
82 chapter sixteen of this code or the private office of a
83 dentist to evaluate and treat a medical condition
84 manifesting itself by the sudden, and at the time,

85 unexpected onset of symptoms that require immediate
86 medical attention and for which failure to provide medical
87 attention would result in serious impairment to bodily
88 function, serious dysfunction to any bodily organ or part,
89 or would place the person's health in jeopardy. From the
90 first day of July, one thousand nine hundred ninety-eight,
91 through the thirtieth day of June, two thousand, the
92 following provisions apply: Plans shall provide coverage
93 for emergency services, including any prehospital services,
94 to the extent necessary to screen and stabilize the covered
95 person. The plans shall reimburse, less any applicable
96 copayments, deductibles, or coinsurance, for emergency
97 services rendered and related to the condition for which
98 the covered person presented. Prior authorization of
99 coverage shall not be required for the screening services if
100 a prudent layperson acting reasonably would have
101 believed that an emergency medical condition existed.
102 Prior authorization of coverage shall not be required for
103 stabilization if an emergency medical condition exists. In
104 the event that prior authorization was obtained, the
105 authorization may not be retracted after the services have
106 been provided except when the authorization was based on
107 a material misrepresentation about the medical condition
108 by the provider of the services or the insured person. The
109 provider of the emergency services and the plan
110 representative shall make a good faith effort to
111 communicate with each other in a timely fashion to
112 expedite postevaluation or poststabilization services.
113 Payment of claims for emergency services shall be based
114 on the retrospective review of the presenting history and
115 symptoms of the covered person. For purposes of this
116 subdivision: (A) "Emergency services" means those
117 services required to screen for or treat an emergency
118 medical condition until the condition is stabilized,
119 including prehospital care; (B) "prudent layperson"
120 means a person who is without medical training and who
121 draws on his or her practical experience when making a
122 decision regarding whether an emergency medical
123 condition exists for which emergency treatment should be
124 sought; (C) "emergency medical condition for the
125 prudent layperson" means one that manifests itself by

126 acute symptoms of sufficient severity, including severe
127 pain, such that the person could reasonably expect the
128 absence of immediate medical attention to result in serious
129 jeopardy to the individual's health, or, with respect to a
130 pregnant woman, the health of the unborn child; serious
131 impairment to bodily functions; or serious dysfunction of
132 any bodily organ or part; (D) "stabilize" means with
133 respect to an emergency medical condition, to provide
134 medical treatment of the condition necessary to assure,
135 with reasonable medical probability that no medical
136 deterioration of the condition is likely to result from or
137 occur during the transfer of the individual from a facility:
138 *Provided*, That this provision may not be construed to
139 prohibit, limit or otherwise delay the transportation
140 required for a higher level of care than that possible at the
141 treating facility; (E) "medical screening examination"
142 means an appropriate examination within the capability of
143 the hospital's emergency department, including ancillary
144 services routinely available to the emergency department,
145 to determine whether or not an emergency medical
146 condition exists. The director is to report annually to the
147 legislative oversight commission on health and human
148 resources accountability on the utilization of emergency
149 services, the cost of those services, a comparison of
150 utilization and costs between enrollees of the various plans,
151 and possible plan amendments designed to decrease any
152 inappropriate utilization of emergency services; and (F)
153 "emergency medical condition" means a condition that
154 manifests itself by acute symptoms of sufficient severity
155 including severe pain such that the absence of immediate
156 medical attention could reasonably be expected to result
157 in serious jeopardy to the individual's health or with
158 respect to a pregnant woman the health of the unborn
159 child, serious impairment to bodily functions or serious
160 dysfunction of any bodily part or organ.

CHAPTER 33. INSURANCE.

Article

1. Definitions.
15. Accident and Sickness Insurance.
16. Group Accident and Sickness Insurance.

- 24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.
- 25. Health Care Corporations.
- 25A. Health Maintenance Organization Act.

ARTICLE 1. DEFINITIONS.

§33-1-21. Emergency services.

1 (a) Emergency services are: Those services provided in
2 or by a hospital emergency facility, an ambulance
3 providing related services under the provisions of article
4 four-c, chapter sixteen of this code or the private office of
5 a dentist to evaluate and treat a medical condition
6 manifesting itself by the sudden, and at the time,
7 unexpected onset of symptoms that require immediate
8 medical attention and that failure to provide medical
9 attention would result in serious impairment to bodily
10 function, serious dysfunction to any bodily organ or part,
11 or would place the person's health in jeopardy.

12 (b) From the first day of July, one thousand nine
13 hundred ninety-eight, through the thirtieth day of June,
14 two thousand, the following provisions apply:

15 (1) "Emergency medical services" means those
16 services required to screen for or treat an emergency
17 medical condition until the condition is stabilized,
18 including prehospital care;

19 (2) "Prudent layperson" means a person who is
20 without medical training and who draws on his or her
21 practical experience when making a decision regarding
22 whether an emergency medical condition exists for which
23 emergency treatment should be sought;

24 (3) "Emergency medical condition for the prudent
25 layperson" means one that manifests itself by acute
26 symptoms of sufficient severity, including severe pain,
27 such that the person could reasonably expect the absence
28 of immediate medical attention to result in serious
29 jeopardy to the individual's health, or, with respect to a
30 pregnant woman, the health of the unborn child; serious

31 impairment to bodily functions; or serious dysfunction of
32 any bodily organ or part;

33 (4) "Stabilize" means with respect to an emergency
34 medical condition, to provide medical treatment of the
35 condition necessary to assure, with reasonable medical
36 probability that no medical deterioration of the condition
37 is likely to result from or occur during the transfer of the
38 individual from a facility: *Provided*, That this provision
39 may not be construed to prohibit, limit or otherwise delay
40 the transportation required for a higher level of care than
41 that possible at the treating facility;

42 (5) "Medical screening examination" means an
43 appropriate examination within the capability of the
44 hospital's emergency department, including ancillary
45 services routinely available to the emergency department,
46 to determine whether or not an emergency medical
47 condition exists; and

48 (6) "Emergency medical condition" means a
49 condition that manifests itself by acute symptoms of
50 sufficient severity including severe pain such that the
51 absence of immediate medical attention could reasonably
52 be expected to result in serious jeopardy to the
53 individual's health or with respect to a pregnant woman
54 the health of the unborn child, serious impairment to
55 bodily functions or serious dysfunction of any bodily part
56 or organ.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-21. Coverage of emergency services.

1 From the first day of July, one thousand nine hundred
2 ninety-eight, through the thirtieth day of June, two
3 thousand, the following provisions apply:

4 (a) Every insurer shall provide coverage for
5 emergency medical services, including prehospital
6 services, to the extent necessary to screen and to stabilize
7 an emergency medical condition. The insurer shall not
8 require prior authorization of the screening services if a
9 prudent layperson acting reasonably would have believed
10 that an emergency medical condition existed. Prior

11 authorization of coverage shall not be required for
12 stabilization if an emergency medical condition exists.
13 Payment of claims for emergency services shall be based
14 on the retrospective review of the presenting history and
15 symptoms of the covered person.

16 (b) An insurer that has given prior authorization for
17 emergency services shall cover the services and shall not
18 retract the authorization after the services have been
19 provided unless the authorization was based on a material
20 misrepresentation about the covered person's health
21 condition made by the referring provider, the provider of
22 the emergency services or the covered person.

23 (c) Coverage of emergency services shall be subject to
24 coinsurance, copayments and deductibles applicable under
25 the health benefit plan.

26 (d) The emergency department and the insurer shall
27 make a good faith effort to communicate with each other
28 in a timely fashion to expedite postevaluation or
29 poststabilization services in order to avoid material
30 deterioration of the covered person's condition.

31 (e) As used in this section:

32 (1) "Emergency medical services" means those
33 services required to screen for or treat an emergency
34 medical condition until the condition is stabilized,
35 including prehospital care;

36 (2) "Prudent layperson" means a person who is
37 without medical training and who draws on his or her
38 practical experience when making a decision regarding
39 whether an emergency medical condition exists for which
40 emergency treatment should be sought;

41 (3) "Emergency medical condition for the prudent
42 layperson" means one that manifests itself by acute
43 symptoms of sufficient severity, including severe pain,
44 such that the person could reasonably expect the absence
45 of immediate medical attention to result in serious
46 jeopardy to the individual's health, or, with respect to a
47 pregnant woman, the health of the unborn child; serious

48 impairment to bodily functions; or serious dysfunction of
49 any bodily organ or part;

50 (4) "Stabilize" means with respect to an emergency
51 medical condition, to provide medical treatment of the
52 condition necessary to assure, with reasonable medical
53 probability that no medical deterioration of the condition
54 is likely to result from or occur during the transfer of the
55 individual from a facility: *Provided*, That this provision
56 may not be construed to prohibit, limit or otherwise delay
57 the transportation required for a higher level of care than
58 that possible at the treating facility;

59 (5) "Medical screening examination" means an
60 appropriate examination within the capability of the
61 hospital's emergency department, including ancillary
62 services routinely available to the emergency department,
63 to determine whether or not an emergency medical
64 condition exists; and

65 (6) "Emergency medical condition" means a
66 condition that manifests itself by acute symptoms of
67 sufficient severity including severe pain such that the
68 absence of immediate medical attention could reasonably
69 be expected to result in serious jeopardy to the
70 individual's health or with respect to a pregnant woman
71 the health of the unborn child, serious impairment to
72 bodily functions or serious dysfunction of any bodily part
73 or organ.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3i. Coverage of emergency services.

1 (a) Notwithstanding any provision of any policy,
2 provision, contract, plan or agreement to which this article
3 applies, any entity regulated by this article shall provide as
4 benefits to all subscribers and members coverage for
5 emergency services. A policy, provision, contract, plan or
6 agreement may apply to emergency services the same
7 deductibles, coinsurance and other limitations as apply to
8 other covered services: *Provided*, That preauthorization or
9 precertification shall not be required.

10 (b) From the first day of July, one thousand nine
11 hundred ninety-eight, through the thirtieth day of June,
12 two thousand, the following provisions apply:

13 (1) Every insurer shall provide coverage for
14 emergency medical services, including prehospital
15 services, to the extent necessary to screen and to stabilize
16 an emergency medical condition. The insurer shall not
17 require prior authorization of the screening services if a
18 prudent layperson acting reasonably would have believed
19 that an emergency medical condition existed. Prior
20 authorization of coverage shall not be required for
21 stabilization if an emergency medical condition exists.
22 Payment of claims for emergency services shall be based
23 on the retrospective review of the presenting history and
24 symptoms of the covered person.

25 (2) An insurer that has given prior authorization for
26 emergency services shall cover the services and shall not
27 retract the authorization after the services have been
28 provided unless the authorization was based on a material
29 misrepresentation about the covered person's health
30 condition made by the referring provider, the provider of
31 the emergency services or the covered person.

32 (3) Coverage of emergency services shall be subject to
33 coinsurance, copayments and deductibles applicable under
34 the health benefit plan.

35 (4) The emergency department and the insurer shall
36 make a good faith effort to communicate with each other
37 in a timely fashion to expedite postevaluation or
38 poststabilization services in order to avoid material
39 deterioration of the covered person's condition.

40 (5) As used in this section:

41 (A) "Emergency medical services" means those
42 services required to screen for or treat an emergency
43 medical condition until the condition is stabilized,
44 including prehospital care;

45 (B) "Prudent layperson" means a person who is
46 without medical training and who draws on his or her
47 practical experience when making a decision regarding

48 whether an emergency medical condition exists for which
49 emergency treatment should be sought;

50 (C) "Emergency medical condition for the prudent
51 layperson" means one that manifests itself by acute
52 symptoms of sufficient severity, including severe pain,
53 such that the person could reasonably expect the absence
54 of immediate medical attention to result in serious
55 jeopardy to the individual's health, or, with respect to a
56 pregnant woman, the health of the unborn child; serious
57 impairment to bodily functions; or serious dysfunction of
58 any bodily organ or part;

59 (D) "Stabilize" means with respect to an emergency
60 medical condition, to provide medical treatment of the
61 condition necessary to assure, with reasonable medical
62 probability that no medical deterioration of the condition
63 is likely to result from or occur during the transfer of the
64 individual from a facility: *Provided*, That this provision
65 may not be construed to prohibit, limit or otherwise delay
66 the transportation required for a higher level of care than
67 that possible at the treating facility;

68 (E) "Medical screening examination" means an
69 appropriate examination within the capability of the
70 hospital's emergency department, including ancillary
71 services routinely available to the emergency department,
72 to determine whether or not an emergency medical
73 condition exists; and

74 (F) "Emergency medical condition" means a
75 condition that manifests itself by acute symptoms of
76 sufficient severity including severe pain such that the
77 absence of immediate medical attention could reasonably
78 be expected to result in serious jeopardy to the
79 individual's health or with respect to a pregnant woman
80 the health of the unborn child, serious impairment to
81 bodily functions or serious dysfunction of any bodily part
82 or organ.

83 (c) The commissioner shall require periodic reports
84 regarding emergency services utilization and costs
85 provided pursuant to the provisions of this article. Those
86 reports will be provided annually to the

87 oversight commission on health and human resources
88 accountability.

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

§33-24-7e. Coverage of emergency services.

1 (a) Notwithstanding any provision of any policy,
2 provision, contract, plan or agreement to which this article
3 applies, any entity regulated by this article shall provide as
4 benefits to all subscribers and members coverage for
5 emergency services. A policy, provision, contract, plan or
6 agreement may apply to emergency services the same
7 deductibles, coinsurance and other limitations as apply to
8 other covered services: *Provided*, That preauthorization
9 or precertification shall not be required.

10 (b) From the first day of July, one thousand nine
11 hundred ninety-eight, through the thirtieth day of June,
12 two thousand, the following provisions apply:

13 (1) Every insurer shall provide coverage for
14 emergency medical services, including prehospital
15 services, to the extent necessary to screen and to stabilize
16 an emergency medical condition. The insurer shall not
17 require prior authorization of the screening services if a
18 prudent layperson acting reasonably would have believed
19 that an emergency medical condition existed. Prior
20 authorization of coverage shall not be required for
21 stabilization if an emergency medical condition exists.
22 Payment of claims for emergency services shall be based
23 on the retrospective review of the presenting history and
24 symptoms of the covered person.

25 (2) An insurer that has given prior authorization for
26 emergency services shall cover the services and shall not
27 retract the authorization after the services have been
28 provided unless the authorization was based on a material
29 misrepresentation about the covered person's health
30 condition made by the referring provider, the provider of
31 the emergency services or the covered person.

32 (3) Coverage of emergency services shall be subject to
33 coinsurance, copayments and deductibles applicable under
34 the health benefit plan.

35 (4) The emergency department and the insurer shall
36 make a good faith effort to communicate with each other
37 in a timely fashion to expedite postevaluation or
38 poststabilization services in order to avoid material
39 deterioration of the covered person's condition.

40 (5) As used in this section:

41 (A) "Emergency medical services" means those
42 services required to screen for or treat an emergency
43 medical condition until the condition is stabilized,
44 including prehospital care;

45 (B) "Prudent layperson" means a person who is
46 without medical training and who draws on his or her
47 practical experience when making a decision regarding
48 whether an emergency medical condition exists for which
49 emergency treatment should be sought;

50 (C) "Emergency medical condition for the prudent
51 layperson" means one that manifests itself by acute
52 symptoms of sufficient severity, including severe pain,
53 such that the person could reasonably expect the absence
54 of immediate medical attention to result in serious
55 jeopardy to the individual's health, or, with respect to a
56 pregnant woman, the health of the unborn child; serious
57 impairment to bodily functions; or serious dysfunction of
58 any bodily organ or part;

59 (D) "Stabilize" means with respect to an emergency
60 medical condition, to provide medical treatment of the
61 condition necessary to assure, with reasonable medical
62 probability that no medical deterioration of the condition
63 is likely to result from or occur during the transfer of the
64 individual from a facility: *Provided*, That this provision
65 may not be construed to prohibit, limit or otherwise delay
66 the transportation required for a higher level of care than
67 that possible at the treating facility;

68 (E) "Medical screening examination" means an
69 appropriate examination within the capability of the

70 hospital's emergency department, including ancillary
71 services routinely available to the emergency department,
72 to determine whether or not an emergency medical
73 condition exists; and

74 (F) "Emergency medical condition" means a
75 condition that manifests itself by acute symptoms of
76 sufficient severity including severe pain such that the
77 absence of immediate medical attention could reasonably
78 be expected to result in serious jeopardy to the
79 individual's health or with respect to a pregnant woman
80 the health of the unborn child, serious impairment to
81 bodily functions or serious dysfunction of any bodily part
82 or organ.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8d. Coverage of emergency services.

1 (a) Notwithstanding any provision of any policy,
2 provision, contract, plan or agreement to which this article
3 applies, any entity regulated by this article shall provide as
4 benefits to all subscribers and members coverage for
5 emergency services. A policy, provision, contract, plan or
6 agreement may apply to emergency services the same
7 deductibles, coinsurance and other limitations as apply to
8 other covered services: *Provided*, That preauthorization
9 or precertification shall not be required.

10 (b) From the first day of July, one thousand nine
11 hundred ninety-eight, through the thirtieth day of June,
12 two thousand, the following provisions apply:

13 (1) Every insurer shall provide coverage for
14 emergency medical services, including pre-hospital
15 services, to the extent necessary to screen and to stabilize
16 an emergency medical condition. The insurer shall not
17 require prior authorization of the screening services if a
18 prudent layperson acting reasonably would have believed
19 that an emergency medical condition existed. Prior
20 authorization of coverage shall not be required for
21 stabilization if an emergency medical condition exists.
22 Payment of claims for emergency services shall be based

23 on the retrospective review of the presenting history and
24 symptoms of the covered person.

25 (2) An insurer that has given prior authorization for
26 emergency services shall cover the services and shall not
27 retract the authorization after the services have been
28 provided unless the authorization was based on a material
29 misrepresentation about the covered person's health
30 condition made by the referring provider, the provider of
31 the emergency services or the covered person.

32 (3) Coverage of emergency services shall be subject to
33 coinsurance, copayments and deductibles applicable under
34 the health benefit plan.

35 (4) The emergency department and the insurer shall
36 make a good faith effort to communicate with each other
37 in a timely fashion to expedite postevaluation or
38 poststabilization services in order to avoid material
39 deterioration of the covered person's condition.

40 (5) As used in this section:

41 (A) "Emergency medical services" means those
42 services required to screen for or treat an emergency
43 medical condition until the condition is stabilized,
44 including prehospital care;

45 (B) "Prudent layperson" means a person who is
46 without medical training and who draws on his or her
47 practical experience when making a decision regarding
48 whether an emergency medical condition exists for which
49 emergency treatment should be sought;

50 (C) "Emergency medical condition for the prudent
51 layperson" means one that manifests itself by acute
52 symptoms of sufficient severity, including severe pain,
53 such that the person could reasonably expect the absence
54 of immediate medical attention to result in serious
55 jeopardy to the individual's health, or, with respect to a
56 pregnant woman, the health of the unborn child; serious
57 impairment to bodily functions; or serious dysfunction of
58 any bodily organ or part;

59 (D) "Stabilize" means with respect to an emergency
60 medical condition, to provide medical treatment of the
61 condition necessary to assure, with reasonable medical
62 probability that no medical deterioration of the condition
63 is likely to result from or occur during the transfer of the
64 individual from a facility: *Provided*, That this provision
65 may not be construed to prohibit, limit or otherwise delay
66 the transportation required for a higher level of care than
67 that possible at the treating facility;

68 (E) "Medical screening examination" means an
69 appropriate examination within the capability of the
70 hospital's emergency department, including ancillary
71 services routinely available to the emergency department,
72 to determine whether or not an emergency medical
73 condition exists; and

74 (F) "Emergency medical condition" means a
75 condition that manifests itself by acute symptoms of
76 sufficient severity including severe pain such that the
77 absence of immediate medical attention could reasonably
78 be expected to result in serious jeopardy to the
79 individual's health or with respect to a pregnant woman
80 the health of the unborn child, serious impairment to
81 bodily functions or serious dysfunction of any bodily part
82 or organ.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8d. Coverage of emergency services.

1 (a) Notwithstanding any provision of any policy,
2 provision, contract, plan or agreement to which this article
3 applies, any entity regulated by this article shall provide as
4 benefits to all subscribers and members coverage for
5 emergency services. A policy, provision, contract, plan or
6 agreement may apply to emergency services the same
7 deductibles, coinsurance and other limitations as apply to
8 other covered services: *Provided*, That preauthorization
9 or precertification shall not be required.

10 (b) From the first day of July, one thousand nine
11 hundred ninety-eight, through the thirtieth day of June,
12 two thousand, the following provisions apply:

13 (1) Every insurer shall provide coverage for
14 emergency medical services, including pre-hospital
15 services, to the extent necessary to screen and to stabilize
16 an emergency medical condition. The insurer shall not
17 require prior authorization of the screening services if a
18 prudent layperson acting reasonably would have believed
19 that an emergency medical condition existed. Prior
20 authorization of coverage shall not be required for
21 stabilization if an emergency medical condition exists.
22 Payment of claims for emergency services shall be based
23 on the retrospective review of the presenting history and
24 symptoms of the covered person.

25 (2) An insurer that has given prior authorization for
26 emergency services shall cover the services and shall not
27 retract the authorization after the services have been
28 provided unless the authorization was based on a material
29 misrepresentation about the covered person's health
30 condition made by the referring provider, the provider of
31 the emergency services or the covered person.

32 (3) Coverage of emergency services shall be subject to
33 coinsurance, copayments and deductibles applicable under
34 the health benefit plan.

35 (4) The emergency department and the insurer shall
36 make a good faith effort to communicate with each other
37 in a timely fashion to expedite postevaluation or
38 poststabilization services in order to avoid material
39 deterioration of the covered person's condition.

40 (5) As used in this section:

41 (A) "Emergency medical services" means those
42 services required to screen for or treat an emergency
43 medical condition until the condition is stabilized,
44 including prehospital care;

45 (B) "Prudent layperson" means a person who is
46 without medical training and who draws on his or her
47 practical experience when making a decision regarding
48 whether an emergency medical condition exists for which
49 emergency treatment should be sought;

50 (C) "Emergency medical condition for the prudent
51 layperson" means one that manifests itself by acute
52 symptoms of sufficient severity, including severe pain,
53 such that the person could reasonably expect the absence
54 of immediate medical attention to result in serious
55 jeopardy to the individual's health, or, with respect to a
56 pregnant woman, the health of the unborn child; serious
57 impairment to bodily functions; or serious dysfunction of
58 any bodily organ or part;

59 (D) "Stabilize" means with respect to an emergency
60 medical condition, to provide medical treatment of the
61 condition necessary to assure, with reasonable medical
62 probability that no medical deterioration of the condition
63 is likely to result from or occur during the transfer of the
64 individual from a facility: *Provided*, That this provision
65 may not be construed to prohibit, limit or otherwise delay
66 the transportation required for a higher level of care than
67 that possible at the treating facility;

68 (E) "Medical screening examination" means an
69 appropriate examination within the capability of the
70 hospital's emergency department, including ancillary
71 services routinely available to the emergency department,
72 to determine whether or not an emergency medical
73 condition exists; and

74 (F) "Emergency medical condition" means a
75 condition that manifests itself by acute symptoms of
76 sufficient severity including severe pain such that the
77 absence of immediate medical attention could reasonably
78 be expected to result in serious jeopardy to the
79 individual's health or with respect to a pregnant woman
80 the health of the unborn child, serious impairment to
81 bodily functions or serious dysfunction of any bodily part
82 or organ.

83 (6) Each insurer shall provide the enrolled member
84 with a description of procedures to be followed by the
85 member for emergency services, including the following:

86 (A) The appropriate use of emergency facilities;

87 (B) The appropriate use of any prehospital services
88 provided by the health maintenance organization;

89 (C) Any potential responsibility of the member for
90 payment for nonemergency services rendered in an
91 emergency facility;

92 (D) Any cost-sharing provisions for emergency
93 services; and

94 (E) An explanation of the prudent layperson standard
95 for emergency medical condition.

96 (c) The commissioner shall require periodic reports
97 regarding emergency services utilization and costs
98 provided pursuant to the provisions of this article. Those
99 reports will be provided annually to the legislative
100 oversight commission on health and human resources
101 accountability.

CHAPTER 141

(H. B. 4595—By Delegates Seacrist, Pulliam, Compton, Warner,
Fantasia, Kelley and Pettit)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four-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 six-b, relating to creating an emergency medical services licensure fund, expenditures therefrom, and annual reporting.

Be it enacted by the Legislature of West Virginia:

That article four-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 six-b, to read as follows:

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.**§16-4C-6b. Establishment of emergency medical services agency licensure fund; authorized expenditures; annual report.**

1 (a) There is established in the state treasury a special
 2 revenue fund designated the "emergency medical services
 3 agency licensure fund", which shall be administered by
 4 the commissioner of the bureau of public health.

5 (b) All application and licensing fees collected
 6 pursuant to the provisions of section six-a of this article
 7 shall be deposited into the fund and expended in
 8 accordance with the licensure duties imposed in this
 9 article.

10 (c) Any remaining balance, including accrued interest,
 11 in the fund at the end of the fiscal year shall not revert to
 12 the general revenue fund, but shall remain in the account.

13 (d) On or before the first day of January of each year,
 14 the commissioner shall provide the Legislature with an
 15 annual fiscal year report on the emergency medical
 16 services agency licensure account including, but not
 17 limited to, the previous fiscal year's expenditures;
 18 projected expenditures for the current and next fiscal
 19 years; the number of agency licenses issued, denied,
 20 suspended or revoked; and, the status of licensure hearings
 21 and court actions.

CHAPTER 142

(H. B. 4693—By Delegates Staton, Amores, Hunt, Pino, Tomblin,
 Riggs and L. White)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and six, article one,
 chapter twenty-two of the code of West Virginia, one
 thousand nine hundred thirty-one, as amended, all relating

generally to allowing the department of environmental protection to promote pollution reduction and elimination; providing for findings, policy and purpose; allowing the director to establish a program to assist businesses with pollution reduction and elimination activities; providing duties and powers of the director; requiring release of information when human health or the environment are at risk; granting the director authority to propose legislative rules to implement the pollution reduction and elimination program; and deleting provisions relating to governor's discretion in appointing director or requiring secretary to act as director.

Be it enacted by the Legislature of West Virginia:

That sections one and six, article one, chapter twenty-two 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. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-1. Legislative findings; legislative statement of policy and purpose.

§22-1-6. Director of the division of environmental protection.

§22-1-1. Legislative findings; legislative statement of policy and purpose.

1 (a) The Legislature finds that:

2 (1) Restoring and protecting the environment is
3 fundamental to the health and welfare of individual
4 citizens, and our government has a duty to provide and
5 maintain a healthful environment for our citizens.

6 (2) The state has the primary responsibility for
7 protecting the environment; other governmental entities,
8 public and private organizations and our citizens have the
9 primary responsibility of supporting the state in its role as
10 protector of the environment.

11 (3) Governmental decisions on matters which relate to
12 the use, enhancement, preservation, protection and
13 conservation of the environment should be made after
14 public participation and public hearings.

15 (4) Efficiency in the wise use, enhancement,
16 preservation, protection and conservation of the
17 environment can best be accomplished by an integrated
18 and interdisciplinary approach in decision making and
19 would benefit from the coordination, consolidation and
20 integration of state programs and agencies which are
21 significantly concerned with the use, enhancement,
22 preservation, protection and conservation of the
23 environment.

24 (5) Those functions of government which regulate the
25 environment should be consolidated in order to
26 accomplish the purposes set forth in this article, to carry
27 out the environmental functions of government in the
28 most efficient and cost effective manner, to protect human
29 health and safety and, to the greatest degree practicable, to
30 prevent injury to plant, animal and aquatic life, improve
31 and maintain the quality of life of our citizens, and
32 promote economic development consistent with
33 environmental goals and standards.

34 (b) The Legislature declares that the establishment of
35 a division of environmental protection is in the public
36 interest and will promote the general welfare of the state of
37 West Virginia without sacrificing social and economic
38 development. It is the policy of the state of West Virginia,
39 in cooperation with other governmental agencies, public
40 and private organizations, and the citizens of this state, to
41 use all practicable means and measures to prevent or
42 eliminate harm to the environment and biosphere, to
43 create and maintain conditions under which man and
44 nature can exist in productive harmony, and fulfill the
45 social, economic and other requirements of present and
46 future generations. The purposes of this chapter are:

47 (1) To strengthen the commitment of this state to
48 restore, maintain and protect the environment;

49 (2) To consolidate environmental regulatory
50 programs in a single state agency;

51 (3) To provide a comprehensive program for the
52 conservation, protection, exploration, development,

53 enjoyment and use of the natural resources of the state of
54 West Virginia;

55 (4) To supplement and complement the efforts of the
56 state by coordinating state programs with the efforts of
57 other governmental entities, public and private
58 organizations and the general public; to improve the
59 quality of the environment, the public health and public
60 enjoyment of the environment, and the propagation and
61 protection of animal, aquatic and plant life, in a manner
62 consistent with the benefits to be derived from strong
63 agricultural, manufacturing, tourism and energy-
64 producing industries;

65 (5) Insofar as federal environmental programs require
66 state participation, to endeavor to obtain and continue state
67 primacy in the administration of such federally-mandated
68 environmental programs, and to endeavor to maximize
69 federal funds which may be available to accomplish the
70 purposes of the state and federal environmental programs
71 and to cooperate with appropriate federal agencies to meet
72 environmental goals;

73 (6) To encourage the increased involvement of all
74 citizens in the development and execution of state
75 environmental programs;

76 (7) To promote improvements in the quality of the
77 environment through research, evaluation and sharing of
78 information;

79 (8) To improve the management and effectiveness of
80 state environmental protection programs;

81 (9) To increase the accountability of state
82 environmental protection programs to the governor, the
83 Legislature and the public generally; and

84 (10) To promote pollution prevention by encouraging
85 reduction or elimination of pollutants at the source
86 through process modification, material substitutions, in-
87 process recycling, reduction of raw material use or other
88 source reduction opportunities.

***§22-1-6. Director of the division of environmental protection.**

1 (a) The director is the chief executive officer of the
2 division. Subject to section seven of this article and other
3 provisions of law, the director shall organize the division
4 into such offices, sections, agencies and other units of
5 activity as may be found by the director to be desirable
6 for the orderly, efficient and economical administration of
7 the division and for the accomplishment of its objects and
8 purposes. The director may appoint assistants, hearing
9 officers, clerks, stenographers and other officers, technical
10 personnel and employees needed for the operation of the
11 division and may prescribe their powers and duties and fix
12 their compensation within amounts appropriated
13 therefore.

14 (b) The director has the power to and may designate
15 supervisory officers or other officers or employees of the
16 division to substitute for him or her on any board or
17 commission established under this code or to sit in his or
18 her place in any hearings, appeals, meetings or other
19 activities with such substitute having the same powers,
20 duties, authority and responsibility as the director.
21 Additionally, the director has the power to delegate, as he
22 or she considers appropriate, to supervisory officers or
23 other officers or employees of the division his or her
24 powers, duties, authority and responsibility relating to
25 issuing permits, hiring and training inspectors and other
26 employees of the division, conducting hearings and
27 appeals and such other duties and functions set forth in
28 this chapter or elsewhere in this code.

29 (c) The director has responsibility for the conduct of
30 the intergovernmental relations of the division, including
31 assuring: (1) That the division carries out its functions in a
32 manner which supplements and complements the
33 environmental policies, programs and procedures of the
34 federal government, other state governments and other
35 instrumentalities of this state; and (2) that appropriate
36 officers and employees of the division consult with

***Clerk's Note:** This section was also amended by HB 2735 (Chapter 143), which passed prior to this act, and SB 145 (Chapter 144), which passed subsequent to this act.

37 individuals responsible for making policy relating to
38 environmental issues in the federal government, other state
39 governments and other instrumentalities of this state
40 concerning differences over environmental policies,
41 programs and procedures and concerning the impact of
42 statutory law and rules upon the environment of this state.

43 (d) The director has the authority to designate
44 employees in established programs within the division of
45 environmental protection to engage in bona fide pollution
46 prevention and compliance assistance activities as
47 designated by the director within the state. Disclosure to
48 the enforcement or other division personnel is not
49 required unless an imminent hazard to human health or
50 the environment exists. Pollution prevention and
51 compliance assistance may not interfere with current or
52 future enforcement actions by state or federal regulatory
53 agencies even if such assistance may result in compliance
54 although the director may modify agency enforcement
55 actions in light of a facility's implementation of pollution
56 prevention and waste minimization practices. The director
57 shall propose for legislative promulgation, legislative rules
58 pursuant to article three, chapter twenty-nine-a of this
59 code to implement the provisions of this subsection.

60 (e) In addition to other powers, duties and
61 responsibilities granted and assigned to the director by this
62 chapter, the director is hereby authorized and empowered
63 to:

64 (1) Sign and execute in the name of the state by the
65 "division of environmental protection" any contract or
66 agreement with the federal government or its departments
67 or agencies, subdivisions of the state, corporations,
68 associations, partnerships or individuals: *Provided*, That
69 the powers granted to the director to enter into agreements
70 or contracts and to make expenditures and obligations of
71 public funds under this subdivision shall not exceed or be
72 interpreted as authority to exceed the powers heretofore
73 granted by the Legislature to the various commissioners,
74 directors or board members of the various departments,
75 agencies or boards that comprise and are incorporated
76 into each secretary's department pursuant to the
77 provisions of chapter five-f of this code;

78 (2) Conduct research in improved environmental
79 protection methods and disseminate information to the
80 citizens of this state;

81 (3) Enter private lands to make surveys and
82 inspections for environmental protection purposes; to
83 investigate for violations of statutes or rules which the
84 division is charged with enforcing; to serve and execute
85 warrants and processes; to make arrests; issue orders,
86 which for the purposes of this chapter include consent
87 agreements; and to otherwise enforce the statutes or rules
88 which the division is charged with enforcing;

89 (4) Acquire for the state in the name of the "division
90 of environmental protection" by purchase, condemnation,
91 lease or agreement, or accept or reject for the state, in the
92 name of the division of environmental protection, gifts,
93 donations, contributions, bequests or devises of money,
94 security or property, both real and personal, and any
95 interest in such property;

96 (5) Provide for workshops, training programs and
97 other educational programs, apart from or in cooperation
98 with other governmental agencies, necessary to insure
99 adequate standards of public service in the division. The
100 director may also provide for technical training and
101 specialized instruction of any employee. Approved
102 educational programs, training and instruction time may
103 be compensated for as a part of regular employment. The
104 director is further authorized to pay out of federal or state
105 funds, or both, as such funds are available, fees and
106 expenses incidental to such educational programs,
107 training, and instruction. Eligibility for participation by
108 employees will be in accordance with guidelines
109 established by the director;

110 (6) Issue certifications required under 33 U.S.C.
111 §1341. Prior to issuing any such certification the director
112 shall solicit from the division of natural resources reports
113 and comments concerning the possible certification. The
114 reports and comments shall be directed from the division
115 of natural resources to the director for consideration; and

116 (7) Notwithstanding any provisions of this code to the
117 contrary, employ in-house counsel to perform all legal
118 services for the director and the division, including, but
119 not limited to, representing the director, any chief, the

120 division or any office thereof in any administrative
121 proceeding or in any proceeding in any state or federal
122 court. Additionally, the director may call upon the
123 attorney general for legal assistance and representation as
124 provided by law.

125 (f) The director shall be appointed by the governor,
126 by and with the advice and consent of the Senate, and
127 serves at the will and pleasure of the governor.

128 (g) At the time of his or her initial appointment, the
129 director shall be at least thirty years old and shall be
130 selected with special reference and consideration given to
131 his or her administrative experience and ability, to his or
132 her demonstrated interest in the effective and responsible
133 regulation of the energy industry and the conservation
134 and wise use of natural resources. The director shall have
135 at least a bachelor's degree in a related field and shall
136 have at least three years of experience in a position of
137 responsible charge in at least one discipline relating to the
138 duties and responsibilities for which the director will be
139 responsible upon assumption of the office of director.
140 The director shall not be a candidate for or hold any other
141 public office, shall not be a member of any political party
142 committee and shall immediately forfeit and vacate his or
143 her office as director in the event he or she becomes a
144 candidate for or accepts appointment to any other public
145 office or political party committee.

146 (h) The director shall receive an annual salary of
147 sixty-five thousand dollars and shall be allowed and paid
148 necessary expenses incident to the performance of his or
149 her official duties. Prior to the assumption of the duties of
150 his or her office, the director shall take and subscribe to
151 the oath required of public officers prescribed by section
152 five, article IV of the constitution of West Virginia and
153 shall execute a bond, with surety approved by the
154 governor, in the penal sum of ten thousand dollars, which
155 executed oath and bond shall be filed in the office of the
156 secretary of state. Premiums on the bond shall be paid
157 from the division funds.

CHAPTER 143

(H. B. 2735—By Delegates Amores, Rowe and Buchanan)

[Passed March 12, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying status of division of environmental protection in-house counsel.

Be it enacted by the Legislature of West Virginia:

That section six, 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.

*§22-1-6. Director of the division of environmental protection.

1 (a) The director is the chief executive officer of the
2 division. Subject to section seven of this article and other
3 provisions of law, the director shall organize the division
4 into such offices, sections, agencies and other units of
5 activity as may be found by the director to be desirable
6 for the orderly, efficient and economical administration of
7 the division and for the accomplishment of its objects and
8 purposes. The director may appoint assistants, hearing
9 officers, clerks, stenographers and other officers, technical
10 personnel and employees needed for the operation of the
11 division and may prescribe their powers and duties and fix
12 their compensation within amounts appropriated therefor.

13 (b) The director has the power to and may designate
14 supervisory officers or other officers or employees of the

*Clerk's Note: This section was also amended by HB 4693 (Chapter 142), and SB 145 (Chapter 144), which passed subsequent to this act.

15 division to substitute for him or her on any board or
16 commission established under this code or to sit in his or
17 her place in any hearings, appeals, meetings or other
18 activities with such substitute having the same powers,
19 duties, authority and responsibility as the director.
20 Additionally, the director has the power to delegate, as he
21 or she considers appropriate, to supervisory officers or
22 other officers or employees of the division his or her
23 powers, duties, authority and responsibility relating to
24 issuing permits, hiring and training inspectors and other
25 employees of the division, conducting hearings and
26 appeals and such other duties and functions set forth in
27 this chapter or elsewhere in this code.

28 (c) The director has responsibility for the conduct of
29 the intergovernmental relations of the division, including
30 assuring: (1) That the division carries out its functions in
31 a manner which supplements and complements the
32 environmental policies, programs and procedures of the
33 federal government, other state governments and other
34 instrumentalities of this state; and (2) that appropriate
35 officers and employees of the division consult with
36 individuals responsible for making policy relating to
37 environmental issues in the federal government, other state
38 governments and other instrumentalities of this state
39 concerning differences over environmental policies,
40 programs and procedures and concerning the impact of
41 statutory law and rules upon the environment of this state.

42 (d) In addition to other powers, duties and
43 responsibilities granted and assigned to the director by this
44 chapter, the director is hereby authorized and empowered
45 to:

46 (1) Sign and execute in the name of the state by the
47 "division of environmental protection" any contract or
48 agreement with the federal government or its departments
49 or agencies, subdivisions of the state, corporations,
50 associations, partnerships or individuals: *Provided*, That
51 the powers granted to the director to enter into agreements
52 or contracts and to make expenditures and obligations of
53 public funds under this subdivision shall not exceed or be
54 interpreted as authority to exceed the powers heretofore

55 granted by the Legislature to the various commissioners,
56 directors or board members of the various departments,
57 agencies or boards that comprise and are incorporated
58 into each secretary's department pursuant to the provisions
59 of chapter five-f of this code;

60 (2) Conduct research in improved environmental
61 protection methods and disseminate information to the
62 citizens of this state;

63 (3) Enter private lands to make surveys and
64 inspections for environmental protection purposes; to
65 investigate for violations of statutes or rules which the
66 division is charged with enforcing; to serve and execute
67 warrants and processes; to make arrests; issue orders,
68 which for the purposes of this chapter include consent
69 agreements; and to otherwise enforce the statutes or rules
70 which the division is charged with enforcing;

71 (4) Acquire for the state in the name of the "division
72 of environmental protection" by purchase, condemnation,
73 lease or agreement, or accept or reject for the state, in the
74 name of the division of environmental protection, gifts,
75 donations, contributions, bequests or devises of money,
76 security or property, both real and personal, and any
77 interest in such property;

78 (5) Provide for workshops, training programs and
79 other educational programs, apart from or in cooperation
80 with other governmental agencies, necessary to insure
81 adequate standards of public service in the division. The
82 director may also provide for technical training and
83 specialized instruction of any employee. Approved
84 educational programs, training and instruction time may
85 be compensated for as a part of regular employment. The
86 director is further authorized to pay out of federal or state
87 funds, or both, as such funds are available, fees and
88 expenses incidental to such educational programs,
89 training, and instruction. Eligibility for participation by
90 employees will be in accordance with guidelines
91 established by the director;

92 (6) Issue certifications required under 33 U.S.C.
93 §1341. Prior to issuing any such certification the director

94 shall solicit from the division of natural resources reports
95 and comments concerning the possible certification. The
96 reports and comments shall be directed from the division
97 of natural resources to the director for consideration; and

98 (7) Notwithstanding any provisions of this code to the
99 contrary, employ in-house counsel to perform all legal
100 services for the director and the division, including, but
101 not limited to, representing the director, any chief, the
102 division or any office thereof in any administrative
103 proceeding or in any proceeding in any state or federal
104 court, said counsel to be classified-exempt. Additionally,
105 the director may call upon the attorney general for legal
106 assistance and representation as provided by law.

107 (e) The director shall be appointed by the governor,
108 by and with the advice and consent of the Senate, and
109 serves at the will and pleasure of the governor: *Provided,*
110 That in lieu of appointing a director, the governor may
111 order the secretary to directly exercise the powers of the
112 director. The secretary shall designate the order in which
113 other officials of the division shall act for and perform the
114 functions of the secretary or the director during the
115 absence or disability of both the secretary and the director
116 or in the event of vacancies in both of those offices.

117 (f) At the time of his or her initial appointment, the
118 director shall be at least thirty years old and shall be
119 selected with special reference and consideration given to
120 his or her administrative experience and ability, to his or
121 her demonstrated interest in the effective and responsible
122 regulation of the energy industry and the conservation
123 and wise use of natural resources. The director shall have
124 at least a bachelor's degree in a related field and shall have
125 at least three years of experience in a position of
126 responsible charge in at least one discipline relating to the
127 duties and responsibilities for which the director will be
128 responsible upon assumption of the office of director.
129 The director shall not be a candidate for or hold any other
130 public office, shall not be a member of any political party
131 committee and shall immediately forfeit and vacate his or
132 her office as director in the event he or she becomes a
133 candidate for or accepts appointment to any other public
134 office or political party committee.

135 (g) The director shall receive an annual salary of
136 sixty-five thousand dollars and shall be allowed and paid
137 necessary expenses incident to the performance of his or
138 her official duties. Prior to the assumption of the duties of
139 his or her office, the director shall take and subscribe to
140 the oath required of public officers prescribed by section
141 five, article IV of the constitution of West Virginia and
142 shall execute a bond, with surety approved by the
143 governor, in the penal sum of ten thousand dollars, which
144 executed oath and bond shall be filed in the office of the
145 secretary of state. Premiums on the bond shall be paid
146 from the division funds.

CHAPTER 144

(Com. Sub. for S. B. 145—By Senators Anderson, Dittmar, Ross, Sharpe,
White, Bowman, Walker, Helmick, Schoonover,
McKenzie and Dugan)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article eleven of said chapter by adding thereto a new section, designated section seven-a, all relating generally to establishing a water quality certification program for surface mining operations; authorizing the director to enter into certification agreements; providing for certificating upon receipt of certain federal permits; requiring compliance with current environmental laws; providing circumstances when a certification is required; establishing mitigation ratios and fees for loss of waters of this state; requiring certain activities as part of certification requirements; establishing requirements and review of mitigation by the director; establishing application processing requirements for the director; providing for public participation of application approval process; providing that the legislative auditor conduct a performance review of the mitigation program;

requiring the director to conduct a study and enter into certain agreements; and authorizing the joint committee on government and finance to conduct a study and establishing guidelines for the study.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **Division of Environmental Protection.**
11. **Water Pollution Control Act.**

ARTICLE I. DIVISION OF ENVIRONMENTAL PROTECTION.

***§22-1-6. Director of the division of environmental protection.**

1 (a) The director is the chief executive officer of the
2 division. Subject to section seven of this article and other
3 provisions of law, the director shall organize the division
4 into such offices, sections, agencies and other units of
5 activity as may be found by the director to be desirable
6 for the orderly, efficient and economical administration of
7 the division and for the accomplishment of its objects and
8 purposes. The director may appoint assistants, hearing
9 officers, clerks, stenographers and other officers, technical
10 personnel and employees needed for the operation of the
11 division and may prescribe their powers and duties and fix
12 their compensation within amounts appropriated therefor.

13 (b) The director has the power to and may designate
14 supervisory officers or other officers or employees of the
15 division to substitute for him or her on any board or
16 commission established under this code or to sit in his or
17 her place in any hearings, appeals, meetings or other
18 activities with such substitute having the same powers,
19 duties, authority and responsibility as the director.
20 Additionally, the director has the power to delegate, as he
21 or she considers appropriate, to supervisory officers or

*Clerk's Note: This section was also amended by HB 2735 (Chapter 143) and HB 4693 (Chapter 142), which passed prior to this act.

22 other officers or employees of the division his or her
23 powers, duties, authority and responsibility relating to
24 issuing permits, hiring and training inspectors and other
25 employees of the division, conducting hearings and
26 appeals and such other duties and functions set forth in
27 this chapter or elsewhere in this code.

28 (c) The director has responsibility for the conduct of
29 the intergovernmental relations of the division, including
30 assuring:

31 (1) That the division carries out its functions in a
32 manner which supplements and complements the
33 environmental policies, programs and procedures of the
34 federal government, other state governments and other
35 instrumentalities of this state; and (2) that appropriate
36 officers and employees of the division consult with
37 individuals responsible for making policy relating to
38 environmental issues in the federal government, other state
39 governments and other instrumentalities of this state
40 concerning differences over environmental policies,
41 programs and procedures and concerning the impact of
42 statutory law and rules upon the environment of this state.

43 (d) In addition to other powers, duties and
44 responsibilities granted and assigned to the director by this
45 chapter, the director is hereby authorized and empowered
46 to:

47 (1) Sign and execute in the name of the state by the
48 "division of environmental protection" any contract or
49 agreement with the federal government or its departments
50 or agencies, subdivisions of the state, corporations,
51 associations, partnerships or individuals: *Provided*, That
52 the powers granted to the director to enter into agreements
53 or contracts and to make expenditures and obligations of
54 public funds under this subdivision may not exceed or be
55 interpreted as authority to exceed the powers heretofore
56 granted by the Legislature to the various commissioners,
57 directors or board members of the various departments,
58 agencies or boards that comprise and are incorporated
59 into each secretary's department pursuant to the provisions
60 of chapter five-f of this code;

61 (2) Conduct research in improved environmental
62 protection methods and disseminate information to the
63 citizens of this state;

64 (3) Enter private lands to make surveys and inspections
65 for environmental protection purposes; to investigate for
66 violations of statutes or rules which the division is charged
67 with enforcing; to serve and execute warrants and
68 processes; to make arrests; issue orders, which for the
69 purposes of this chapter include consent agreements; and
70 to otherwise enforce the statutes or rules which the division
71 is charged with enforcing;

72 (4) Acquire for the state in the name of the "division of
73 environmental protection" by purchase, condemnation,
74 lease or agreement, or accept or reject for the state, in the
75 name of the division of environmental protection, gifts,
76 donations, contributions, bequests or devises of money,
77 security or property, both real and personal, and any
78 interest in such property;

79 (5) Provide for workshops, training programs and
80 other educational programs, apart from or in cooperation
81 with other governmental agencies, necessary to ensure
82 adequate standards of public service in the division. The
83 director may also provide for technical training and
84 specialized instruction of any employee. Approved
85 educational programs, training and instruction time may
86 be compensated for as a part of regular employment. The
87 director is further authorized to pay out of federal or state
88 funds, or both, as such funds are available, fees and
89 expenses incidental to such educational programs, training
90 and instruction. Eligibility for participation by employees
91 will be in accordance with guidelines established by the
92 director;

93 (6) Issue certifications required under 33 U.S.C.
94 §1341 of the federal Clean Water Act and may enter into
95 agreements in accordance with the provisions of section
96 seven-a, article eleven of this chapter. Prior to issuing any
97 certification the director shall solicit from the division of
98 natural resources reports and comments concerning the
99 possible certification. The reports and comments shall be
100 directed from the division of natural resources to the
101 director for consideration; and

102 (7) Notwithstanding any provisions of this code to the
103 contrary, employ in-house counsel to perform all legal
104 services for the director and the division, including, but
105 not limited to, representing the director, any chief, the
106 division or any office thereof in any administrative
107 proceeding or in any proceeding in any state or federal
108 court. Additionally, the director may call upon the
109 attorney general for legal assistance and representation as
110 provided by law.

111 (e) The director shall be appointed by the governor, by
112 and with the advice and consent of the Senate, and serves
113 at the will and pleasure of the governor: *Provided*, That in
114 lieu of appointing a director, the governor may order the
115 secretary to directly exercise the powers of the director.
116 The secretary shall designate the order in which other
117 officials of the division shall act for and perform the
118 functions of the secretary or the director during the
119 absence or disability of both the secretary and the director
120 or in the event of vacancies in both of those offices.

121 (f) At the time of his or her initial appointment, the
122 director shall be at least thirty years old and shall be
123 selected with special reference and consideration given to
124 his or her administrative experience and ability, to his or
125 her demonstrated interest in the effective and responsible
126 regulation of the energy industry and the conservation
127 and wise use of natural resources. The director shall have
128 at least a bachelor's degree in a related field and shall have
129 at least three years of experience in a position of
130 responsible charge in at least one discipline relating to the
131 duties and responsibilities for which the director will be
132 responsible upon assumption of the office of director.
133 The director may not be a candidate for or hold any other
134 public office, may not be a member of any political party
135 committee and shall immediately forfeit and vacate his or
136 her office as director in the event he or she becomes a
137 candidate for or accepts appointment to any other public
138 office or political party committee.

139 (g) The director shall receive an annual salary of sixty-
140 five thousand dollars and shall be allowed and paid
141 necessary expenses incident to the performance of his or
142 her official duties. Prior to the assumption of the duties of
143 his or her office, the director shall take and subscribe to

144 the oath required of public officers prescribed by section
145 five, article IV of the constitution of West Virginia and
146 shall execute a bond, with surety approved by the
147 governor, in the penal sum of ten thousand dollars, which
148 executed oath and bond shall be filed in the office of the
149 secretary of state. Premiums on the bond shall be paid
150 from the division funds.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-7a. Certification agreements; required provisions; effective date.

1 If the applicant for the water quality certification seeks
2 certification of activities covered by the United States
3 army corps of engineers nationwide permit number
4 twenty-one or twenty-six issued in accordance with 33
5 U.S.C. §1344 and 33 C.F.R. Part 330 for use at or in
6 conjunction with a surface coal mining operation as
7 defined in section three, article three of this chapter, then
8 certification may be issued subject to the following
9 conditions:

10 (1) If the applicant's surface coal mining operation
11 will not impact waters of the state designated as national
12 resource waters and streams where trout naturally
13 reproduce and will not impact waters of the state which are
14 wetlands of one acre or more in size, and if the watershed
15 above the toe of the farthest downstream permanent
16 structure authorized pursuant to an United States army
17 corps of engineers nationwide permit number twenty-one
18 or twenty-six is less than four hundred eighty acres, then
19 the director may issue a water quality certification
20 containing certain conditions including, but not limited to,
21 the following:

22 (A) All earthwork operations shall be carried out so
23 that sediment runoff and soil erosion to waters of the state
24 are controlled and minimized. Best management practices
25 for water pollution control shall be used by the surface
26 coal mining operations;

27 (B) Heavy equipment, such as bulldozers, backhoes
28 and draglines, may not be used or operated within waters
29 of the state outside of the boundaries of a permanent
30 structure, unless that use cannot be avoided. If use of

31 heavy equipment within waters of the state outside the
32 boundaries of a permanent structure is unavoidable, then
33 the work shall be performed so as to minimize
34 resuspension of sediments and disturbance to substrates,
35 banks or riparian vegetation;

36 (C) Any riprap shall be of a composition that does not
37 cause a diminution of existing water quality by adversely
38 affecting the biological, chemical or physical properties of
39 waters of the state. If riprap is used, it shall be of a weight
40 and size using current and prudent engineering design;
41 and

42 (D) Removal of riparian vegetation outside the
43 boundaries of a permanent structure shall be minimized.

44 (2) If the applicant's surface coal mining operation
45 will not impact waters of the state designated as national
46 resource waters and streams where trout naturally
47 reproduce and will not impact waters of the state which are
48 wetlands of one acre or more in size, and if the watershed
49 above the toe of the farthest downstream permanent
50 structure authorized pursuant to an United States army
51 corps of engineers nationwide permit number twenty-one
52 or twenty-six is less than four hundred eighty acres, then
53 the director may issue a water quality certification. The
54 director shall require that all earthwork operations shall be
55 carried out so that sediment runoff and soil erosion to
56 waters of the state are controlled and minimized, and that
57 best management practices for water pollution control
58 shall be used by the surface coal mining operations.

59 (3) If the watershed above the toe of the farthest
60 downstream permanent structure authorized pursuant to
61 the United States army corps of engineers nationwide
62 permit number twenty-one or twenty-six is greater than or
63 equal to four hundred eighty acres, then the director may
64 further condition a water quality certification on a
65 requirement that the applicant mitigate the expected water
66 quality impacts under the following conditions:

67 (A) The water quality certification may require
68 mitigation at a ratio two acres for every one acre of
69 permanent loss of waters of the state on the permitted area,
70 except for waters of the state isolated as a result of the
71 permanent structure;

72 (B) For waters of the state isolated as a result of a
73 permanent structure, the maximum mitigation ratio shall
74 be five-tenths acre of mitigation area for every one acre of
75 those isolated waters;

76 (C) The director may accept mitigation on the
77 permitted area, mitigation off the permitted area,
78 mitigation banking of waters of the state, or any
79 combination thereof, or any other mitigation measure
80 acceptable to the director;

81 (D) Upon completion of the work required by an
82 agreement to conduct operations authorized by this
83 subsection, the surface coal mining operation shall obtain
84 a certification from a registered professional engineer that
85 all mitigation work specified in the agreement has been
86 completed in accordance with the conditions of the water
87 quality certification. The director shall promptly review
88 the certification and provide to the surface coal mining
89 operation with notice that all mitigation work has been
90 successfully completed, or that further mitigation work is
91 necessary to meet the conditions imposed by the water
92 quality certification. The mitigation amount may not
93 exceed two hundred twenty-five thousand dollars per acre
94 of stream disturbed. Those moneys shall be deposited in
95 the stream restoration fund under the jurisdiction of the
96 division of environmental protection and any expenditures
97 from this fund after the thirtieth day of June, one
98 thousand nine hundred ninety-eight, shall not be
99 authorized from collections but shall only be authorized
100 by appropriation by the Legislature.

101 (4) The director may issue a general certification if the
102 certification consistent with state and federal laws, rules
103 and regulations, for use of United States army corps of
104 engineers nationwide permit number twenty-one or
105 twenty-six for a road crossing on the permitted area
106 directly impacting less than two hundred linear feet of
107 waters of the state.

108 (5) The director shall confer with representatives of
109 the surface coal mining industry and representatives of
110 environmental organizations with an interest in water
111 quality in developing a manual of approval options for
112 mitigation on permitted areas, mitigation off permitted
113 areas and mitigation involving banking of waters of the
114 state.

115 (6) The director has twenty working days to make a
116 determination that an application for a water quality
117 certification is administratively complete or to give written
118 notification to the applicant of specific deficiencies. The
119 director has sixty working days to review an
120 administratively complete application for a water quality
121 certification, to issue or waive that certification, or to deny
122 that certification with specific deficiencies identified, and
123 to notify the applicant of the final determination:
124 *Provided*, That public comment and public participation
125 shall be in accordance with the certification requirements
126 set forth in article three, chapter twenty-two of this code.

127 (7) The performance evaluation and research division
128 of the legislative auditor's office shall conduct a
129 preliminary performance review of the mitigation
130 program of the division of environmental protection
131 during the interim of the Legislature in the year one
132 thousand nine hundred ninety-eight. The joint committee
133 on government and finance shall authorize a study of the
134 methods to determine values for stream mitigation. The
135 joint committee in authorizing the study shall set the
136 guidelines and issues to be studied. A biannual status
137 report as to the progress of study shall be provided to the
138 joint committee on government and finance on or before
139 the tenth day of July of each year and the tenth day of
140 January of each year until the study has been completed.
141 Within thirty days of completion, a copy of the study shall
142 be provided to the joint committee on government and
143 finance. The director shall by the thirty-first day of
144 December of each year provide a report to the joint
145 committee on government and finance on receipts and
146 expenditures from the stream restoration fund, the number
147 of acreage reclaimed by the division through the use of
148 these funds and the effectiveness of achieving stream
149 restoration through the payment of the mitigation
150 amounts into the fund in lieu of reclamation by the
151 certificate holder.

152 (8) The proposed surface coal mining operation shall
153 comply with all state and federal laws, rules and
154 regulations. The director shall review each mitigation
155 agreement signed on or after the ninth day of March, one
156 thousand nine hundred ninety-six, to ensure compliance
157 with all the provisions of this section.

CHAPTER 145

(Com. Sub. for H. B. 4578—By Delegates Ashley, Martin, Seacrist and Staton)

[Passed March 13, 1998; 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 eighteen, relating to requiring the director of the division of environmental protection to propose legislative rules; establishing a market-based air emission banking and trading program; and providing for emissions credits.

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 eighteen, to read as follows:

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-18. Market-based banking and trading programs, emissions credits; director to promulgate rules.

1 (a) Within one hundred eighty days after the effective
2 date of this section, the director shall propose legislative
3 rules for promulgation in accordance with article three,
4 chapter twenty-nine-a of this code, to the full extent
5 allowed by federal and state law, one or more rules
6 establishing a voluntary emissions trading and banking
7 program that provides incentives to make progress toward
8 the attainment or maintenance of the national ambient air
9 quality standards, the reduction or prevention of
10 hazardous air contaminants or the protection of human
11 health and welfare and the environment from air
12 pollution.

13 (b) Any person reducing air emission from a source to
14 a greater extent than otherwise required by state or federal
15 law is entitled to an emissions credit in the amount of the

16 excess emission reduction. The director shall establish a
17 system by legislative rule for quantifying, verifying and
18 registering all emissions reduction credits, which are
19 eligible for banking and trading if achieved after the first
20 day of January, one thousand nine hundred ninety-one, to
21 the extent permitted by federal law. Credits also shall be
22 available for permanent shutdowns: *Provided*, That the
23 credits may be transferred by the depositor to the state
24 office of economic development or to a public interest
25 group of the depositor's designation. Except for
26 voluntary reductions of nitrogen oxides, ten percent of
27 any emission credits registered with the director shall be
28 credited to an account for the benefit of the state and
29 retired from future use, if not used within ten years. All
30 other emissions reduction credits registered shall remain in
31 effect until used and debited or retired, if not used within
32 ten years. The director may charge a reasonable
33 transaction fee at the time any credits are registered and
34 shall deposit the fees in the air pollution control fund.

35 (c) Emission credits registered by a person in
36 accordance with subsection (b) of this section may be used
37 by the person to satisfy emission reduction requirements
38 that would otherwise be required under state or federal law
39 or the credits may be used for the same purpose at another
40 source, by the person who registered the credit or by
41 another person to whom the credit was transferred. Same
42 source use of banked emission credits requires prior
43 notification to the West Virginia office of air quality. The
44 rules may not prohibit the transfer of credits among
45 persons, but shall establish procedures by which transfers
46 are identified, tracked and accounted for in the program.
47 The division may establish the emissions trading program
48 as a state, multistate or regional program as long as the
49 program contributes to the goal of improving the air
50 quality in West Virginia and in the air quality region
51 where the source is located.

52 (d) The director may propose legislative rules for
53 promulgation in accordance with article three, chapter
54 twenty-nine-a of this code, establishing classes of volatile
55 organic compounds, and shall allow banking and trading
56 of different volatile organic compounds within the same

57 class. In lieu thereof, trading shall be allowed among all
58 volatile organic compounds where not inconsistent with
59 federal law and where similar degrees of hazard and
60 qualitative impact are anticipated with respect to air
61 quality. For any emissions banking and trading program
62 used for the purpose of making progress toward attaining
63 or maintaining the national ambient air quality standard
64 for ozone, the director may allow reductions of volatile
65 organic compounds to be substituted for required
66 reductions of oxides of nitrogen, or reductions of oxides
67 of nitrogen to be substituted for required reductions of
68 volatile organic compounds, where appropriate, if not
69 inconsistent with federal law.

CHAPTER 146

(Com. Sub. for H. B. 4228—By Mr. Speaker, Mr. Kiss, and Delegates Martin,
Varner, Staton, Kuhn, Collins and Linch)

[Passed March 13, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended by adding thereto a new article, designated article twenty-three, relating to prohibiting the state division of environmental protection from modifying any agency rule which implements the provisions of the united nations framework convention on global climate change treaty and its proposed reductions of limitations on greenhouse gases emissions; providing legislative findings relating thereto; prohibiting the division of environmental protection from entering into any agreement with any federal agency relating to limiting state emission of greenhouse gases resulting from the Kyoto protocol; allowing continuation of voluntary reduction efforts; and providing that this article be effective until a federal treaty supersedes the requirements of this article.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-two 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-three, to read as follows:

ARTICLE 23. KYOTO PROTOCOL; ENFORCEMENT PROHIBITIONS.

§22-23-1. Findings and purposes.

§22-23-2. Restrictions on state rules related to greenhouse gas emissions.

§22-23-1. Findings and purposes.

1 The West Virginia Legislature hereby finds that:

2 (a) The United States is a signatory to the one
3 thousand nine hundred ninety-two United Nations
4 Framework Convention on Global Climate Change
5 Treaty("FCCC");

6 (b) A protocol to expand the scope of the FCCC was
7 negotiated in December, one thousand nine hundred
8 ninety-seven in Kyoto, Japan ("Kyoto Protocol"),
9 requiring the United States to reduce emissions of
10 greenhouse gases such as carbon dioxide and methane by
11 seven percent from one thousand nine hundred ninety
12 emission levels during the years two thousand eight to two
13 thousand twelve, with similar reduction obligations for
14 other major industrial nations;

15 (c) Developing nations, including China, India,
16 Mexico, Indonesia and Brazil, are exempt from
17 greenhouse gas emission limitation requirements in the
18 FCCC;

19 (d) Developing nations refused in the Kyoto
20 negotiations to accept any new commitments for
21 greenhouse gas emission limitations through the Kyoto
22 Protocol or other agreements;

23 (e) With respect to new commitments under the FCCC,
24 President William J. Clinton pledged on the twenty-second
25 day of October, one thousand nine hundred ninety-seven,
26 that "The United States will not assume binding
27 obligations unless key developing nations meaningfully
28 participate in this effort";

29 (f) On the twenty-fifth day of July, one thousand nine
30 hundred ninety-seven, the United States Senate adopted
31 Senate Resolution Number Ninety-eight by a vote of
32 ninety-five to zero, expressing the sentiment of the Senate
33 that "the United States should not be a signatory to any
34 protocol to other agreement regarding, the Framework
35 Convention on Climate Change... which would require the
36 advice and consent of the Senate to ratification, and which
37 would mandate new commitments to mitigate greenhouse
38 gas emissions for the Developed Country Parties, unless
39 the protocol or other agreement also mandates specific
40 scheduled commitments within the same compliance
41 period to mitigate greenhouse gas emissions for
42 Developing Country Parties";

43 (g) The Kyoto Protocol fails to meet the tests
44 established for acceptance of new climate change
45 commitments by President Clinton and by United States
46 Senate Resolution Number ninety-eight;

47 (h) Achieving the emission reductions proposed by
48 the Kyoto Protocol would require more than a thirty-five
49 percent reduction in projected United States carbon
50 dioxide and other greenhouse gas emissions during the
51 period between two thousand eight to two thousand twelve;

52 (i) Developing countries exempt from emission
53 limitations under the Kyoto Protocol are expected to
54 increase their rates of fossil fuel use over the next two
55 decades, and to surpass the United States and other
56 industrialized countries in total emissions of greenhouse
57 gases;

58 (j) Increased emissions of greenhouse gases by
59 developing countries would offset any potential
60 environmental benefits associated with emissions
61 reductions achieved by the United States and by other
62 industrial nations;

63 (k) Economic impact studies by the United States
64 government estimate that legally binding requirements for
65 the reduction of United States greenhouse gases to one
66 thousand nine hundred ninety, emission levels would
67 result in the loss of more than nine hundred thousand jobs

68 in the United States, sharply increased energy prices,
69 reduced family incomes and wages, and severe losses of
70 output in energy-intensive industries important to the West
71 Virginia economy such as aluminum, steel, rubber,
72 chemicals and utilities;

73 (l) The failure to provide for commitments by
74 developing countries in the Kyoto Protocol creates an
75 unfair competitive imbalance between industrial and
76 developing nations, potentially leading to the transfer of
77 jobs and industrial development from the United States to
78 developing countries;

79 (m) Federal implementation of the Kyoto Protocol, if
80 ratified by the United States Senate, would entail new
81 congressional legislation whose form and requirements
82 cannot be predicted at this time, but could include national
83 energy taxes or emission control allocation schemes that
84 would preempt state-specific programs intended to reduce
85 emissions of greenhouse gases;

86 (n) Piecemeal or other uncoordinated state regulatory
87 initiatives intended to reduce emissions of greenhouse
88 gases may be inconsistent with subsequent congressional
89 determinations concerning the Kyoto Protocol, and with
90 federal legislation implementing the Kyoto Protocol;

91 (o) Individual state responses to the Kyoto Protocol,
92 including development of new regulatory programs
93 intended to reduce greenhouse gas emissions, are
94 premature prior to Senate ratification of that Protocol, in
95 its current or amended form, and congressional enactment
96 of related implementing legislation.

§22-23-2. Restrictions on state rules related to greenhouse gas emissions.

1 (a) The West Virginia division of environmental
2 protection shall refrain from proposing or promulgating
3 any new rule intended, in whole or in part, to reduce
4 emissions of greenhouse gases from the residential,
5 commercial, industrial, electric utility or transportation
6 sectors in order to comply with the Kyoto Protocol;

7 (b) In the absence of an act of the Legislature of the
8 state of West Virginia approving same, the West Virginia
9 division of environmental protection shall not submit to
10 the United States environmental protection agency or to
11 any other agency of the federal government any legally
12 enforceable commitments related to the reduction of
13 greenhouse gases, as such gases are defined by the Kyoto
14 Protocol;

15 (c) Nothing in this section shall be construed to limit
16 or to impede state or private participation in any on-going
17 voluntary initiatives to reduce emissions of greenhouse
18 gases, including, but not limited to, the federal
19 environmental protection agency's "Green Lights"
20 program, the federal department of energy's climate
21 challenge program, and similar state and federal initiatives
22 relying on voluntary participation.

23 (d) This article shall remain in effect until repealed by
24 an act of the Legislature of the state of West Virginia, or
25 until ratification of the Kyoto Protocol by the United
26 States Senate and enactment of federal legislation
27 implementing the Kyoto Protocol.

CHAPTER 147

(S. B. 96—By Senators Oliverio, Tomblin, Mr. President, Craigo,
Buckalew, Kessler, Minear, Sprouse, Kimble, Ball, Ross,
Dittmar, Anderson, Sharpe, Walker, Dugan, Love,
McKenzie, Schoonover and Hunter)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-two 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 creating a revolving low-interest environmental loan program for small businesses; establishing eligibility, qualifications, requirements, conditions, terms and processing procedures; providing

program funding; and setting forth legislative findings and intent.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-two 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. SMALL BUSINESS ENVIRONMENTAL LOAN PROGRAM.

§22-24-1. Legislative findings, intent and purpose.

§22-24-2. Definitions.

§22-24-3. Loan application requirements.

§22-24-4. Loan conditions.

§22-24-5. Small business environmental revolving loan account.

§22-24-6. Loan processing.

§22-24-1. Legislative findings, intent and purpose.

1 The Legislature hereby finds and declares that, in this
 2 state the protection and improvement of the environment,
 3 and the sustainability of small businesses, would be
 4 collectively enhanced by the establishment of a revolving
 5 low-interest small business environmental loan program, to
 6 provide partial relief from the burden small businesses
 7 face from compliance with existing and new state and
 8 federal environmental protection rules and regulations.
 9 The Legislature intends, in providing such a loan program
 10 for small businesses, that the program will further enable
 11 small businesses to aggressively comply with or exceed
 12 environmental obligations and requirements and thereby
 13 continue as a positive economic force in the state of West
 14 Virginia.

§22-24-2. Definitions.

1 As used in this article, the following words have the
 2 meanings ascribed to them.

3 (a) "Authority" means the West Virginia economic
 4 development authority established in article fifteen,
 5 chapter thirty-one of this code.

6 (b) "Director" means the director of the West Virginia
 7 division of environmental protection.

8 (c) "Division" means the West Virginia division of
9 environmental protection as established in article one of
10 this chapter.

11 (d) "Eligible borrower" means a small business as
12 defined in subsection (g) of this section that:

13 Is required or needs to conduct a qualifying
14 environmental project as defined in subsection (f) of this
15 section.

16 An eligible borrower also means a small business that
17 desires to refinance the remaining balance of a debt that
18 was incurred between the first day of January, one
19 thousand nine hundred ninety-two, and the effective date
20 of this article, and that meets, or would have met, at the
21 time of the original loan application, the requirements of
22 this subsection. The refinancing option is not available
23 for applications received by the authority more than two
24 years after the effective date of this article. Funds
25 available for refinanced loans may not, at any time, exceed
26 forty percent of the total funds available plus the
27 outstanding balance of funded loans.

28 (e) "Environmental project" means:

29 (1) Any environmental equipment purchases and
30 installations thereof;

31 (2) Any associated transportation, technical or
32 consulting services for installation or modification of
33 environmental equipment;

34 (3) Any equipment, purchase and installation
35 necessary to effect a process change that in the director's
36 judgment yields significant environmental benefits; or

37 (4) Any combination of subdivision (1), (2) or (3) of
38 this subsection.

39 (f) "Qualifying environmental project" means an
40 environmental project as described in subsection (e) of
41 this section that is to be undertaken at a location in West
42 Virginia and used for the purpose of:

43 (1) Effecting pollution elimination, minimization,
44 prevention, recycling or abatement measures;

45 (2) Improving conditions or operations
46 environmentally or substantially improving compliance
47 with local, city, state, interstate or federal rules, regulations
48 or laws pertaining to the environment and human health;
49 or

50 (3) Purchasing equipment to establish environmental
51 information, computing, consulting or laboratory services.

52 (g) "Small business" means a business that:

53 (1) Is properly registered with the appropriate
54 agencies to do business in this state;

55 (2) Is actively conducting business in this state;

56 (3) Is current with all workers' compensation and
57 unemployment premiums and state taxes; and

58 (4) Employs less than fifty full-time employees as
59 defined in subsection (h) of this section within the entire
60 company, business or corporation inside and outside this
61 state.

62 (h) "Total number of full-time employees" means all
63 full-time employees, plus all part-time employees counted
64 as full-time employee equivalents, plus all full and part-
65 time equivalent employees providing any type of service
66 by contract or by any other arrangement.

§22-24-3. Loan application requirements.

1 (a) Any eligible small business may apply for a small
2 business environmental loan by submitting two identical
3 copies of an application to the authority, on forms
4 provided by the authority.

5 (b) The director shall determine environmental
6 program qualification as provided by section two of this
7 article, and based on the following factors:

8 (1) Pertinent environmental benefits of the project,
9 including expected eliminations or reductions of regulated
10 pollutants, solid wastes, hazardous wastes and in the use of

11 toxic and hazardous chemicals, as well as expected
12 benefits from recycling programs, and pollution
13 prevention measures;

14 (2) The degree of compliance with applicable
15 environmental rules, regulations, laws and statutes; and

16 (3) Borrower's past environmental compliance
17 performance, including history of compliance, violations,
18 permitting difficulties and reporting record.

§22-24-4. Loan conditions.

1 A loan made to an eligible borrower as provided by
2 this article shall:

3 (a) Have an interest rate not to exceed one half of the
4 federal prime interest rate, but in no case may the annual
5 rate be less than four percent;

6 (b) Have repayment terms not to exceed ten years;

7 (c) Have collateral terms acceptable to the authority;
8 and

9 (d) Be in an amount of not less than five thousand
10 dollars nor more than one hundred fifty thousand dollars;
11 but in no case may the amount exceed ninety percent of
12 the cost of the project.

§22-24-5. Small business environmental revolving loan account.

1 The small business environmental revolving loan
2 account is hereby established in the authority and will be
3 made available for environmental loans defined by this
4 article for any type of qualifying environmental project.
5 Loans may be issued only during the five-year period
6 commencing on the effective date of this article unless the
7 time period is otherwise extended by the Legislature. The
8 administration of this loan program is authorized for one
9 year beyond the last payment date for any outstanding
10 loan.

11 The environmental revolving loan account shall be
12 funded by appropriations from the Legislature and, at the
13 director's discretion, by using portions of penalties and
14 fines that are collected from various sources, including

15 violators that economically benefited by noncompliance:
16 *Provided*, That the maximum value of all active
17 outstanding loans, combined with funds in reserve at any
18 time, may not exceed five million dollars.

19 Interest income from the small business environmental
20 loan program as well as appropriations from the
21 Legislature shall be used to defray the operating costs of
22 the program, including, but not limited to, administration,
23 facilities, salaries and travel. Any excess interest income
24 shall be used to reestablish the loan program to its
25 maximum authorized limit of five million dollars, with
26 additional excesses returned to the state's general revenue
27 account. If interest income is not projected to provide the
28 necessary operating funds for all aspects of the small
29 business environmental loan program for any one year,
30 the authority shall request the necessary funding in the
31 annual budget request.

§22-24-6. Loan processing.

1 The authority shall: (a) Process small business
2 environmental loan applications and assure that a copy is
3 forwarded to the director for eligibility review; (b)
4 confirm that the director has certified the environmental
5 acceptability of the project; (c) verify the borrower's
6 eligibility as provided by section two of this article; (d)
7 evaluate the borrower's financial stability, needs and
8 ability to repay based upon an appropriate examination of
9 financial information, including, but not limited to,
10 income and credit histories, income tax returns, financial
11 statements and collateral offered to secure the loan; (e)
12 process loans for payments; and (f) establish loan
13 processing procedures that include, but are not limited to,
14 loan approvals, accounting, authorizations for payments,
15 loan repayments and auditing of the small business
16 environmental loan program. The authority shall
17 implement reporting requirements that include the total
18 number of full-time employees of the loan recipient on
19 the thirtieth day of September of each calendar year for
20 the term of the loan.

21 The authority shall act upon loan requests within
22 forty-five days of receipt of a complete application as
23 determined by the authority.

CHAPTER 148

(Com. Sub. for H. B. 4312—By Mr. Speaker, Mr. Kiss, and Delegates
Jenkins, Staton, Varner, Trump and Dalton)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, 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 four-a, relating to the recording of memoranda of trust with the clerk of the county commission; and specifying requirements for memoranda of trust.

Be it enacted by the Legislature of West Virginia:

That article one, 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 four-a, to read as follows:

ARTICLE 1. CREATION OF ESTATES GENERALLY.

§36-1-4a. Memorandum of trust; requirements; recordation.

1 (a) A memorandum of trust that satisfies both of the
2 following requirements may be presented for recordation
3 in the office of the clerk of the county commission of any
4 county in which real property that is subject to the trust is
5 located:

6 (1) The memorandum shall be executed by the
7 currently acting trustee or trustees of the trust, and, if
8 living, by the settlor or settlors, personally, or by a duly
9 appointed attorney-in-fact or conservator of the settlor or
10 settlors, and shall be acknowledged in the manner a deed
11 must be acknowledged in order to be recorded.

12 (2) The memorandum shall contain at least the
13 following information with respect to the trust:

- 14 (i) The existence of the trust and the date of the trust;
- 15 (ii) The names and mailing addresses of the settlor or
16 settlors and of the currently acting trustee or trustees of
17 the trust, the names and mailing addresses of any
18 successor trustee or trustees, and the circumstances under
19 which any successor trustee or trustees will assume trust
20 powers;
- 21 (iii) The revocability or irrevocability of the trust; and
- 22 (iv) A verbatim recitation of the trust powers specified
23 in the trust relative to the acquisition, sale, disposition, or
24 encumbering of real property by the trustee or trustees or
25 the conveyance or disposition of real property by the
26 trustee or trustees and any restrictions upon those powers,
27 or a statement that the trust powers include at least all
28 those trust powers contained in section three, article five-a,
29 chapter forty-four of this code as they existed at the date
30 of the execution of the trust.
- 31 (b) A memorandum of trust may also set forth the
32 substance or actual text of any or all of the provisions of
33 the trust.
- 34 (c) A memorandum of trust that satisfies the
35 provisions of this section constitutes notice only of the
36 information contained therein.
- 37 (d) Upon the presentation of a memorandum of trust
38 that satisfies the provisions of this section and the payment
39 of the requisite fee, the clerk shall record the
40 memorandum of trust with the records of deeds and list it
41 in the grantor index under the name of the settlor or
42 settlors and in the grantee index under the names of the
43 then-acting trustee or trustees.
- 44 (e) Nothing herein shall be construed or deemed to
45 require recordation of any original trust agreement or
46 other governing instrument which establishes the trust
47 identified in the memorandum of trust.

CHAPTER 149

(Com. Sub. for H. B. 4309—By Mr. Speaker, Mr. Kiss, and Delegates
Jenkins, Staton, Varner, Trump and Dalton)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article one, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article five, chapter forty-four of said code by adding thereto a new section, designated section fifteen, all relating to the nonmerger of trusts; providing that trust estates are subject to the debts of the beneficiaries; permitting spendthrift trusts; and preventing the merger of trusts in which the trustee is also a beneficiary of the trust.

Be it enacted by the Legislature of West Virginia:

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

Chapter

36. Estates and Property.

44. Administration of Estates and Trusts.

CHAPTER 36. ESTATES AND PROPERTY.

ARTICLE 1. CREATION OF ESTATES GENERALLY.

§36-1-18. Trust estates; debts of beneficiaries; spendthrift trusts; nonmerger of trusts.

1 Estates of every kind in real or personal property,
2 holden or possessed in trust, shall be subject to the debts
3 and charges of the persons to whose use or for whose
4 benefit they are holden or possessed, as they would be if
5 those persons owned the like interest in the things holden
6 or possessed, as in the uses or trusts thereof; but where the
7 creator of the trust has expressly so provided in the
8 instrument or conveyance creating the trust, real or
9 personal property may be held in trust upon condition

10 that the income therefrom shall be applied by the trustee
11 to the support and maintenance of a beneficiary or
12 beneficiaries of the trust in being at the time of the
13 creation of the trust, other than the creator of the trust, for
14 the life of such beneficiary or beneficiaries, without being
15 subject to the liabilities of, or alienation by, such
16 beneficiary or beneficiaries: *Provided*, That no trust,
17 whenever executed or created, may be deemed to be
18 invalid or terminated, and title to trust assets may not be
19 merged, merely because a creditor asserts that the trustee
20 or trustees are the same person or persons as the
21 beneficiaries of the trust.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

§44-5-15. Nonmerger of trusts.

- 1 (a) No trust is invalid or terminated, and title to trust
2 assets is not merged, because the trustee or trustees are the
3 same person or persons as the beneficiaries of the trust.
- 4 (b) This section applies to all trusts whenever executed
5 or created.

CHAPTER 150

(Com. Sub. for H. B. 4311—By Mr. Speaker, Mr. Kiss, and Delegates
Jenkins, Staton, Varner, Trump and Dalton)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article one,
chapter forty-four of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to
the appraisal of a decedent's estate; and establishing a

ninety-day time period for filing an appraisal of a decedent's estate.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article one, chapter forty-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. PERSONAL REPRESENTATIVES.

§44-1-14. Appraisal of estates in triplicate; disposition; authority of appraisers to act throughout the state; hiring of experts.

1 The real and personal estate of every deceased person,
2 or in which such deceased person had an interest at the
3 time of his or her death, shall be appraised by the personal
4 representative of such deceased person. Such personal
5 representative, after first taking an oath for the purpose,
6 shall list and appraise at its real and actual value all the real
7 estate and all the tangible property of every description
8 owned by the deceased at the time of his or her death,
9 including, but not limited to, all real estate and tangible
10 property in which the decedent had an interest as joint
11 tenant or otherwise or in which any beneficial interest
12 passes to another person by reason of the death of such
13 decedent whose estate is being so appraised and
14 irrespective of whether such real estate or tangible
15 property is subject to administration and located in each
16 county or the counties, as the case may be. The personal
17 representative shall also list and appraise at its real and
18 actual value all of the decedent's intangible property of
19 every description, including moneys, credits, investments,
20 annuities, life insurance policies, (irrespective of whether
21 such policies are payable to named beneficiaries or in trust
22 or otherwise), judgments and decrees for moneys, notes,
23 bonds, accounts and all other evidences of debt, whether
24 owing to him or her by persons or corporations in or out
25 of the state, and the number and value, including both the
26 par value, if any, and the actual value, of any shares of

27 capital stock owned by the decedent in any corporation,
28 and every other item of intangible property of whatsoever
29 nature or kind, including all intangible property in which
30 the decedent had an interest as joint tenant or otherwise or
31 in which any beneficial interest passes to another by
32 reason of the death of such decedent, and irrespective of
33 whether such intangible property is subject to
34 administration and whether located in this state or
35 elsewhere. Any real estate or interest therein so appraised
36 shall be identified with particularity and description, shall
37 identify the source of title in the decedent and the location
38 of such realty for purposes of real property ad valorem
39 taxation. In addition to all other information required by
40 law, the appraisement shall contain and include a
41 questionnaire designed and formulated by the tax
42 commissioner which is designed for the purpose of
43 examining the personal representative to determine that he
44 or she has made a thorough and proper search and
45 investigation as to the existence and value of each and
46 every kind and species of property required to be
47 included within, and subject to appraisement by, the
48 provisions of this or any other section of this code, which
49 said questionnaire shall be completed and answered upon
50 the oath or adjuration of the personal representative or
51 fiduciary.

52 The appraisement, list and questionnaire aforesaid
53 shall be executed in triplicate and shall be signed by the
54 personal representative and be returned to the clerk of the
55 county commission by whom such personal representative
56 was appointed or to the fiduciary supervisor within ninety
57 days of the date of qualification of the personal
58 representative. Such clerk or supervisor shall inspect such
59 appraisement, list and questionnaire, see that the same are
60 in proper form, and that all property, if any, suggested by
61 the questionnaire is included within the appraisement. If
62 such appraisement, list and questionnaire are returned to a
63 fiduciary supervisor within ten days after they are received
64 and approved by him or her, such supervisor shall deliver
65 two copies of the same to the clerk of the county

66 commission. Upon receipt of the appraisal, list and
67 questionnaire, the clerk of the county commission shall
68 record the same, with the certificate of approval of the
69 supervisor, and mail one copy of the same to the tax
70 commissioner of West Virginia. The date of return of an
71 appraisal shall be entered by the clerk of the county
72 commission in his or her record of fiduciaries. Every
73 such appraisal and list shall be prima facie evidence of
74 the value of the property embraced therein, and that the
75 personal estate embraced therein which is subject to
76 administration came to the hands of the personal
77 representative. No person shall be permitted by any
78 means whatsoever to avoid the appraisal and listing of
79 his or her estate and of all property, real, tangible and
80 intangible, of whatsoever nature and kind, in which a
81 beneficial interest passes to another by reason of the death
82 of the decedent and irrespective of whether such property
83 is subject to administration as herein provided, nor shall
84 his or her personal representative be permitted to do so.
85 Any personal representative who fails, refuses or declines
86 to comply with the provisions of this section shall be
87 guilty of a misdemeanor and, upon conviction thereof,
88 shall be fined not less than twenty-five dollars nor more
89 than five hundred dollars.

90 Every personal representative shall have authority to
91 retain or hire the services of such expert or experts as may
92 be deemed appropriate to assist and advise him or her in
93 and about his or her duties in appropriately and accurately
94 appraising all or any part of the assets or property to be
95 appraised according to the provisions of this section.
96 Such expert or experts so retained or hired shall be
97 compensated a reasonable sum by the personal
98 representative from the assets coming into his or her hands
99 or of which he or she is embraced, which compensation
100 and the reasonableness thereof shall be subject to review
101 and approval by the county commission, upon
102 recommendation of the fiduciary supervisor.

CHAPTER 151

(Com. Sub. for H. B. 4310—By Mr. Speaker, Mr. Kiss, and Delegates
Jenkins, Staton, Varner, Trump and Dalton)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and twenty-nine, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to revising the short form settlement of a decedent's estate; providing for fees and expenses of fiduciary commissioners; establishing certain instances in which estates may proceed without reference to a fiduciary commissioner and requiring publication of notice in such instances; requiring unpaid creditors to file a claim in order to force reference to a fiduciary commissioner; permitting personal representatives to approve such claims and avoid reference to a fiduciary commissioner; addressing and clarifying certain language with respect to waivers of final settlement; and requiring unpaid creditors to file claims against an estate with the fiduciary commissioner within ninety days of the first notice publication date.

Be it enacted by the Legislature of West Virginia:

That sections one, two and twenty-nine, article two, chapter forty-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 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.

- §44-2-1. Reference of decedents' estates; proceedings thereon.
§44-2-2. Fiduciary commissioner to publish notice of time for receiving claims against decedents estates.
§44-2-29. Waiver of final settlement.
§44-2-1. Reference of decedents' estates; proceedings thereon.

1 (a) Upon the return of the appraisalment by the
2 personal representative to the county clerk, the estate of
3 his or her decedent shall, by order of the county
4 commission to be then made, be referred to a fiduciary
5 commissioner for proof and determination of debts and
6 claims, establishment of their priority, determination of the
7 amount of the respective shares of the legatees and
8 distributees, and any other matter necessary and proper
9 for the settlement of the estate: *Provided*, That in counties
10 where there are two or more such commissioners, the
11 estates of decedents shall be referred to such
12 commissioners in rotation, in order that, so far as possible,
13 there may be an equal division of the work.
14 Notwithstanding any other provision of this code to the
15 contrary, a fiduciary commissioner may not charge to the
16 estate a fee greater than three hundred dollars and
17 expenses for the settlement of an estate, except upon: (i)
18 Approval of the personal representative; or (ii) a
19 determination by the county commission after a hearing
20 that complicating issues or problems attendant to such
21 settlement substantiate the allowance of a greater fee.

22 (b) If the personal representative shall deliver to the
23 clerk an appraisalment of the assets of the estate showing
24 their value to be fifty thousand dollars or less, exclusive of
25 real estate specifically devised and nonprobate assets, or, if
26 it appears to the clerk that there is only one beneficiary of
27 the probate estate and that the beneficiary is competent at
28 law, the clerk shall record said appraisalment and publish a
29 notice once a week for two successive weeks in a
30 newspaper of general circulation within the county of
31 administration of the estate, substantially as follows:

32 NOTICE OF PENDING
33 OR UNADMINISTERED ESTATE

34 "Notice is hereby given that settlement of the estate of
35 the following named decedents will proceed without
36 reference to a fiduciary commissioner unless within ninety
37 days from the first publication of this notice such
38 reference is requested by a party in interest or an unpaid

39 creditor files a claim and good cause is shown to support
40 reference to a fiduciary commissioner.

41 Dated this _____ day of _____, _____.

42 _____

43

Clerk of the County Commission of

44

_____ County, West Virginia.”

45 The clerk shall charge to the personal representative,
46 and receive, the reasonable cost of publication of the
47 notice. If an unpaid creditor files a claim against the
48 estate, the personal representative has twenty days after the
49 date of the filing of a claim against the estate of the
50 decedent to approve or reject the claim before the estate is
51 referred to a fiduciary commissioner. If the personal
52 representative approves all claims as filed, then no
53 reference may be made.

54 The personal representative shall, within a reasonable
55 time after the date of recordation of the appraisalment in
56 such case: (i) File a waiver of final settlement in
57 accordance with the provisions of section twenty-nine of
58 this article; or (ii) make a report to the clerk of his
59 receipts, disbursements and distribution and submit an
60 affidavit stating that all claims against the estate for
61 expenses of administration, taxes and debts of the
62 decedent have been paid in full. The clerk shall collect a
63 fee of ten dollars for recording such report and affidavit,
64 and for publication of the notice hereafter provided, the
65 fee to be in lieu of any other fee provided by law for
66 recording a report of settlement of the accounts of a
67 decedent's personal representative. At least once a month
68 the clerk shall cause to be published once a week for two
69 successive weeks in a newspaper of general circulation
70 within the county of the administration of the estate, with
71 regard to reports received in the prior month, a notice
72 substantially as follows:

73

NOTICE OF FILING OF ESTATE ACCOUNTS
OR WAIVERS OF FINAL SETTLEMENT

74

75 "I have before me the account or waiver of final
76 settlement of the executor(s) or administrator(s) of the
77 estates of the following deceased persons:

78 _____

79 _____

80 _____

81 Any person having a claim against the estate of any
82 such deceased person, or who has any beneficial interest
83 therein, may appear before me or the county commission
84 at any time within thirty days after first publication of this
85 notice, and request reference of said estate to a
86 commissioner or object to confirmation of the accounting.
87 In the absence of such request or objection, the
88 accounting may be approved by the county commission.

89 _____
90 Clerk of the County Commission

91 of _____ County, W. Va."

92 If no such request or objection is made to the clerk or
93 to the county commission, the county commission may
94 confirm the report of the personal representative, and
95 thereupon the personal representative and his surety shall
96 be discharged; but if such objection or request is made,
97 the county commission may confirm the accounting and
98 record the same, or may refer the estate to one of its
99 fiduciary commissioners: *Provided*, That the personal
100 representative has twenty days after the date of the filing
101 of a claim or claims against the estate of the decedent to
102 approve or reject the claim before the estate is referred to
103 a fiduciary commissioner and if all claims are approved as
104 filed, then no reference may be made.

§44-2-2. Fiduciary commissioner to publish notice of time for receiving claims against decedents estates.

1 Each month the fiduciary commissioner shall publish
2 a notice designating the date by which claims against the
3 estate or estates referred to him during the previous
4 calendar month must be presented. The date so
5 designated by the fiduciary commissioner shall be ninety

6 days from the date of the first publication of the notice
7 hereinafter set forth. The notice shall be to the following
8 effect:

9 To the Creditors and Beneficiaries of the Estate(s) of
10 _____
11 _____

12 (Naming the decedent or decedents, as the case may be)

13 All persons having claims against the estate(s) of the
14 said _____,

15 (Naming the decedent or decedents, as the case may
16 be) deceased, whether due or not, are notified to exhibit
17 same, with the voucher thereof, legally verified, to the
18 undersigned, at (designating the place) on or before the
19 ____ day of _____, otherwise they may
20 by law be excluded from all benefit of said estate(s). All
21 beneficiaries of said estate(s) may appear on or before
22 said day to examine said claims and otherwise protect their
23 interests.

24 Given under my hand this ____ day of _____

25 _____
26 Fiduciary Commissioner,

27 County of _____

28 Such notice shall be published as a Class II legal
29 advertisement in compliance with the provisions of article
30 three, chapter fifty-nine of this code, and the publication
31 area for such publication shall be the county. The
32 publication of such notice shall be equivalent to personal
33 service on the creditors, distributees and legatees, or any of
34 them.

§44-2-29. Waiver of final settlement.

1 In all estates of decedents subject to administration
2 under this article where a release of lien, if required by the
3 provisions of article eleven, chapter eleven of this code,
4 has been filed with the clerk and more than ninety days
5 have elapsed since the filing of any notice required by the
6 provisions of this article, even though such estate may
7 have been referred to a fiduciary commissioner, a final

8 settlement may be waived by a waiver containing an
9 affidavit made by the personal representative, that the time
10 for filing of claims has expired, that no known and unpaid
11 claims exist against the estate, and that all beneficiaries
12 have each been advised of the share or shares to which
13 each is entitled from the estate and signed by every
14 beneficiary.

15 In the case of a deceased beneficiary or a beneficiary
16 under a disability, the duly qualified fiduciary or agent of
17 such beneficiary may sign in lieu of such beneficiary. A
18 fiduciary or agent signing such waiver shall be responsible
19 to the beneficiary for any loss resulting from such waiver.

20 The waiver shall be recorded as in the case of and in
21 lieu of a settlement as provided in section one, article two
22 of this chapter.

CHAPTER 152

(S. B. 771—By Senators Wooton, Ball, Bowman,
Dittmar, Kessler, Ross and Schoonover)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and four, article four, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the terms of office and the appointment of family law masters; extending the current terms of office; creating new terms of office; extending the term of office of the temporary law master assigned to Marshall County; and providing for temporary assignments of family law masters.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PROCEEDING BEFORE A MASTER.

§48A-4-1. Appointment of family law masters; term of office; vacancy; removal.

§48A-4-4. Assignment of family law masters by geographical regions.

§48A-4-1. Appointment of family law masters; term of office; vacancy; removal.

1 (a) The family law masters holding office on the first
2 day of June, one thousand nine hundred ninety-eight, by
3 virtue of appointments made under the prior enactments
4 of this article shall continue their service for a term of
5 office ending on the thirtieth day of June, one thousand
6 nine hundred ninety-nine. Before the first day of July,
7 one thousand nine hundred ninety-nine, the governor
8 shall appoint family law masters in such numbers and to
9 serve for geographical regions of the state as provided for
10 under the provisions of section four of this article, with
11 terms commencing on the first day of July, one thousand
12 nine hundred ninety-nine, and on a like date in every
13 fourth year thereafter, and ending on the thirtieth day of
14 June, two thousand three, and on a like date in every
15 fourth year thereafter. Upon the expiration of his or her
16 term, a family law master may continue to perform the
17 duties of the office until the governor makes the
18 appointment, or for sixty days after the date of the
19 expiration of the master's term, whichever is earlier. If a
20 vacancy occurs in the office of family law master, the
21 governor shall, within thirty days after such vacancy
22 occurs, fill the vacancy by appointment for the unexpired
23 term: *Provided*, That if the remaining portion of the
24 unexpired term to be filled is less than one year, the
25 governor may, in his or her discretion, simultaneously
26 appoint an individual to the unexpired term and to the
27 next succeeding full four-year term.

28 (b) An individual may be reappointed to succeeding
29 terms as a family law master to serve in the same or a
30 different region of the state.

31 (c) Removal of a master during the term for which he
32 or she is appointed shall be as follows:

33 (1) Upon a recommendation by the judicial hearing
34 board created pursuant to the rules of procedure for the

35 handling of complaints against justices, judges, magistrates
36 and family law masters, if the supreme court of appeals
37 shall find that a family law master has violated the judicial
38 code of ethics or that the master, because of advancing
39 years and attendant physical or mental incapacity, should
40 not continue to serve, the supreme court of appeals may,
41 in lieu of or in addition to any disposition authorized by
42 such rules, remove the family law master from office; and

43 (2) The supreme court of appeals may remove a
44 master when conduct of the family law master evidences
45 incompetence, unsatisfactory performance, misconduct,
46 neglect of duty or physical or mental disability.

§48A-4-4. Assignment of family law masters by geographical regions.

1 (a) There shall be a total of twenty-six family law
2 masters, not more than fourteen of whom shall be
3 full-time masters, to serve throughout the state. During
4 the year immediately preceding the appointment of law
5 masters as provided for in section one of this article, the
6 supreme court of appeals shall apportion the state into
7 geographical regions which may be single-master regions
8 or multi-master regions, or a combination of both.
9 County boundaries shall be strictly observed and no
10 county may be divided among two or more regions.
11 Otherwise, in making such apportionment, the supreme
12 court of appeals shall construct regions which provide, as
13 nearly as is practicable, for the caseload of each master to
14 be equal to that of other masters. Mathematical exactness
15 as to caseload is not required and deviations from an
16 absolute standard may be based upon concerns, other than
17 caseload, including, but not limited to, deviations dictated
18 by the following considerations:

19 (1) Judicial circuits;

20 (2) Geographical features which affect the time and
21 expense of travel;

22 (3) Traditional patterns of practice by members of the
23 bar; and

24 (4) Population variances between regions.

25 (b) In the region that includes Kanawha County, of the
26 masters appointed, not less than two shall be part-time
27 masters.

28 (c) Notwithstanding the provisions of subsection (a) of
29 this section, for the time period extending from the first
30 day of August, one thousand nine hundred ninety-six,
31 until the thirtieth day of June, one thousand nine hundred
32 ninety-nine, there shall temporarily be a total of
33 twenty-seven family law masters, not more than fourteen
34 of whom shall be full-time masters, to serve throughout
35 the state, and the additional part-time position of family
36 law master created by this subsection shall be assigned to
37 the region that includes Marshall County.

38 (d) Nothing contained herein shall prohibit the chief
39 justice of the supreme court of appeals from temporarily
40 assigning a family law master from one geographical
41 region to another geographical region, as caseload,
42 disqualification, recusal, vacation or illness may dictate. In
43 each such case of temporary assignment, the chief justice
44 shall appoint only those persons currently serving as
45 family law masters and appointed pursuant to section one
46 of this article.

47 (e) The administrative office of the supreme court
48 shall promulgate any procedural rule necessary to
49 delineate the duties of the part-time and full-time law
50 masters consistent with this article.

CHAPTER 153

(Com. Sub. for H. B. 4250—By Delegates Osborne,
Mahan, Sparks, Heck and Johnson)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to vacancies in paid fire departments; requiring completion of apprenticeship before eligibility for promotion; and exceptions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-22. Vacancies filled by promotions; eligibility for promotion.

1 Vacancies in positions in a paid fire department shall
2 be filled, so far as practicable, by promotions from among
3 individuals holding positions in the next lower grade in
4 the department. Promotions shall be based upon
5 experience and by competitive examinations to be
6 provided by the firemen's civil service commission:
7 *Provided, however,* That no individual shall be eligible for
8 promotion from the lower grade to the next higher grade
9 until such individual shall have completed at least two
10 years of continuous service in the next lower grade in the
11 department immediately prior to said examination and has
12 completed the registered apprenticeship and certification
13 program under article twenty-nine-a, chapter thirty of this
14 code: *Provided,* That completion of the registered
15 apprenticeship and certification program as a requirement
16 for promotion shall apply only to those firefighters
17 employed since the twelfth day of June, one thousand nine
18 hundred eighty-seven. The commission shall have the
19 power to determine in each instance whether an increase in
20 salary constitutes a promotion.

CHAPTER 154

(H. B. 4042—By Delegates Buchanan, Givens, Dalton,
Kominar, Tillis and Faircloth)

[Passed February 11, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to

the powers and duties of the state fire marshal and the deputy and assistant fire marshals, authorizing arrest and the making of complaint for search or arrest warrant for explosives-related offenses; removing imprecise references to a penalty, to the taking of testimony, and to determination of incendiary origin; and clarifying that those empowered under this section are those employed by the state fire marshal pursuant to section eleven of this article.

Be it enacted by the Legislature of West Virginia:

That section twelve, article three, 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 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-12. Powers and duties of state fire marshal.

- 1 (a) *Enforcement of laws.* — The state fire marshal shall
2 enforce all laws of the state having to do with:
 - 3 (1) Prevention of fire;
 - 4 (2) The storage, sale and use of any explosive,
5 combustible or other dangerous article in solid, flammable
6 liquid or gas form;
 - 7 (3) The installation and maintenance of equipment of
8 all sorts intended to extinguish, detect and control fires;
 - 9 (4) The means and adequacy of exit, in case of fire,
10 from buildings and all other places in which persons work,
11 live or congregate from time to time for any purpose,
12 except buildings used wholly as dwelling houses for no
13 more than two families;
 - 14 (5) The suppression of arson.
- 15 (b) *Assistance upon request.* — Upon request, the state
16 fire marshal shall immediately assist any chief of any
17 recognized fire company or department.
- 18 (c) *Enforcement of regulations.* — The state fire
19 marshal shall enforce the regulations promulgated by the

20 state fire commission as authorized by section three of this
21 article.

22 (d) *Inspections generally.* — The state fire marshal shall
23 inspect all state, county and municipally owned
24 institutions, all public and private schools, theaters,
25 churches and other places of public assembly as to fire
26 exits and reasonable safety standards and report his
27 findings and recommendations to the proper
28 administrative heads.

29 (e) *Right of entry.* — The state fire marshal may at all
30 reasonable hours enter any building or premises, other
31 than dwelling houses, for the purpose of making an
32 inspection, which he may deem necessary to be made
33 under the provisions of this article.

34 (f) *Investigations.* — The state fire marshal may at any
35 time investigate as to the origin or circumstances of any
36 fire or explosion or attempt to cause fire or explosion
37 occurring in the state. The state fire marshal shall have the
38 authority at all times of the day or night, in performance
39 of the duties imposed by the provisions of this article, to
40 investigate where any fires or attempt to cause fires shall
41 have occurred, or which at the time may be burning.
42 Notwithstanding the above provisions of this subsection,
43 prior to entering any building or premises for the
44 purposes of such investigation, the state fire marshal shall
45 obtain a proper search warrant: *Provided,* That the same
46 shall not be necessary where there is permissive waiver or
47 the state fire marshal is an invitee of the individual having
48 legal custody and control of the property, building or
49 premises to be searched.

50 (g) *Testimony.* — The state fire marshal, in making an
51 inspection or investigation, when in his judgment such
52 proceedings are necessary, may take the statements or
53 testimony under oath of all persons who may be cognizant
54 of any facts or have any knowledge about the matter to be
55 examined and inquired into, and may have the statements
56 or testimony reduced to writing; and shall transmit a copy
57 of such statements or testimony so taken to the

58 prosecuting attorney for the county wherein the fire or
59 explosion or attempt to cause a fire or explosion occurred.
60 Notwithstanding the above, no person shall be compelled
61 to testify or give any such statement under this subsection.

62 (h) *Arrests; warrants.* — The state fire marshal, any
63 full-time deputy fire marshal or any full-time assistant fire
64 marshal employed by the state fire marshal pursuant to
65 section eleven of this article is hereby authorized and
66 empowered:

67 (1) To arrest any person anywhere within the confines
68 of the state of West Virginia, or have him arrested, for any
69 violation of the arson-related offenses of article three,
70 chapter sixty-one of this code or of the explosives-related
71 offenses of article three-e of chapter sixty-one of this
72 code: *Provided*, That any and all persons so arrested shall
73 be forthwith brought before the magistrate or circuit
74 court.

75 (2) To make complaint in writing before any court or
76 officer having jurisdiction and obtain, serve and execute
77 an arrest warrant when knowing or having reason to
78 believe that anyone has committed an offense under any
79 provision of this article, of the arson-related offenses of
80 article three, chapter sixty-one of this code, or of the
81 explosives-related offenses of article three-e of chapter
82 sixty-one of this code. Proper return shall be made on all
83 arrest warrants before the tribunal having jurisdiction over
84 such violation.

85 (3) To make complaint in writing before any court or
86 officer having jurisdiction and obtain, serve and execute a
87 warrant for the search of any premises that may possess
88 evidence or unlawful contraband relating to violations of
89 this article, of the arson-related offenses of article three,
90 chapter sixty-one of this code, or of the explosives-related
91 offenses of article three-e of chapter sixty-one of this
92 code. Proper return shall be made on all search warrants
93 before the tribunal having jurisdiction over such violation.

94 (i) *Witnesses and oaths.* — The state fire marshal is
95 empowered and authorized to issue subpoenas and
96 subpoenas duces tecum to compel the attendance of
97 persons before him to testify in relation to any matter
98 which is, by the provision of this article, a subject of
99 inquiry and investigation by the state fire marshal and
100 cause to be produced before him such papers as he may
101 require in making such examination. The state fire
102 marshal is hereby authorized to administer oaths and
103 affirmations to persons appearing as witnesses before him.
104 False swearing in any matter or proceeding aforesaid shall
105 be deemed perjury and shall be punishable as such.

106 (j) *Deputizing members of fire departments in this*
107 *state.* — The state fire marshal may deputize a member of
108 any fire department, duly organized and operating in this
109 state, who is approved by the chief of his department and
110 who is properly qualified, to act as his assistant for the
111 purpose of making inspections with the consent of the
112 property owner or the person in control of such property
113 and such investigations as may be directed by the state fire
114 marshal, and the carrying out of such orders as may be
115 prescribed by him, to enforce and make effective the
116 provisions of this article and any and all regulations
117 promulgated by the state fire commission under authority
118 of this article: *Provided*, That in the case of a volunteer
119 fire department, only the chief thereof or his single
120 designated assistant may be so deputized.

121 (k) *Written report of examinations.* — The state fire
122 marshal shall, at the request of the county commission of
123 any county or the municipal authorities of any
124 incorporated municipality in this state, make to them a
125 written report of the examination made by him regarding
126 any fire happening within their respective jurisdictions.

127 (l) *Report of losses by insurance companies.* — It shall
128 be the duty of each fire insurance company or association
129 doing business in this state, within ten days after the
130 adjustment of any loss sustained by it that exceeds fifteen
131 hundred dollars, to report to the state fire marshal, upon
132 forms furnished by him, such information regarding the
133 amount of insurance, the value of the property insured

134 and the amount of claim as adjusted, as in the judgment of
135 the state fire marshal it is necessary for him to know. This
136 report is in addition to any such information required by
137 the state insurance commissioner. Upon the request of the
138 owner or insurer of any property destroyed or injured by
139 fire or explosion, or in which an attempt to cause a fire or
140 explosion may have occurred, the state fire marshal shall
141 make a written report to the person requesting the same of
142 the result of the examination made by him regarding the
143 property.

144 (m) *Issuance of permits and licenses.* — The state fire
145 marshal is authorized to issue permits and licenses as
146 required in this article.

147 (n) *Issuance of citations for fire and life safety*
148 *violations.* — The state fire marshal, any full-time deputy
149 fire marshal, and any full-time assistant fire marshal are
150 hereby authorized, and any person deputized pursuant to
151 subsection (j) of this section who is approved by the chief
152 of his department and who is properly qualified, may be
153 authorized by the state fire marshal, to issue citations, in
154 their respective jurisdictions, for fire and life safety
155 violations of the state fire code and as provided for by the
156 rules promulgated by the state fire commission in
157 accordance with article three, chapter twenty-nine-a of this
158 code: *Provided,* That a summary report of all citations
159 issued pursuant to this section by persons deputized under
160 subsection (j) of this section shall be forwarded
161 semiannually to the state fire marshal in such form and
162 containing such information as he may by regulation
163 require, including the violation for which the citation was
164 issued, the date of issuance, the name of the person issuing
165 the citation and the person to whom the citation was
166 issued. The state fire marshal may at any time revoke the
167 authorization of a person deputized pursuant to subsection
168 (j) of this section to issue citations, if in the opinion of the
169 state fire marshal, the exercise of such authority by such
170 person is inappropriate.

171 Violations for which citations may be issued include,
172 but are not limited to:

173 (1) Overcrowding places of public assembly;

- 174 (2) Locked or blocked exits in public areas;
175 (3) Failure to abate a fire hazard;
176 (4) Blocking of fire lanes or fire department
177 connections; and
178 (5) Tampering with, or rendering inoperable except
179 during necessary maintenance or repairs, on-premise
180 firefighting equipment, fire detection equipment and fire
181 alarm systems.

182 No person deputized pursuant to subsection (j) of this
183 section may be authorized to issue a citation unless that
184 person has satisfactorily completed a law-enforcement
185 officer training course designed specifically for fire
186 marshals. The course shall be approved by the law-
187 enforcement training subcommittee of the governor's
188 committee on criminal justice and highway safety and the
189 state fire commission. In addition, no person deputized
190 pursuant to subsection (j) of this section may be
191 authorized to issue a citation until evidence of liability
192 coverage of such person has been provided, in the case of
193 a paid municipal fire department by the municipality
194 wherein the fire department is located, or in the case of a
195 volunteer fire department, by the county commission of
196 the county wherein the fire department is located or by the
197 municipality served by such volunteer fire department,
198 and that evidence of liability coverage has been filed with
199 the state fire marshal.

200 (o) *Penalties for violations.* — Any person who
201 violates any fire and life safety regulation of the state fire
202 code shall be guilty of a misdemeanor and, upon
203 conviction thereof, shall be fined not more than one
204 hundred dollars or imprisoned in the county jail not more
205 than ninety days, or both fined and imprisoned.

206 Each and every day during which any illegal erection,
207 construction, reconstruction, alteration, maintenance or use
208 continues after knowledge or official notice that same is
209 illegal, shall be deemed a separate offense.

CHAPTER 155

(Com. Sub for S. B. 389—By Senators Ball,
White, Hunter and Love)

[Passed March 14, 1998; to take effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact section sixteen-a, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring carbon monoxide detectors in certain residential units with a fuel-burning heating or cooking source after the first day of July, one thousand nine hundred ninety-eight; penalty; and requiring maintenance and repair workers to inform owners and lessors of the benefits of carbon monoxide detectors.

Be it enacted by the Legislature of West Virginia:

That section sixteen-a, article three, 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 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-16a. Smoke detectors in one- and two-family dwellings; carbon monoxide detectors in residential units; penalty.

1 (a) On or before the first day of July, one thousand
2 nine hundred ninety-one, an operational smoke detector
3 shall be installed in the immediate vicinity of each
4 sleeping area within all one- and two-family dwellings,
5 including any "manufactured home" as that term is
6 defined in subsection (j), section two, article nine, chapter
7 twenty-one of this code. Such smoke detector shall be
8 capable of sensing visible or invisible particles of
9 combustion and shall meet the specifications and be
10 installed as provided for in the National Fire Protection
11 Association Standard 74, "Standard for the Installation,
12 Maintenance and Use of Household Fire Warning
13 Equipment", 1989 edition, and in the manufacturer's
14 specifications. When activated, the smoke detector shall

15 provide an alarm suitable to warn the occupants of the
16 danger of fire.

17 (b) The owner of each dwelling described in
18 subsection (a) of this section shall provide, install and
19 replace the operational smoke detectors required by this
20 section. So as to assure that the smoke detector continues
21 to be operational, in each dwelling described in subsection
22 (a) of this section which is not occupied by the owner
23 thereof, the tenant in any such dwelling shall perform
24 routine maintenance on the smoke detectors within such
25 dwelling.

26 (c) Where a dwelling is not occupied by the owner and
27 is occupied by an individual who is deaf or hearing
28 impaired, the owner shall, upon written request by or on
29 behalf of such individual, provide and install a smoke
30 detector with a light signal sufficient to warn the deaf or
31 hearing-impaired individual of the danger of fire.

32 (d) An automatic fire sprinkler system installed in
33 accordance with the National Fire Protection Association
34 Standard 13D, "Standard for the Installation of Sprinkler
35 Systems in Residential Occupancies", 1989 edition, may be
36 provided in lieu of smoke detectors.

37 (e) After investigating a fire in any dwelling described
38 in subsection (a) of this section, the local investigating
39 authority shall issue to the owner a smoke detector
40 installation order in the absence of the required smoke
41 detectors.

42 (f) After the first day of July, one thousand nine
43 hundred ninety-eight, an operational carbon monoxide
44 detector with a suitable alarm shall be installed in
45 accordance with the manufacturer's direction:

46 (1) In any newly constructed residential unit which
47 has a fuel-burning heating or cooking source, including,
48 but not limited to, an oil or gas furnace or stove;

49 (2) In any residential unit which is connected to a
50 newly constructed building, including, but not limited to, a
51 garage, storage shed or bar, which has a fuel-burning
52 heating or cooking source, including, but not limited to,
53 an oil or gas furnace or stove.

54 (g) When repair or maintenance work is undertaken
55 on a fuel-burning heating or cooking source or a venting
56 system in an existing residential unit, the person making
57 the repair or performing the maintenance shall inform the
58 owner or lessor of the unit of the dangers of carbon
59 monoxide poisoning and recommend the installation of a
60 carbon monoxide detector.

61 (h) Any person who violates any provision of this
62 section is guilty of a misdemeanor and, upon conviction
63 thereof, shall be fined not less than fifty dollars nor more
64 than one hundred dollars.

65 (i) A violation of this section shall not be deemed by
66 virtue of such violation to constitute evidence of
67 negligence or contributory negligence or comparative
68 negligence in any civil action or proceeding for damages.

69 (j) A violation of this section shall not constitute a
70 defense in any civil action or proceeding involving any
71 insurance policy.

72 (k) Nothing in this section shall be construed to limit
73 the rights of any political subdivision in this state to enact
74 laws imposing upon owners of any dwelling or other
75 building described in subsection (a) or (f) of this section a
76 greater duty with regard to the installation, repair and
77 replacement of the smoke detectors or carbon monoxide
78 detectors than is required by this section.

CHAPTER 156

(Com. Sub. for H. B. 4005—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority and duties of the director of the division of forestry with regard to forest fires, and limiting the liability of certain persons for

activities performed in connection with fighting forest fires under the supervision of the director.

Be it enacted by the Legislature of West Virginia:

That section four, article three, 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 3. FORESTS AND WILDLIFE AREAS.

§20-3-4. Authority and duties of director of the division of forestry and others as to forest fires; expenditures for forest fire control; limited liability of certain persons fighting forest fires.

1 Upon receiving notice of any fire which is injuring or
2 endangering forest land within the state, the director of the
3 division of forestry or his or her duly authorized
4 representatives shall employ all necessary means to
5 confine, extinguish or suppress the fire. For these
6 purposes, any temporary or permanent employee of the
7 division of forestry or any other agency of the state and
8 any volunteer shall, under the general supervision of the
9 director of the division of forestry, have the right and
10 authority to enter upon public or private lands, to destroy
11 fences thereon, to plow such lands, and in case of extreme
12 emergency, to set backfires thereon. No person
13 performing or reasonably attempting to perform any of
14 the activities authorized by the preceding sentence under
15 the general supervision of the director of the division of
16 forestry, whether as a temporary or permanent employee
17 of the division of forestry or any other agency of the state
18 or as a volunteer, shall be liable in damages for the death
19 of or injury to any person or for damage to any property
20 as a result of his or her performance of such activities to
21 an extent greater than the applicable limits of any liability
22 insurance coverage available to such person under any
23 liability insurance policy or policies issued to the division
24 of forestry, any other agency of the state involved in
25 suppressing the forest fire, any volunteer fire department

26 of which such person was a member and which volunteer
27 fire department was responding to the forest fire at the
28 time of the incident alleged to have caused such death,
29 personal injury or property damage, or any combination
30 thereof. The limitation of liability established by the
31 preceding sentence shall not apply if the death, personal
32 injury or property damage alleged was caused by such
33 person's willful or criminal misconduct, gross negligence
34 or reckless misconduct, or by a conscious, flagrant
35 indifference to the rights or safety of any person harmed
36 by such conduct. The director of the division of forestry
37 and any duly authorized representative may employ
38 persons to detect fires which may injure or endanger
39 forest land and may likewise summon or employ persons
40 to assist in extinguishing such fires, who shall be paid for
41 the actual time so employed, at a rate per hour to be
42 determined by the director of the division of forestry:
43 *Provided*, That the rate per hour shall not exceed the rate
44 per hour paid for any comparable labor or skills by the
45 division of forestry. Any person so summoned who shall
46 fail or refuse to assist in extinguishing any such fire shall,
47 unless such failure or refusal to assist is due to physical
48 inability, be guilty of a misdemeanor.

49 Expenditures for detecting, confining, extinguishing
50 or suppressing fires described in this section shall be
51 charged against the state. The director of the division of
52 forestry or his or her representative shall prepare, as soon
53 as practicable, a sworn statement with the names of all
54 persons who were summoned or employed to assist in
55 fighting such fires, the time so spent by each, as well as the
56 names of persons who furnished equipment, subsistence or
57 supplies, or transportation therefor, and the amount of
58 money due each for such services, subsistence, supplies or
59 transportation. Requisitions shall be issued and payment
60 of the sums due shall be made in the same manner as is
61 provided for the making of other expenditures by the
62 director of the division of forestry.

CHAPTER 157

(Com. Sub. for H. B. 2785—By Delegate Mezzatesta)

[Passed March 11, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article fifteen, chapter seventeen-c, of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to additional lighting equipment to be used by funeral hearses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. EQUIPMENT.

*§17C-15-19. Additional lighting equipment.

- 1 (a) Any motor vehicle may be equipped with not more
2 than two side cowl or fender lamps which shall emit an
3 amber or white light without glare.
- 4 (b) Any motor vehicle may be equipped with not
5 more than one running board courtesy lamp on each side
6 thereof which shall emit a white or amber light without
7 glare.
- 8 (c) Except for school buses as provided in this
9 subsection, any motor vehicle may be equipped with not
10 more than two back-up lamps either separately or in
11 combination with other lamps, but any such back-up lamp
12 shall not be lighted when the motor vehicle is in forward
13 motion. School buses used for the transportation of
14 school children in this state, whether owned and operated
15 by a county board of education or privately owned and
16 operated under contract with a county board of
17 education, shall be equipped with two back-up lamps, one

*Clerk's Note: This section was also amended by SB 682 (Chapter 212), which passed subsequent to this act.

18 on each side of the rear door, with white lens or reflectors,
19 capable of lighting the roadway and objects to the rear of
20 the bus for safe backing during darkness, and which, at the
21 option of the county board of education, may each
22 provide fifty candlepower in illumination intensity instead
23 of thirty-two candlepower.

24 (d) Any vehicle may be equipped with lamps which
25 may be used for the purpose of warning the operators of
26 other vehicles of the presence of a vehicular traffic hazard
27 requiring the exercise of unusual care in approaching,
28 overtaking or passing, and when so equipped may display
29 such warning in addition to any other warning signals
30 required by this article. The lamps used to display such
31 warning to the front shall be mounted at the same level
32 and as widely spaced laterally as practicable and shall
33 display simultaneously flashing white or amber lights, or
34 any shade of color between white and amber. The lamps
35 used to display such warning to the rear shall be mounted
36 at the same level and as widely spaced laterally as
37 practicable, and shall show simultaneously flashing amber
38 or red lights, or any shade of color between amber and
39 red.

40 (e) Vehicles used by "rural mail carriers" in carrying or
41 delivering mail in rural areas may be equipped with amber
42 flashing lights. Such lights shall be on the front and rear
43 of the vehicle and may be activated when the vehicle is
44 stopped or decreasing speed in order to stop in the course
45 of carrying, delivering or picking up mail along the route.

46 (f) Vehicles used as the lead car in a funeral procession
47 are hereby authorized to be equipped with, but are not
48 required to use, purple lamps or purple flashing lights.
49 Such lamps may be used for the purpose of warning the
50 operators of other vehicles of the presence of a vehicular
51 traffic hazard requiring the exercise of unusual care in
52 approaching, overtaking or passing a funeral procession,
53 and when so equipped may display such warning in
54 addition to any other warning signals required by this
55 article. The lamps or flashing lights used to display such
56 warning to the front shall be mounted at the same level
57 and as widely spaced laterally as practicable and shall
58 display simultaneously either illuminated or flashing
59 purple lights. The lamps used to display such warning to
60 the rear shall be mounted at the same level and as widely
61 spaced laterally as practicable, and shall show
62 simultaneously flashing or illuminated purple lights.

CHAPTER 158

(Com. Sub. for H. B. 2605—By Delegates Beach, Kelley, Cann and Amores)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section sixteen, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article seven-d, relating to liability for damages claimed for the consumption or use of donated food items or grocery products; legislative findings; definitions; limiting liability for persons, gleaners and nonprofit corporations under certain circumstances; exceptions.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said chapter be further amended by adding thereto a new article, designated article seven-d, to read as follows:

ARTICLE 7D. GOOD SAMARITAN FOOD DONATION ACT.

§55-7D-1. Legislative findings.

§55-7D-2. Definitions.

§55-7D-3. Limiting liability of persons or corporations who donate food or grocery products; exceptions.

§55-7D-4. Limitation of liability for landowners or occupiers who allow collection or gleaning of donations; exceptions.

§55-7D-5. Construction.

§55-7D-1. Legislative findings.

1 The Legislature finds that wholesale and retail food
2 distributors, shipping terminals and other establishments
3 across the state are disposing of food that could be made
4 available to those in need. However, many potential food
5 donors are discouraged from donating this food because
6 of potential liability. The United States Congress has
7 recognized the need to encourage food distributors to
8 make otherwise disposed-of food products available to

9 those in need and has adopted Title 42 United States Code
10 § 1791 entitled the “Bill Emerson Good Samaritan Food
11 Donation Act.” This federal law encourages state and
12 local governments to enact good samaritan or donor
13 liability limitation laws to encourage private cooperative
14 efforts to provide food for hungry people within their
15 respective jurisdictions. The Legislature finds that this is a
16 worthy goal, and therefore it is appropriate for the state to
17 encourage participation in food donation programs by
18 providing a statutory framework to protect food donors
19 from liability for their good faith efforts.

§55-7D-2. Definitions.

1 As used in this section:

2 (a) “Apparently fit grocery product” means a
3 grocery product that meets all quality and labeling
4 standards imposed by federal, state and local laws and
5 regulations even though the product may not be readily
6 marketable due to appearance, age, freshness, grade, size,
7 surplus or other conditions.

8 (b) “Apparently wholesome food” means food that
9 meets all quality and labeling standards imposed by
10 federal, state and local laws and regulations even though
11 the food may not be readily marketable due to
12 appearance, age, freshness, grade, size, surplus or other
13 conditions.

14 (c) “Donate” means to give without requiring
15 anything of monetary value from the recipient, except that
16 the term includes donations by one nonprofit organization
17 to another nonprofit organization, notwithstanding that the
18 donor organization has charged a nominal fee to the
19 donee organization, if the ultimate recipient or user is not
20 required to give anything of monetary value.

21 (d) “Food” means any raw, cooked, processed or
22 prepared edible substance, ice, beverage or ingredient used
23 or intended for use, in whole or in part, for human
24 consumption.

25 (e) “Gleaner” means a person who harvests a donated
26 agricultural crop for free distribution to the needy or for

27 donation to a nonprofit organization for ultimate
28 distribution to the needy.

29 (f) "Grocery product" means a nonfood grocery
30 product, including disposable paper or plastic products,
31 household cleaning supplies, laundry detergent or other
32 household item.

33 (g) "Gross negligence" means voluntary and
34 conscious conduct, including a failure to act, by a person
35 who, at the time of the conduct, knew that the conduct was
36 likely to be harmful to the health or well-being of another
37 person.

38 (h) "Intentional misconduct" means conduct by a
39 person with knowledge, at the time of the conduct, that the
40 conduct is harmful to the health or well-being of another
41 person.

42 (i) "Nonprofit organization" means an incorporated
43 or unincorporated entity that:

44 (1) Is operating for religious, charitable or educational
45 purposes; and

46 (2) Does not provide net earnings to or operate in any
47 other manner that inures to the benefit of, any officer,
48 employee or shareholder of the entity.

49 (j) "Person" means an individual, corporation,
50 partnership, organization, association or governmental
51 entity, including a retail grocer, wholesaler, hotel, motel,
52 manufacturer, restaurant, caterer, farmer, nonprofit food
53 distributor or hospital. In the case of a corporation,
54 partnership, organization, association or governmental
55 entity, the term includes an officer, director, partner,
56 deacon, trustee, council member or other elected or
57 appointed individual responsible for the governance of the
58 entity.

**§55-7D-3. Limiting liability of persons or corporations who
donate food or grocery products; exceptions.**

1 (a) A person or gleaner is not subject to civil liability
2 or criminal liability arising from the nature, age,
3 packaging or condition of apparently wholesome food or
4 an apparently fit grocery product which the person or

5 gleaner donates in good faith to a nonprofit organization
6 for ultimate distribution without profit or gain to needy
7 individuals: *Provided*, That this limitation on liability
8 does not apply to an injury to or the death of an ultimate
9 user or recipient of the food or grocery product which
10 results from an act or omission of the person or gleaner
11 which constitutes gross negligence or intentional
12 misconduct.

13 (b) A nonprofit organization is not subject to civil
14 liability or criminal liability arising from the nature, age,
15 packaging or condition of apparently wholesome food or
16 an apparently fit grocery product which the nonprofit
17 organization received as a donation in good faith from a
18 person or gleaner for ultimate distribution without profit
19 or gain to needy individuals: *Provided*, That this
20 limitation on liability does not apply to an injury to or the
21 death of an ultimate user or recipient of the food or
22 grocery product which results from an act or omission of
23 the nonprofit organization which constitutes gross
24 negligence or intentional misconduct.

**§55-7D-4. Limitation of liability for landowners or occupiers
who allow collection or gleaning of donations;
exceptions.**

1 Any person who is a landowner or occupier and who
2 allows the collection or gleaning of donations on his or
3 her property by gleaners or representatives of a nonprofit
4 organization, whether paid or unpaid, for ultimate
5 donation without profit or gain to needy individuals is not
6 subject to civil liability or criminal liability that arises due
7 to the injury or death of the gleaner or representative
8 while engaged in collecting or gleaning on the property:
9 *Provided*, That this limitation on liability does not apply
10 to an injury or death that results from an act or omission
11 of the landowner or occupier which constitutes gross
12 negligence or intentional misconduct.

§55-7D-5. Construction.

1 Nothing in this article shall be construed to supersede
2 state or local health regulations, nor to restrict the state
3 department of health or any county or municipal health
4 officer to regulate, inspect or ban the use of any donated
5 food for human consumption.

CHAPTER 159

(S. B. 573—By Senators White, Minear, Hunter, Walker, Sharpe, Dittmar, Ball, Schoonover, Fanning, Snyder, Helmick, Anderson, Deem, Bowman, McKenzie, Kessler, Ross, Dugan, Scott, Boley, Craigo, Love, Kimble and Plymale)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article two-b, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to grandparent visitation generally; setting forth legislative findings and intent; defining certain terms; providing for the grandparent of a child residing in this state to apply for an order granting reasonable visitation rights with a grandchild; authorizing a grandparent, in proceedings for divorce, custody, legal separation, annulment or establishment of paternity, to make a motion for reasonable visitation rights; authorizing a grandparent to petition for reasonable visitation rights when no domestic relations action is pending; requiring circuit courts to grant grandparent visitation upon a finding that visitation rights would be in the best interests of the child and would not substantially interfere with the parent-child relationship; describing the factors which the circuit court must consider in making a determination on a motion or petition for grandparent visitation; providing for an in camera interview with a child by the circuit judge; establishing the degree of proof required to support an award of grandparent visitation; prescribing the contents of orders granting or refusing a motion or petition for grandparent visitation; describing the effect of remarriage or adoption on an order granting grandparent visitation; providing for the modification or termination of orders; authorizing the award of attorney's fees; and defining the misdemeanor offense of allowing contact between a child and a person precluded from visitation, and establishing the penalty therefor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2B. GRANDPARENT VISITATION.

- §48-2B-1. Legislative findings; intent.
- §48-2B-2. Definitions.
- §48-2B-3. Visitation for grandparents.
- §48-2B-4. Proceedings for visitation for grandparents.
- §48-2B-5. Factors affecting a decision to grant visitation for grandparents.
- §48-2B-6. Interview of child by judge.
- §48-2B-7. Proof required.
- §48-2B-8. Orders.
- §48-2B-9. Effect of remarriage or adoption on visitation for grandparents.
- §48-2B-10. Modification or termination of grandparent visitation.
- §48-2B-11. Attorney's fees; reasonable costs.
- §48-2B-12. Penalties for violation of order of visitation.

§48-2B-1. Legislative findings; intent.

1 The Legislature finds that circumstances arise where it
 2 is appropriate for circuit courts of this state to order that
 3 grandparents of minor children may exercise visitation
 4 with their grandchildren. The Legislature further finds
 5 that in such situations, as in all situations involving
 6 children, the best interests of the child or children are the
 7 paramount consideration. It is the express intent of the
 8 Legislature that the provisions for grandparent visitation
 9 that are set forth in this article are exclusive.

§48-2B-2. Definitions.

1 For purposes of this article:

2 (1) "Child" means a person under the age of eighteen
 3 years who has not been married or otherwise emancipated.

4 (2) "Grandparent" means a biological grandparent, a
 5 person married or previously married to a biological
 6 grandparent, or a person who has previously been granted
 7 custody of the parent of a minor child with whom
 8 visitation is sought.

§48-2B-3. Visitation for grandparents.

1 A grandparent of a child residing in this state may, by
 2 motion or petition, make application to the circuit court of

3 the county in which that child resides for an order
4 granting visitation with his or her grandchild.

§48-2B-4. Proceedings for visitation for grandparents.

1 (a) The provisions of this subsection apply to all
2 proceedings for divorce, custody, legal separation,
3 annulment or establishment of paternity. After the
4 commencement of the proceeding, a grandparent seeking
5 visitation with his or her grandchild may, by motion, apply
6 to the circuit court for an order granting visitation. A
7 grandparent moving for an order of visitation will not be
8 afforded party status, but may be called as a witness by the
9 court, and will be subject to cross-examination by the
10 parties.

11 (b) The provisions of this subsection apply when no
12 proceeding for divorce, custody, legal separation,
13 annulment or establishment of paternity is pending. A
14 grandparent may petition the circuit court for an order
15 granting visitation with his or her grandchild, regardless of
16 whether the parents of the child are married. If the
17 grandparent filed a motion for visitation in a previous
18 proceeding for divorce, custody, legal separation,
19 annulment or establishment of paternity, and a decree or
20 final order has issued in that earlier action, the
21 grandparent may petition for visitation if the
22 circumstances have materially changed since the entry of
23 the earlier order or decree.

24 (c) When a petition under subsection (b) of this
25 section is filed, the matter shall be styled "In re
26 grandparent visitation of [petitioner's(s') name(s)]."

27 (d) The court, on its own motion or upon the motion
28 of a party or grandparent, may appoint a guardian ad
29 litem for the child to assist the court in determining the
30 best interests of the child regarding grandparent visitation.

§48-2B-5. Factors affecting a decision to grant visitation for grandparents.

1 (a) The circuit court shall grant reasonable visitation to
2 a grandparent upon a finding that visitation would be in
3 the best interests of the child and would not substantially
4 interfere with the parent-child relationship.

5 (b) In making a determination on a motion or petition
6 made pursuant to section four of this article, the court
7 shall consider the following factors:

8 (1) The age of the child;

9 (2) The relationship between the child and the
10 grandparent;

11 (3) The relationship between each of the child's
12 parents or the person with whom the child is residing and
13 the grandparent;

14 (4) The time which has elapsed since the child last had
15 contact with the grandparent;

16 (5) The effect that such visitation will have on the
17 relationship between the child and the child's parents or
18 the person with whom the child is residing;

19 (6) If the parents are divorced or separated, the
20 custody and visitation arrangement which exists between
21 the parents with regard to the child;

22 (7) The time available to the child and his or her
23 parents, giving consideration to such matters as each
24 parent's employment schedule, the child's schedule for
25 home, school and community activities, and the child's
26 and parents' holiday and vacation schedule;

27 (8) The good faith of the grandparent in filing the
28 motion or petition;

29 (9) Any history of physical, emotional or sexual abuse
30 or neglect being performed, procured, assisted or
31 condoned by the grandparent;

32 (10) Whether the child has, in the past, resided with the
33 grandparent for a significant period or periods of time,
34 with or without the child's parent or parents;

35 (11) Whether the grandparent has, in the past, been a
36 significant caretaker for the child, regardless of whether
37 the child resided inside or outside of the grandparent's
38 residence;

39 (12) The preference of the parents with regard to the
40 requested visitation; and

41 (13) Any other factor relevant to the best interests of
42 the child.

§48-2B-6. Interview of child by judge.

1 (a) In considering the factors listed in section five of
2 this article for purposes of determining whether to grant
3 visitation, establishing a specific visitation schedule, and
4 resolving any issues related to the making of any
5 determination with respect to visitation or the
6 establishment of any specific visitation schedule, the court,
7 in its discretion, may interview in chambers any or all
8 involved children regarding their wishes and concerns.
9 No person shall be present other than the court, the child,
10 the child's attorney or guardian ad litem, if any, and any
11 necessary court personnel.

12 (b) No person shall obtain or attempt to obtain from a
13 child a written or recorded statement or affidavit setting
14 forth the wishes and concerns of the child regarding those
15 visitation matters, and the court, in considering the factors
16 listed in section five of this article for purposes of
17 determining whether to grant any visitation, establishing a
18 visitation schedule, or resolving any issues related to the
19 making of any determination with respect to visitation or
20 the establishment of any specific visitation schedule, shall
21 not accept or consider such a written or recorded
22 statement or affidavit.

23 (c) A child shall not be called as a witness in any
24 proceeding to determine whether grandparent visitation
25 should be awarded.

§48-2B-7. Proof required.

1 (a) If a motion for grandparent visitation is filed in a
2 pending action for divorce, custody, legal separation,
3 annulment or establishment of paternity pursuant to
4 subsection (a), section four of this article, the grandparent
5 shall be granted visitation if a preponderance of the
6 evidence shows that visitation is in the best interest of the
7 child and that:

8 (1) The party to the divorce through which the
9 grandparent is related to the minor child has failed to
10 answer or otherwise appear and defend the cause of
11 action; or

12 (2) The whereabouts of the party through which the
13 grandparent is related to the minor child are unknown to
14 the party bringing the action and to the grandparent who
15 filed the motion for visitation.

16 (b) If a petition is filed pursuant to subsection (b),
17 section four of this article when the parent through whom
18 the grandparent is related to the grandchild does not: (1)
19 Have custody of the child; (2) share custody of the child;
20 or (3) exercise visitation privileges with the child that
21 would allow participation in the visitation by the
22 grandparent if the parent so chose, the grandparent shall
23 be granted visitation if a preponderance of the evidence
24 shows that visitation is in the best interest of the child.

25 (c) If a petition is filed pursuant to subsection (b),
26 section four of this article, there is a presumption that
27 visitation privileges need not be extended to the
28 grandparent if the parent through whom the grandparent
29 is related to the grandchild has custody of the child, shares
30 custody of the child, or exercises visitation privileges with
31 the child that would allow participation in the visitation by
32 the grandparent if the parent so chose. This presumption
33 may be rebutted by clear and convincing evidence that an
34 award of grandparent visitation is in the best interest of the
35 child.

§48-2B-8. Orders.

1 (a) An order granting or refusing the grandparent's
2 motion or petition for visitation shall state in writing the
3 court's findings of fact and conclusions of law.

4 (b) In the court's discretion, an order granting
5 visitation privileges to a grandparent may require
6 supervised visitation or may place such conditions upon
7 visitation that it finds are in the best interests of the child,
8 including, but not limited to, the following:

9 (1) That the grandparent not attempt to influence any
10 religious beliefs or practices of the children in a manner
11 contrary to the preferences of the child's parents;

12 (2) That the grandparent not engage in, permit or
13 encourage activities, or expose the grandchild to
14 conditions or circumstances, that are contrary to the
15 preferences of the child's parents; or

16 (3) That the grandparent not otherwise act in a manner
17 to contradict or interfere with child-rearing decisions
18 made by the child's parents.

§48-2B-9. Effect of remarriage or adoption on visitation for grandparents.

1 (a) The remarriage of the custodial parent of a child
2 does not affect the authority of a circuit court to grant
3 reasonable visitation to any grandparent.

4 (b) If a child who is subject to a visitation order under
5 this article is later adopted, the order for grandparent
6 visitation is automatically vacated when the order for
7 adoption is entered, unless the adopting parent is a
8 stepparent, grandparent or other relative of the child.

§48-2B-10. Modification or termination of grandparent visitation.

1 (a) Any circuit court which grants visitation rights to a
2 grandparent shall retain jurisdiction throughout the
3 minority of the minor child with whom visitation is
4 granted to modify or terminate such rights as dictated by
5 the best interests of the minor child.

6 (b) A circuit court shall, based upon a petition brought
7 by an interested person, terminate any grant of the right of
8 grandparent visitation upon presentation of a
9 preponderance of the evidence that a grandparent granted
10 visitation has materially violated the terms and conditions
11 of the order of visitation.

§48-2B-11. Attorney's fees; reasonable costs.

1 In an action brought under the provisions of this
2 article, a circuit court may order payment of reasonable
3 attorney's fees and costs based upon the equities of the
4 positions asserted by the parties to pay such fees and costs.

§48-2B-12. Penalties for violation of order of visitation.

1 Any grandparent who knowingly allows contact
2 between the minor grandchild and a parent or other
3 person who has been precluded visitation rights with the
4 child by court order shall, in addition to any other remedy
5 under section seven of this article, be guilty of a
6 misdemeanor and, upon conviction thereof, shall be
7 confined in the county jail not more than thirty days or
8 fined not less than one hundred dollars nor more than one
9 thousand dollars.

CHAPTER 160

(Com. Sub. for H. B. 4314—By Mr. Speaker, Mr. Kiss, and Delegates
Martin, Staton, Manuel, Fleischauer and Givens)

[Passed March 13, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact section five, article twenty-nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three, four, five, six, seven and ten, article six-a, chapter twenty-nine of said code; and to further amend said article by adding thereto a new section, designated section twelve, all relating to the education and public employees grievance process; providing for expedited grievance processes; expanding the jurisdiction of the board; changing the default provisions; giving board procedural jurisdiction at levels two and three; allowing mediation at the request of any party; allowing appeals to be filed in the circuit court of Kanawha County; and increasing the cap on attorney's fees for prevailing grievants.

Be it enacted by the Legislature of West Virginia:

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

Chapter

18. Education.

29. Miscellaneous Boards and Officers.

CHAPTER 18. EDUCATION.

ARTICLE 29. GRIEVANCE PROCEDURE.

§18-29-5. Education and state employees grievance board; hearing examiners.

1 (a) The education and state employees grievance
2 board shall consist of three members who are citizens of
3 the state appointed by the governor by and with the advice
4 and consent of the Senate for overlapping terms of three
5 years. No two members may be from the same
6 congressional district, and no more than two of the
7 appointed members may be from the same political party.
8 No person may be appointed to membership on the board
9 who is a member of any political party executive
10 committee or holds any other public office or public
11 employment under the federal government or under the
12 government of this state. Members are eligible for
13 reappointment, and any vacancy on the board shall be
14 filled within thirty days of the vacancy by the governor by
15 appointment for the unexpired term.

16 A member of the board may not be removed from
17 office except for official misconduct, incompetence,
18 neglect of duty, gross immorality or malfeasance, and then
19 only in the manner prescribed in article six, chapter six of
20 this code for the removal by the governor of the state
21 elected officers.

22 The board shall hold at least two meetings yearly at
23 times and places as it may prescribe and may meet at other
24 times as may be necessary, the other meetings to be agreed
25 to in writing by at least two of the members. The
26 compensation for members of the board is seventy-five
27 dollars for each calendar day devoted to the work of the
28 board, but not more than seven hundred fifty dollars
29 during any one fiscal year. Each member shall be
30 reimbursed for all reasonable and necessary expenses
31 actually incurred in the performance of board duties, but
32 shall submit a request for reimbursement upon a sworn
33 itemized statement.

34 The board shall administer the grievance procedure at
35 levels two, three and four, as provided in section five,
36 article six-a, chapter twenty-nine of this code, and as
37 provided for in section four of this article and shall
38 employ at least two full-time hearing examiners on an
39 annual basis and clerical help as is necessary to implement

40 the legislative intent expressed in section one of this
41 article.

42 In addition to the authorization granted by this section
43 over education employees, the board has jurisdiction over
44 the procedures to be followed in processing grievances
45 filed under article six-a, chapter twenty-nine of this code.

46 The board shall hire hearing examiners who reside in
47 different regional educational service agency areas unless
48 and until the number of hearing examiners exceeds the
49 number of the areas, at which time two hearing examiners
50 may be from the same area. If a grievant previously
51 before a hearing examiner again brings a grievance, a
52 different hearing examiner is required to hear the
53 grievance upon written request therefor by any party to
54 the grievance. These hearing examiners serve at the will
55 and pleasure of the board.

56 The board shall submit a yearly budget and shall
57 report annually to the governor and Legislature regarding
58 receipts and expenditures, number of level four hearings
59 conducted, synopses of hearing outcomes and other
60 information as the board determines appropriate. The
61 board shall further evaluate on an annual basis the level
62 four grievance process and the performance of all hearing
63 examiners and include the evaluation in the annual report
64 to the governor and Legislature. In making the
65 evaluation, the board shall notify all institutions, employee
66 organizations and all grievants participating in level four
67 grievances in the year for which evaluation is being made
68 and shall provide for the submission of written comment
69 or the hearing of testimony regarding the grievance
70 process, or both. The board shall provide suitable office
71 space for all hearing examiners in space other than that
72 utilized by any institution as defined in section two of this
73 article and shall ensure that reference materials are
74 generally available.

75 The board is authorized to promulgate rules consistent
76 with the provisions of this article; the rules shall be
77 adopted in accordance with chapter twenty-nine-a of this
78 code.

79 (b) Hearing examiners may consolidate grievances,
80 allocate costs among the parties in accordance with section
81 eight of this article, subpoena witnesses and documents in
82 accordance with the provisions of section one, article five,
83 chapter twenty-nine-a of this code, provide relief found
84 fair and equitable in accordance with the provisions of this
85 article, and exercise other powers as provides for the
86 effective resolution of grievances not inconsistent with any
87 rules of the board or the provisions of this article.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 6A. GRIEVANCE PROCEDURE FOR STATE EM- PLOYEES.

§29-6A-3. Grievance procedure generally.

§29-6A-4. Procedural levels and procedure at each level.

§29-6A-5. Education and state employees grievance board; hearing examiners.

§29-6A-6. Hearings generally.

§29-6A-7. Enforcement and reviewability; costs; good faith.

§29-6A-10. Employee's right to attorney's fees and costs.

§29-6A-12. Mediation required at request of either party.

§29-6A-3. Grievance procedure generally.

1 (a) (1) A grievance shall be filed within the times
2 specified in section four of this article and shall be
3 processed as rapidly as possible. The number of days
4 indicated at each level specified in section four of this
5 article is the maximum number of days allowed and, if a
6 decision is not rendered at any level within the prescribed
7 time limits, the grievant may appeal to the next level:
8 *Provided*, That the specified time limits shall be extended
9 whenever a grievant is not working because of accident,
10 sickness, death in the immediate family or other cause
11 necessitating the grievant to take personal leave from his
12 or her employment.

13 (2) Any assertion by the employer that the filing of
14 the grievance at level one was untimely shall be asserted
15 by the employer on behalf of the employer at or before
16 the level two hearing. The grievant prevails by default if a

17 grievance evaluator required to respond to a grievance at
18 any level fails to make a required response in the time
19 limits required in this article, unless prevented from doing
20 so directly as a result of sickness, injury, excusable neglect,
21 unavoidable cause or fraud. Within five days of the
22 receipt of a written notice of the default, the employer
23 may request a hearing before a level four hearing
24 examiner for the purpose of showing that the remedy
25 received by the prevailing grievant is contrary to law or
26 clearly wrong. In making a determination regarding the
27 remedy, the hearing examiner shall presume the employee
28 prevailed on the merits of the grievance and shall
29 determine whether the remedy is contrary to law or clearly
30 wrong in light of that presumption. If the examiner finds
31 that the remedy is contrary to law, or clearly wrong, the
32 examiner may modify the remedy to be granted to
33 comply with the law and to make the grievant whole.

34 (b) If the employer or its agent intends to assert the
35 application of any statute, policy, rule or written
36 agreement or submits any written response to the filed
37 grievance at any level, a copy of the materials shall be
38 forwarded to the grievant and any representative of the
39 grievant named in the filed grievance. Anything
40 submitted and the grievant's response to the submitted
41 materials, if any, becomes part of the record. Failure to
42 assert the statute, policy, rule or written agreement at any
43 level does not prevent the subsequent submission of the
44 materials in accordance with the provisions of this
45 subsection.

46 (c) The grievant may file the grievance at the level
47 vested with authority to grant the requested relief if each
48 lower administrative level agrees in writing to filing the
49 grievance at a higher level. In the event a grievance is
50 filed at a higher level, the employer shall provide copies to
51 each lower administrative level.

52 (d) An employee may withdraw a grievance at any
53 time by notice, in writing, to the level where the grievance
54 is then current. The grievance may not be reinstated by
55 the grievant unless reinstatement is granted by the
56 grievance evaluator at the level where the grievance was

57 withdrawn. If more than one employee is named as
58 grievant in a particular grievance, the withdrawal of one
59 employee does not prejudice the rights of any other
60 employee named in the grievance. In the event a
61 grievance is withdrawn or an employee withdraws from a
62 grievance, the employer shall notify, in writing, each lower
63 administrative level.

64 (e) Grievances may be consolidated at any level by
65 agreement of all parties.

66 (f) A grievant may be represented by an employee
67 organization representative, legal counsel or any other
68 person, including a fellow employee, in the preparation or
69 presentation of the grievance. At the request of the
70 grievant, that person or persons may be present at any step
71 of the procedure: *Provided*, That at level one of the
72 grievance, as set forth in section four of this article, a
73 grievant may have only one representative.

74 (g) If a grievance is filed which cannot be resolved
75 within the time limits set forth in section four of this article
76 prior to the end of the employment term, the time limit
77 shall be reduced as agreed to in writing by both parties so
78 that the grievance procedure may be concluded within ten
79 days following the end of the employment term or an
80 otherwise reasonable time.

81 (h) No reprisals of any kind may be taken by any
82 employer or agent of the employer against any interested
83 party, or any other participant in the grievance procedure
84 by reason of the participation. A reprisal constitutes a
85 grievance, and any person held responsible for reprisal
86 action is subject to disciplinary action for insubordination.

87 (i) Decisions rendered at all levels of the grievance
88 procedure shall be dated, in writing setting forth the
89 decision or decisions and the reasons for the decision, and
90 transmitted to the grievant and any representative named
91 in the grievance within the time prescribed. If the grievant
92 is denied the relief sought, the decision shall include the
93 name of the individual at the next level to whom appeal
94 may be made.

95 (j) Once a grievance has been filed, supportive or
96 corroborative evidence may be presented at any
97 conference or hearing conducted pursuant to the
98 provisions of this article. Whether evidence substantially
99 alters the original grievance and renders it a different
100 grievance is within the discretion of the grievance
101 evaluator at the level where the new evidence is presented.
102 If the grievance evaluator rules that the evidence renders it
103 a different grievance, the party offering the evidence may
104 withdraw it, the parties may consent to the evidence, or the
105 grievance evaluator may decide to hear the evidence or
106 rule that the grievant must file a new grievance. The time
107 limitation for filing the new grievance is measured from
108 the date of the ruling.

109 (k) Any change in the relief sought by the grievant
110 shall be consented to by all parties or may be granted at
111 level four within the discretion of the hearing examiner.

112 (l) Forms for filing grievances, giving notice, taking
113 appeals, making reports and recommendations, and all
114 other necessary documents shall be made available by the
115 immediate supervisor to any employee upon request. The
116 forms shall include information prescribed by the board.
117 The grievant shall have access to the employer's
118 equipment for purposes of preparing grievance
119 documents subject to the reasonable rules of the employer
120 governing the use of the equipment.

121 (m) Notwithstanding the provisions of section three,
122 article nine-a, chapter six of this code, or any other
123 provision relating to open proceedings, all conferences
124 and hearings pursuant to this article shall be conducted in
125 private except that, upon the grievant's request,
126 conferences and hearings at levels two and three shall be
127 open to employees of the grievant's immediate office or
128 work area or, at the request of the grievant, shall be public.
129 Within the discretion of the hearing examiner, conferences
130 and hearings may be public at level four.

131 (n) No person may confer or correspond with a
132 hearing examiner regarding the merits of the grievance
133 unless all parties to the grievance are present.

134 (o) Grievances shall be processed during regular
135 working hours. Attempts shall be made to process the
136 grievance in a manner which does not interfere with the
137 normal operation of the employer.

138 (p) The grievant or the employee selected by a
139 grievant to represent him or her in the processing of a
140 grievance through this procedure, or both, shall be granted
141 necessary time off during working hours for the grievance
142 procedure without loss of pay and without charge to
143 annual or compensatory leave credits. In addition to
144 actual time spent in grievance conferences and hearings,
145 the grievant or the employee representative, or both, shall
146 be granted time off during working hours, not to exceed
147 four hours per grievance, for the preparation of the
148 grievance without loss of pay and without charge to
149 annual or compensatory leave credits. However, the first
150 responsibility of any state employee is the work assigned
151 by the appointing authority to the employee. An
152 employee may not allow grievance preparation and
153 representation activities to seriously affect the overall
154 productivity of the employee.

155 (q) The aggrieved employee, employing agency and
156 representatives of both have the right to call, examine and
157 cross-examine witnesses who are employees of the agency
158 against which the grievance is lodged and who have
159 knowledge of the facts at issue.

160 (r) Both parties may produce witnesses other than
161 employees of the agency against which the grievance is
162 lodged, and the witnesses are subject to examination and
163 cross-examination.

164 (s) If an employer or the employer's agent causes a
165 conference or hearing to be postponed without adequate
166 notice to employees who are scheduled to appear during
167 their normal work day, the employees may not suffer any
168 loss in pay for work time lost.

169 (t) Any grievance evaluator may be excused from
170 participation in the grievance process for reasonable cause,
171 including, but not limited to, conflict of interest or
172 incapacitation, and if this occurs the grievance evaluator at

173 the next higher level shall designate an alternative
174 grievance evaluator if it is reasonable and necessary.

175 (u) No less than one year following resolution of a
176 grievance at any level, the grievant may by request in
177 writing have removed any record of the grievant's identity
178 from any file kept by the employer.

179 (v) All grievance forms and reports shall be kept in a
180 file separate from the personnel file of the employee and
181 may not become a part of the personnel file, but shall
182 remain confidential except by mutual written agreement
183 of the parties.

184 (w) The number of grievances filed against an
185 employer or agent or by an employee is not, per se, an
186 indication of the employer's or agent's or the employee's
187 job performance.

188 (x) Any chief administrator with whom a grievance is
189 filed may appeal a level four decision on the grounds that
190 the decision:

191 (1) Is contrary to law or a lawfully adopted rule or
192 written policy of the employer;

193 (2) Exceeds the hearing examiner's statutory
194 authority;

195 (3) Is the result of fraud or deceit;

196 (4) Is clearly wrong in view of the reliable, probative
197 and substantial evidence on the whole record; or

198 (5) Is arbitrary or capricious or characterized by abuse
199 of discretion.

200 The appeal shall follow the procedure regarding
201 appeal provided the grievant in section four of this article
202 and provided both parties in section seven of this article.

§29-6A-4. Procedural levels and procedure at each level.

1 (a) *Level one.*

2 Within ten days following the occurrence of the event
3 upon which the grievance is based, or within ten days of

4 the date on which the event became known to the grievant,
5 or within ten days of the most recent occurrence of a
6 continuing practice giving rise to a grievance, the grievant
7 or the designated representative, or both, may file a written
8 grievance with the immediate supervisor of the grievant.
9 At the request of the grievant or the immediate supervisor,
10 an informal conference shall be held to discuss the
11 grievance within three days of the receipt of the written
12 grievance. The immediate supervisor shall issue a written
13 decision within six days of the receipt of the written
14 grievance. If a grievance alleges discrimination or
15 retaliation by the immediate supervisor of the grievant, the
16 level one filing may be waived by the grievant and the
17 grievance may be initiated at level two with the
18 administrator or his or her designee, within the time limits
19 set forth in this subsection for filing a grievance at level
20 one. A meeting may be held to discuss the issues in
21 dispute, but the meeting is not required.

22 (b) *Level two.*

23 Within five days of receiving the decision of the
24 immediate supervisor, the grievant may file a written
25 appeal to the administrator of the grievant's work location,
26 facility, area office, or other appropriate subdivision of the
27 department, board, commission or agency. The
28 administrator or his or her designee shall hold a
29 conference within five days of the receipt of the appeal
30 and issue a written decision upon the appeal within five
31 days of the conference.

32 (c) *Level three.*

33 Within five days of receiving the decision of the
34 administrator of the grievant's work location, facility, area
35 office, or other appropriate subdivision of the department,
36 board, commission or agency, the grievant may file a
37 written appeal of the decision with the chief administrator
38 of the grievant's employing department, board,
39 commission or agency. A copy of the appeal and the
40 level two decision shall be served upon the director of the
41 division of personnel by the grievant.

42 The chief administrator or his or her designee shall
43 hold a hearing in accordance with section six of this article
44 within seven days of receiving the appeal. The director of
45 the division of personnel or his or her designee may
46 appear at the hearing and submit oral or written evidence
47 upon the matters in the hearing.

48 The chief administrator or his or her designee shall
49 issue a written decision affirming, modifying or reversing
50 the level two decision within five days of the hearing.

51 (d) *Level four.*

52 (1) If the grievant is not satisfied with the action taken
53 by the chief administrator or his or her designee, within
54 five days of the written decision the grievant may request,
55 in writing, on a form furnished by the employer, that the
56 grievance be submitted to a hearing examiner as provided
57 for in section five of this article. The hearing shall be
58 conducted in accordance with section six of this article
59 within fifteen days following the request for the hearing:
60 *Provided*, That the hearing may be held within thirty days
61 following the request, or within a time that is mutually
62 agreed upon by the parties, if the hearing examiner gives
63 reasonable cause, in writing, as to the necessity for the
64 delay. A copy of the appeal shall be served by the
65 grievant upon the director of the division of personnel.
66 The director of the division of personnel, or his or her
67 designee, may appear at the hearing and submit oral or
68 written evidence upon the matters in the hearing.

69 (2) Within thirty days following the hearing, the
70 hearing examiner shall render a decision in writing to all
71 parties setting forth findings and conclusions on the issues
72 submitted. Subject to the provisions of section seven of
73 this article, the decision of the hearing examiner is final
74 upon the parties and is enforceable in circuit court.

75 (e) *Expedited grievance process.*

76 (1) A grievance involving suspension without pay,
77 demotion or dismissal or loss of wages may be initiated at
78 level two with the administrator of the grievant's work
79 location, facility, area office, or other appropriate

80 subdivision of the department, board, commission or
81 agency.

82 (2) An employee may grieve a final action of the
83 employer involving a dismissal, demotion or suspension
84 exceeding twenty days directly to the hearing examiner.
85 The expedited grievance shall be in writing and shall be
86 filed within ten days of the date of the final action with the
87 chief administrator and the director of the division of
88 personnel.

**§29-6A-5. Education and state employees grievance board;
hearing examiners.**

1 (a) The education employees grievance board, created
2 by virtue of the provisions of section five, article twenty-
3 nine, chapter eighteen of this code, is renamed the
4 education and state employees grievance board and, in
5 addition to those duties set forth in chapter eighteen, shall
6 administer the grievance procedure at level four as
7 provided for in section four of this article. The board has
8 jurisdiction regarding procedural matters at levels two and
9 three of the grievance procedure. The board shall
10 employ, in addition to those persons employed as hearing
11 examiners for educational employee grievances, at least
12 two full-time hearing examiners for the purpose of
13 conducting hearings at level four, as provided in section
14 four of this article. The hearing examiners are employed
15 on an annual basis along with the clerical help necessary
16 to implement the legislative intent expressed in section one
17 of this article.

18 In addition to the budget required for submission to
19 the Legislature by virtue of the provisions of section five,
20 article twenty-nine, chapter eighteen of this code, the
21 board shall submit a yearly budget and shall report
22 annually to the governor and the Legislature regarding
23 proceedings conducted under this article, including
24 receipts and expenditures, the number of level four
25 hearings conducted, synopses of hearing outcomes and
26 other information as the board determines appropriate.
27 The board shall further evaluate on an annual basis the
28 level four grievance process and the performance of all
29 hearing examiners and include the evaluation in the

30 annual report to the governor and the Legislature. In
31 making the evaluation the board shall notify all
32 employers, employee organizations, the director of the
33 division of personnel and all grievants participating in
34 level four grievances in the year for which evaluation is
35 being made and shall provide for the submission of
36 written comment or the hearing of testimony regarding
37 the grievance process, or both.

38 The board shall provide suitable office space for all
39 hearing examiners in space other than that utilized by any
40 employer as defined in section two of this article and shall
41 ensure that reference materials are generally available.
42 The board shall provide forms for filing grievances, giving
43 notice, taking appeals, making reports and
44 recommendations and other documents as the board
45 determines necessary for any stage of a grievance under
46 this article.

47 The board is authorized to propose rules for
48 promulgation consistent with the provisions of this article,
49 and in accordance with article three, chapter twenty-nine-a
50 of this code.

51 (b) Hearing examiners may consolidate grievances,
52 allocate costs among the parties in accordance with section
53 eight of this article, subpoena witnesses and documents in
54 accordance with the provisions of section one, article five,
55 chapter twenty-nine-a of this code, provide relief as is
56 determined fair and equitable in accordance with the
57 provisions of this article, and take any other action to
58 provide for the effective resolution of grievances not
59 inconsistent with any rules of the board or the provisions
60 of this article: *Provided*, That in all cases the hearing
61 examiner has the authority to provide appropriate
62 remedies including, but not limited to, making the
63 employee whole.

§29-6A-6. Hearings generally.

1 (a) The chief administrator or his or her designee
2 acting as a grievance evaluator or the hearing examiner
3 shall conduct all hearings in an impartial manner and shall
4 ensure that all parties are accorded procedural and

5 substantive due process. All parties shall have an
6 opportunity to present evidence and argument with respect
7 to the matters and issues involved, to cross-examine and to
8 rebut evidence. Reasonable notice of a hearing shall be
9 sent prior to the hearing to all parties and their named
10 representative and shall include the date, time and place of
11 the hearing. Level one, level two and level three hearings
12 shall be at a convenient place accessible to the aggrieved
13 employee. All hearings shall be held on the employer's
14 premises or on other premises mutually agreeable to the
15 parties and within regular working hours: *Provided*, That
16 any hearing might continue beyond normal working
17 hours. Level four hearings shall be at a place to be
18 designated by the hearing examiner.

19 (b) The employer that is party to the grievance shall
20 produce prior to the hearing any documents, not
21 privileged, and which are relevant to the subject matter
22 involved in the pending grievance, that have been
23 requested by the grievant, in writing.

24 (c) The chief administrator or his or her designee or
25 the hearing examiner has the power to: (1) Administer
26 oaths and affirmations; (2) subpoena witnesses; (3)
27 regulate the course of the hearing; (4) hold conferences
28 for the settlement or simplification of the issues; (5)
29 exclude immaterial, irrelevant or repetitious evidence; (6)
30 sequester witnesses; (7) restrict the number of advocates;
31 and (8) take any other action not inconsistent with the
32 rules of the board or the provisions of this article.

33 (d) All the testimony and evidence at any level three
34 or level four hearing shall be recorded by mechanical
35 means, and all recorded testimony and evidence at the
36 hearing shall be transcribed and certified by affidavit.
37 The chief administrator is responsible for promptly
38 providing a copy of the certified transcript of a level three
39 hearing to any party to that hearing who requests the
40 transcript. The hearing examiner may also request and be
41 provided a transcript upon appeal to level four and
42 allocate the costs for the transcript as prescribed in section
43 eight of this article. The board is responsible for
44 promptly providing a copy of the certified transcript of a

45 level four hearing to any party to that hearing who
46 requests the transcript.

47 (e) Formal rules of evidence may not be applied, but
48 parties are bound by the rules of privilege recognized by
49 law. No employee may be compelled to testify against
50 himself or herself in a grievance involving disciplinary
51 action. The burden of proof rests with the employer in
52 disciplinary matters.

53 (f) All materials submitted in accordance with section
54 three of this article; the mechanical recording of all
55 testimony and evidence or the transcription of the
56 testimony, if any; the decision; and any other materials
57 considered in reaching the decision are the record of a
58 grievance. The record shall be submitted to any level at
59 which appeal has been made, and the record shall be
60 considered, but the development of the record is not
61 limited thereby.

62 (g) Every decision pursuant to a hearing shall be in
63 writing and shall be accompanied by findings of fact and
64 conclusions of law.

65 (h) Prior to the decision any party may propose
66 findings of fact and conclusions of law.

§29-6A-7. Enforcement and reviewability; costs; good faith.

1 (a) The decision of the hearing examiner is final upon
2 the parties and is enforceable in circuit court.

3 (b) Either party or the director of the division of
4 personnel may appeal to the circuit court of Kanawha
5 County or to the circuit court of the county in which the
6 grievance occurred on the grounds that the hearing
7 examiner's decision:

8 (1) Is contrary to law or a lawfully adopted rule or
9 written policy of the employer;

10 (2) Exceeds the hearing examiner's statutory
11 authority;

12 (3) Is the result of fraud or deceit;

13 (4) Is clearly wrong in view of the reliable, probative
14 and substantial evidence on the whole record; or

15 (5) Is arbitrary or capricious or characterized by abuse
16 of discretion or clearly unwarranted exercise of discretion.

17 (c) The appeal shall be filed within thirty days of
18 receipt of the hearing examiner's decision. The decision
19 of the hearing examiner is not automatically stayed upon
20 the filing of an appeal, but a stay may be granted by the
21 circuit court upon separate motion for a stay.

22 (d) The court's ruling shall be upon the entire record
23 made before the hearing examiner, and the court may
24 hear oral arguments and require written briefs. The court
25 may reverse, vacate or modify the decision of the hearing
26 examiner or may remand the grievance to the appropriate
27 chief administrator for further proceedings.

28 (e) Both employer and employee shall at all times act
29 in good faith and make every possible effort to resolve
30 disputes at the lowest level of the grievance procedure.
31 The hearing examiner may make a determination of bad
32 faith and in extreme instances allocate the cost of the
33 hearing to the party found to be acting in bad faith. The
34 allocation of costs shall be based on the relative ability of
35 the party to pay the costs.

§29-6A-10. Employee's right to attorney's fees and costs.

1 If an employee appeals to a circuit court an adverse
2 decision of a hearing examiner rendered in a grievance
3 proceeding pursuant to provisions of this article or is
4 required to defend an appeal and the person substantially
5 prevails, the adverse party or parties is liable to the
6 employee, upon final judgment or order, for court costs,
7 and for reasonable attorney's fees, to be set by the court,
8 for representing the employee in all administrative
9 hearings and before the circuit court and the supreme
10 court of appeals, and is further liable to the employee for
11 any court reporter's costs incurred during any
12 administrative hearings or court proceedings: *Provided,*
13 That in no event shall such attorney's fees be awarded in
14 excess of a total of one thousand five hundred dollars for

15 the administrative hearings and circuit court proceedings
16 nor an additional one thousand dollars for supreme court
17 proceedings: *Provided, however,* That the requirements
18 of this section shall not be construed to limit the
19 employee's right to recover reasonable attorney's fees in a
20 mandamus proceeding brought under section nine of this
21 article.

§29-6A-12. Mediation required at request of either party.

1 Upon the request of either party, the board may
2 require mediation or other alternative dispute resolution
3 technique to assist the parties in identifying, clarifying and
4 resolving issues regarding the grievance. Mediation may
5 be requested at any time prior to the level four hearing.
6 All of the information that is provided by parties during
7 mediation is and shall remain confidential. Mediators
8 may not be called as witnesses to provide testimony in
9 unresolved grievances that proceed to a grievance hearing,
10 and any hearing examiner involved in a mediation process
11 may not hear the grievance or be consulted regarding the
12 merits of the grievance.

CHAPTER 161

(Com. Sub. for H. B. 4118—By Delegates Cann, Warner, Coleman,
Linch, Staton and Kominar)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and four, article one, chapter forty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, six and nine, article two of said chapter; and to amend and reenact section five, article four of said chapter, all relating generally to establishing conservatorship for missing persons; defining missing person; and providing petition, notice and hearing requirements for appointing conservators for missing persons.

Be it enacted by the Legislature of West Virginia:

That sections one and four, article one, chapter forty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, two, six and nine, article two of said chapter be amended and reenacted; and that section five, article four of said chapter be amended and reenacted, all to read as follows:

Article

1. **Definitions and General Provisions.**
2. **Procedure for Appointment.**
4. **Termination, Revocation and Modification of Appointments.**

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.

§44A-1-1. Short title and legislative findings.

§44A-1-4. Definitions.

§44A-1-1. Short title and legislative findings.

1 This chapter shall be known and may be cited as the
2 "West Virginia Guardianship and Conservatorship Act."

3 The Legislature finds that section six, article eight of
4 the constitution of the state of West Virginia gives it the
5 discretionary authority to pass legislation which
6 "...provides that all matters of probate, the appointment
7 and qualification of personal representatives, guardians,
8 committees and curators, and the settlements of their
9 accounts..." be under the exclusive jurisdiction of circuit
10 courts. The Legislature further finds and declares that the
11 use of the word "all" does not require an interpretation that
12 the Legislature must place every aspect of such matters
13 with circuit courts, but, that because of the discretionary
14 authority given, the Legislature may transfer, from time to
15 time, only those matters which it believes would be better
16 served under the jurisdiction of circuit courts.

17 The Legislature hereby further finds and declares that
18 legal proceedings requiring a tribunal to determine
19 whether persons should be appointed to manage the
20 personal or financial affairs of individuals deemed
21 mentally incompetent, mentally retarded, mentally

22 handicapped or missing involve considerations of
23 constitutionally protected rights which can best be
24 resolved within the circuit courts of this state.

§44A-1-4. Definitions.

1 As used in this chapter, unless a different meaning is
2 clearly required by the context:

3 (1) "Conservator" means a person appointed by the
4 court who is responsible for managing the estate and
5 financial affairs of a protected person, and, where the
6 context plainly indicates, the term "conservator" shall
7 mean or include a "limited conservator" or a "temporary
8 conservator."

9 (2) "Guardian" means a person appointed by the court
10 who is responsible for the personal affairs of a protected
11 person, and, where the context plainly indicates, the term
12 "guardian" shall mean or include a "limited guardian" or a
13 "temporary guardian."

14 (3) "Protected person" means an adult individual,
15 eighteen years of age or older, who has been found by a
16 court, because of mental impairment, to be unable to
17 receive and evaluate information effectively or to respond
18 to people, events, and environments to such an extent that
19 the individual lacks the capacity: (A) To meet the
20 essential requirements for his or her health, care, safety,
21 habilitation, or therapeutic needs without the assistance or
22 protection of a guardian; or (B) to manage property or
23 financial affairs or to provide for his or her support or for
24 the support of legal dependents without the assistance or
25 protection of a conservator. A finding that the individual
26 displays poor judgment, alone, will not be considered
27 sufficient evidence that the individual is a protected person
28 within the meaning of this subsection. "Protected person"
29 also means a person whom a court has determined is a
30 missing person.

31 (4) "Interested person" means: (A) An individual who
32 is the subject of a guardianship or conservatorship
33 proceeding; (B) a guardian or conservator of a protected
34 person; and (C) any other person with an actual and

35 substantial interest in the proceeding, either generally or as
36 to a particular matter, as distinguished from a person who
37 has only a nominal, formal, or technical interest in or
38 connection with the proceeding.

39 (5) "Limited conservator" means a person appointed
40 by the court who has only those responsibilities for
41 managing the estate and financial affairs of a protected
42 person, as specified in the order of appointment.

43 (6) "Limited guardian" means one appointed by the
44 court who has only those responsibilities for the personal
45 affairs of a protected person, as specified in the order of
46 appointment.

47 (7) "Person" means, generally, a natural person, any
48 corporation, association, partnership or other business
49 entity, any political subdivision or other public agency, or
50 any estate, trust or other collection of properties to which
51 the law attributes the capacity of having rights or duties.

52 (8) "Living will" means a living will existing and duly
53 executed in accordance with the provisions of section
54 three, article thirty, chapter sixteen of this code.

55 (9) "Medical power of attorney" means a power of
56 attorney existing and duly executed in accordance with
57 the provisions of section six, article thirty-a, chapter
58 sixteen of this code.

59 (10) "Missing person" means an adult individual,
60 eighteen years of age or older, who is absent from his or
61 her usual place of residence in the state and whose
62 whereabouts are unknown for a period of six months or
63 more.

64 (11) "Surrogate decision-maker" means an individual
65 identified as such by an attending physician in accordance
66 with the provisions of section seven, article thirty-b,
67 chapter sixteen of this code.

ARTICLE 2. PROCEDURE FOR APPOINTMENT.

§44A-2-1. Filing of petition; jurisdiction; fees.

§44A-2-2. Who may file petition; contents.

§44A-2-6. Notice of hearing.

§44A-2-9. Hearing on petition to appoint.

§44A-2-1. Filing of petition; jurisdiction; fees.

1 (a) A petition for the appointment of a guardian or
2 conservator shall be filed with the clerk of the circuit court
3 in the county in which the alleged protected person
4 resides, or, if an alleged protected person has been
5 admitted to a health care or correctional facility, in the
6 county in which that facility is located. A petition for the
7 appointment of a conservator for a missing person shall be
8 filed with the clerk of the circuit court in the county in
9 which the missing person last resided.

10 (b) The circuit court in which the proceeding is first
11 commenced shall have exclusive jurisdiction unless that
12 court determines that a transfer of venue would be in the
13 best interests of the person alleged to need protection.

14 (c) The fee for filing a petition shall be seventy
15 dollars, payable upon filing to the circuit clerk, all of
16 which shall be retained by the circuit clerk. The person
17 bringing the petition shall be responsible for fees for
18 filings of the petition and other papers, for service of
19 process, and for copies of court documents and
20 transcripts. In the event that a guardian and/or conservator
21 is appointed by the court, such fees shall be reimbursed to
22 the individual who filed the petition from the protected
23 person's estate, if funds are available. Any person who is
24 pecuniarily unable to pay such fees and costs as set forth
25 in article one, chapter fifty-nine of this code, and article
26 two, chapter fifty-one of this code, will not be required to
27 pay said fees and costs.

§44A-2-2. Who may file petition; contents.

1 (a) A petition for the appointment of a guardian, a
2 conservator, or both, may be filed by the individual
3 alleged to be a protected person, by a person who is
4 responsible for or has assumed responsibility for the
5 individual's care or custody, by the facility providing care
6 to the individual, by the person that the individual has
7 nominated as guardian or conservator, or by any other

8 interested person, including, but not limited to, the
9 department of health and human resources.

10 (b) A petition for the appointment of a guardian, a
11 conservator, or both, shall state the petitioner's name, place
12 of residence, post office address, and relationship to the
13 alleged protected person, and shall, to the extent known as
14 of the date of filing, include the following:

15 (1) The alleged protected person's name, date of birth,
16 place of residence or location and post office address;

17 (2) The names and post office addresses of the alleged
18 protected person's nearest relatives, in the following order:

19 (i) The spouse and children, if any; or if none

20 (ii) The parents and brothers and sisters, if any; or if
21 none

22 (iii) The nearest known relatives who would be entitled
23 to succeed to the person's estate by intestate succession as
24 set forth in article one, chapter forty-two of this code.

25 Once a relative or several relatives have been identified
26 in one of the aforementioned categories, relatives in a
27 lower category do not have to be listed in the petition;

28 (3) The name, place of residence or location and post
29 office address of the individual or facility that is
30 responsible for or has assumed responsibility for the
31 person's care or custody;

32 (4) The name, place of residence or location and post
33 office address of any person designated as a surrogate
34 decision-maker for the alleged protected person, or of any
35 representative or representatives designated under a
36 durable power of attorney, medical power of attorney or
37 living will, of which the alleged protected person is the
38 principal, and the petitioner shall attach a copy of any
39 such documents, if available;

40 (5) The name, post office address and phone number
41 of the attorney representing the petitioner in the petition
42 and appointment proceedings;

43 (6) Whether the person's incapacity will prevent
44 attendance at the hearing and the reasons therefor;

45 (7) The type of guardianship or conservatorship
46 requested and the reasons for the request;

47 (8) The proposed guardian or conservator's name, post
48 office address and, if the proposed guardian or
49 conservator is an individual, the individual's age,
50 occupation and relationship to the alleged protected
51 person;

52 (9) The name and post office address of a guardian
53 nominated by the alleged protected person if different
54 from the proposed guardian or conservator, and, if the
55 person nominated as a guardian or conservator is an
56 individual, the individual's age, occupation and
57 relationship to the alleged protected person;

58 (10) The name and post office address of any
59 guardian or conservator currently acting, whether in this
60 state or elsewhere;

61 (11) If the appointment of a limited guardian is
62 requested, the specific areas of protection and assistance to
63 be included in the order of appointment;

64 (12) If the appointment of a limited conservator is
65 requested, the specific areas of management and assistance
66 to be included in the order of appointment; and

67 (13) If the appointment of a conservator is requested
68 for a missing person, the specific circumstances under
69 which the person is considered missing.

§44A-2-6. Notice of hearing.

1 (a) Upon the filing of the petition and evaluation
2 report, the court shall promptly issue a notice fixing the
3 date, hour and location for a hearing to take place within
4 sixty days.

5 (b) The alleged protected person shall be personally
6 served with the notice, a copy of the petition, and the
7 evaluation report not less than fourteen days before the

8 hearing. The person may not waive notice, and a failure
9 to properly notify the person shall be jurisdictional.

10 (c) A copy of the notice, together with a copy of the
11 petition, shall be mailed by certified mail, return receipt
12 requested, by the petitioner, at least fourteen days before
13 the hearing to all individuals seven years of age or older
14 and to all entities whose names and post office addresses
15 appear in the petition. In the case of a missing person, a
16 copy of the petition for the appointment of a conservator
17 shall be mailed by certified mail, return receipt requested,
18 by the petitioner, at least fourteen days before the hearing
19 to the last known address of the missing person. A copy
20 of certified mail return receipts shall be filed in the office
21 of the circuit clerk on or before the date of hearing.

22 (d) The notice shall include a brief statement in large
23 print of the purpose of the proceedings, and shall inform
24 the alleged protected person of the right to appear at the
25 hearing, the right to an attorney and the right to object to
26 the proposed appointment. Additionally, the notice shall
27 include the following statement in large print:

28 **POSSIBLE CONSEQUENCES OF A COURT**
29 **FINDING THAT YOU ARE INCAPACITATED**

30 At the hearing you may lose many of your rights. A
31 guardian may be appointed to make personal decisions
32 for you. A conservator may be appointed to make
33 decisions concerning your property and finances. The
34 appointment may affect control of how you spend your
35 money, how your property is managed and controlled,
36 who makes your medical decisions, where you live,
37 whether you are allowed to vote and other important
38 rights.

39 (e) No person may be appointed a guardian or
40 conservator without first receiving proper notice and
41 having the opportunity for a hearing.

§44A-2-9. Hearing on petition to appoint.

1 (a) The court may hear the petition for the
2 appointment of a guardian or conservator or may
3 designate the mental hygiene commissioner in the circuit

4 to serve as the trier of fact at the hearing on the petition:
5 *Provided*, That the court shall be the trier of fact at the
6 hearing on a petition for the appointment of a conservator
7 for a missing person. If a mental hygiene commissioner is
8 appointed, a mental hygiene commitment proceeding may
9 not be held simultaneously with a proceeding for the
10 appointment of a guardian or conservator. The
11 designated mental hygiene commissioner shall submit
12 written findings of fact and recommendations to the court
13 upon conclusion of the hearing. The court may accept or
14 reject the recommendations of the mental hygiene
15 commissioner. Only the court may enter an order
16 appointing a guardian or conservator.

17 (b) The hearing may be held at such convenient place
18 as the court or mental hygiene commissioner directs,
19 including the place where the alleged protected person is
20 located. The hearing shall be closed to the public. The
21 proposed guardian or conservator shall attend the hearing
22 except for good cause shown. Any individual or entity
23 may apply for permission to observe or participate at the
24 hearing, and the court or mental hygiene commissioner
25 shall grant the request if reasonably satisfied that the
26 applicant's participation would be in the best interests of
27 the alleged protected person.

28 (c) The alleged protected person is entitled to attend
29 the hearing, to oppose the petition, to be represented by an
30 attorney, to present evidence, to compel the attendance of
31 witnesses and to confront and cross-examine all witnesses.
32 If the alleged protected person is present at the hearing,
33 the court or mental hygiene commissioner shall verbally
34 inform the person of such rights, of the contents of the
35 petition, and of the purpose and legal effect of the
36 appointment of a guardian or conservator. Except in the
37 case of a missing person, the hearing shall not proceed if
38 the alleged protected person is not present unless there is
39 an affidavit of a physician presented to the court, qualified
40 expert testimony to warrant a finding that the presence of
41 the individual is not possible due to a physical inability or
42 that such presence would significantly impair his or her
43 health, or evidence that the person refuses to appear.

44 (d) The standard of proof to be applied in
45 determining whether the alleged protected person is a
46 person for whom a guardian or conservator should be
47 appointed is clear and convincing evidence.

48 (e) The court shall make specific findings of fact and
49 conclusions of law in support of any orders entered.

50 (f) Upon request, a transcript of the proceedings of
51 appointment shall be provided for the purposes of an
52 appeal.

53 (g) In the case of a hearing held on a petition for the
54 appointment of a conservator for a missing person, the
55 court must be satisfied by clear and convincing evidence
56 that the person has been missing and their whereabouts are
57 unknown for six months or more and the appointment of
58 a conservator is necessary to protect the interests of and to
59 manage the estate and the financial affairs of the missing
60 person. If the court finds there is no necessity to appoint
61 a full conservator, the court may appoint a limited
62 conservator to manage the estate and financial affairs of
63 the missing person. The court may, only as a last resort,
64 appoint a sheriff to serve as a conservator for a missing
65 person.

ARTICLE 4. TERMINATION, REVOCATION AND MODIFICA- TION OF APPOINTMENTS.

§44A-4-5. Termination of guardianship or conservatorship of protected person - When authorized.

1 A guardianship or conservatorship of a protected
2 person shall terminate upon the death of the protected
3 person, whenever jurisdiction is transferred to another state
4 or if ordered by the court following a hearing on the
5 petition of any interested person. In the case of a missing
6 person, a conservatorship shall terminate when the
7 person's death is established by the production of a
8 certified death certificate, the person is presumed dead
9 pursuant to the provisions of article nine, chapter forty-
10 four of this code, or the missing person is located.

CHAPTER 162

(H. B. 4457—By Delegates Hunt, Amores, Rowe,
Seacrist, Spencer, Webb and Henderson)

[Passed March 13, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the collection of head tax on dogs; and exempting dogs used as guide or support dogs by disabled persons.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. DOGS AND CATS.

§19-20-2. Collection of head tax on dogs; duties of assessor and sheriff; registration of dogs; disposition of head tax; taxes on dogs not collected by assessor.

1 It shall be the duty of the county assessor and his or
2 her deputies of each county within this state, at the time
3 they are making assessment of the personal property
4 within such county, to assess and collect a head tax of
5 three dollars on each dog, male or female; and in addition
6 to the above, the assessor and his or her deputies shall have
7 the further duty of collecting any such head tax on dogs
8 as may be levied by the ordinances of each and every
9 municipality within the county. However, no head tax
10 may be levied against any guide or support dog especially
11 trained for the purpose of serving as a guide, leader,
12 listener or support for a blind person, deaf person or a
13 person who is physically or mentally disabled because of
14 any neurological, muscular, skeletal or psycholological
15 disorder that causes weakness or inability to perform any
16 function. Guide or support dogs must be registered as
17 provided by this section. In the event that the owner,

18 keeper or person having in his or her possession or
19 allowing to remain on any premises under his or her
20 control any dog above the age of six months, shall refuse
21 or fail to pay such tax, when the same is assessed or within
22 fifteen days thereafter, to the assessor or deputy assessor,
23 then such assessor or deputy assessor shall certify such tax
24 to the county dog warden; if there be no county dog
25 warden he or she shall certify such tax to the county
26 sheriff, who shall take charge of the dog for which the tax
27 is delinquent and impound the same for a period of
28 fifteen days, for which service he or she shall be allowed a
29 fee of one dollar and fifty cents to be charged against
30 such delinquent taxpayer in addition to the taxes herein
31 provided for. In case the tax and impounding charge
32 herein provided for shall not have been paid within the
33 period of fifteen days, then the sheriff may sell the
34 impounded dog and deduct the impounding charge and
35 the delinquent tax from the amount received therefor, and
36 return the balance, if any, to the delinquent taxpayer.
37 Should the sheriff fail to sell the dog so impounded within
38 the time specified herein, he or she shall kill such dog and
39 dispose of its body.

40 At the same time as the head tax is assessed, the
41 assessor and his or her deputies shall, on the forms
42 prescribed under section four of this article, take down the
43 age, sex, color, character of hair (long or short) and breed
44 (if known) and the name and address of the owner, keeper
45 or harbinger thereof. When the head tax, and extra
46 charges, if any, are paid, the officer to whom payment is
47 made shall issue a certificate of registration and a
48 registration tag for such dog.

49 In addition to the assessment and registration above
50 provided for, whenever a dog either is acquired or
51 becomes six months of age after the assessment of the
52 personal property of the owner, keeper or harbinger
53 thereof, the said owner, keeper or harbinger of said dog
54 shall, within ten days after the acquisition or maturation,
55 register the said dog with the assessor, and pay the head
56 tax thereon unless the prior owner, keeper or harbinger
57 paid the head tax.

58 All certificates of registration and registration tags
59 issued pursuant to the provisions of this section shall be
60 issued for the fiscal year and shall be valid from the date
61 on which issued until the thirtieth day of June of that fiscal
62 year, or until reissued by the assessor or his or her deputy
63 in the regular performance of his or her duties, but in no
64 case shall previous registration tags be valid after
65 September thirtieth of the next ensuing fiscal year.

66 The assessor collecting the head tax on dogs shall be
67 allowed a commission of ten percent upon all such taxes
68 collected by him or her, and shall turn in to the county
69 treasury ninety percent of such taxes so collected, as are
70 levied by this section; and the assessor shall turn over to
71 the treasurer or other proper officer of each and every
72 municipality within the county ninety percent of such
73 taxes levied by the ordinances of such municipality. All
74 such dog taxes, except those belonging to municipalities,
75 shall be accredited to the dog and kennel fund provided
76 for in section ten of this article. Such dog taxes as are
77 collected for and turned over to municipalities shall be
78 deposited by the proper officer of such municipalities to
79 such fund and shall be expended in such manner as the
80 law of such municipality may provide. All taxes on dogs
81 not collected by the assessor shall be collected by the
82 regular tax collecting officer of the county and placed to
83 the credit of the dog and kennel fund.

CHAPTER 163

(S. B. 764—By Senators Craigo, Anderson, Bailey, Chafin, Helmick,
Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe,
Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article sixteen-a,
chapter seventeen of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to funding of projects of the Hatfield-McCoy regional recreation authority from proceeds of parkways authority's economic development projects and tourism projects; and duty of parkways authority to seek authorization to issue additional revenue bonds.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article sixteen-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 16A. WEST VIRGINIA PARKWAYS, ECONOMIC DEVELOPMENT AND TOURISM AUTHORITY.

§17-16A-13. Tolls, rents, fees, charges and revenues; competitive bidding on contracts.

1 (a) (1) The parkways authority is hereby authorized to
2 fix, revise, charge and collect tolls for the use of each
3 parkway project and the different parts or sections thereof,
4 and to fix, revise, charge and collect rents, fees, charges
5 and other revenues, of whatever kind or character, for the
6 use of each economic development project or tourism
7 project, or any part or section thereof, and to contract with
8 any person, partnership, association or corporation
9 desiring the use of any part thereof, including the right-
10 of-way adjoining the paved portion, for placing thereon
11 telephone, telegraph, electric light, power or other utility
12 lines, gas stations, garages, stores, hotels, restaurants and
13 advertising signs, or for any other purpose except for
14 tracks for railroad or railway use, and to fix the terms,
15 conditions, rents and rates of charges for such use. Such
16 tolls, rents, fees and charges shall be so fixed and adjusted
17 in respect of the aggregate of tolls, or in respect of the
18 aggregate rents, fees and charges, from the project or
19 projects in connection with which the bonds of any issue
20 shall have been issued as to provide a fund sufficient with
21 other revenues, if any, to pay: (A) The cost of
22 maintaining, repairing and operating such project or

23 projects; and (B) the principal of and the interest on such
24 bonds as the same shall become due and payable, and to
25 create reserves for such purposes. Such tolls, rents, fees
26 and other charges shall not be subject to supervision or
27 regulation by any other commission, board, bureau,
28 department or agency of the state. The tolls, rents, fees,
29 charges and all other revenues derived from the project or
30 projects in connection with which the bonds of any issue
31 shall have been issued, except such part thereof as may be
32 necessary to pay such cost of maintenance, repair and
33 operation and to provide such reserves therefor as may be
34 provided for in the resolution authorizing the issuance of
35 such bonds or in the trust agreement securing the same,
36 shall be set aside at such regular intervals as may be
37 provided in such resolution or such trust agreement in a
38 sinking fund which is hereby pledged to, and charged
39 with, the payment of: (i) the interest upon such bonds as
40 such interest shall fall due; (ii) the principal of such bonds
41 as the same shall fall due; (iii) the necessary charges of
42 paying agents for paying principal and interest; and (iv)
43 the redemption price or the purchase price of bonds
44 retired by call or purchase as therein provided. The use
45 and disposition of moneys to the credit of such sinking
46 fund shall be subject to the provisions of the resolution
47 authorizing the issuance of such bonds or of such trust
48 agreement. Except as may otherwise be provided in such
49 resolution or such trust agreement, such sinking fund shall
50 be a fund for all such bonds without distinction or priority
51 of one over another. The moneys in the sinking fund, less
52 such reserve as may be provided in such resolution or trust
53 agreement, if not used within a reasonable time for the
54 purchase of bonds for cancellation as above provided,
55 shall be applied to the redemption of bonds at the
56 redemption price then applicable.

57 (2) (A) In fiscal year one thousand nine hundred
58 ninety-eight, after the parkways authority has met or
59 provided for the satisfaction of each requirement imposed
60 by the provisions of subdivision (1) of this subsection, the
61 parkways authority shall pay two hundred fifty thousand

62 dollars to the Hatfield-McCoy regional recreation
63 authority from any remaining balance of revenues
64 received from economic development projects and
65 tourism projects.

66 (B) Upon the effective date of this act, the parkways
67 authority shall seek authorization from the federal
68 highway administration, the state department of
69 transportation and the trustee under any trust indenture or
70 agreement existing as the result of the issuance of any
71 revenue bonds under the provisions of this article to issue
72 additional revenue bonds in a total amount not to exceed
73 six million dollars for the purpose of funding projects of
74 the Hatfield-McCoy regional recreation authority. Upon
75 the agreement of all of such entities that the parkways
76 authority be authorized to do so, as certified to the
77 parkways authority, the governor and the joint committee
78 on government and finance, the parkways authority is
79 authorized to issue additional revenue bonds in a total
80 amount not to exceed six million dollars. The proceeds of
81 the revenue bonds shall be used to fund projects of the
82 Hatfield-McCoy regional recreation authority. Each
83 issuance of such revenue bonds and the application of the
84 proceeds thereof shall be subject to each condition,
85 restriction or other provision of this article applicable to
86 the issuance of parkway revenue bonds. In the event the
87 agreement is not certified as required by this subsection,
88 and until the same is certified, the parkways authority shall
89 pay two hundred fifty thousand dollars to the Hatfield-
90 McCoy regional recreation authority in the fiscal year
91 ending the thirtieth day of June, two thousand, and in each
92 fiscal year thereafter, for a total of four consecutive years,
93 for the purpose of funding projects of the Hatfield-
94 McCoy regional recreation authority. These amounts
95 shall be paid in quarterly installments from remaining
96 balances in each such fiscal year of revenues received
97 from economic development projects and tourism projects
98 as determined in the manner provided in paragraph (A) of
99 this subdivision.

100 (b) The parkways authority shall cause, as soon as it is
101 legally able to do so, all contracts to which it is a party and
102 which relate to the operation, maintenance or use of any
103 restaurant, motel or other lodging facility, truck and
104 automobile service facility, food vending facility or any
105 other service facility located along the West Virginia
106 turnpike, to be renewed on a competitive bid basis. All
107 contracts relating to any facility or services entered into by
108 the parkways authority with a private party with respect to
109 any project constructed after the effective date of this
110 legislation shall be let on a competitive bid basis only. If
111 the parkways authority receives a proposal for the
112 development of a project, such proposal shall be made
113 available to the public in a convenient location in the
114 county wherein the proposed facility may be located. The
115 parkways authority shall publish a notice of the proposal
116 by a Class I legal advertisement in accordance with the
117 provisions of article three, chapter fifty-nine of this code.
118 The publication area shall be the county in which the
119 proposed facility would be located. Any citizen may
120 communicate by writing to the parkways authority his or
121 her opposition to or approval to such proposal within a
122 period of time not less than forty-five days from the
123 publication of the notice. No contract for the
124 development of a project may be entered into by the
125 parkways authority until a public hearing is held in the
126 vicinity of the location of the proposed project with at
127 least twenty days' notice of such hearing by a Class I
128 publication pursuant to section two, article three, chapter
129 fifty-nine of this code. The parkways authority shall
130 make written findings of fact prior to rendering a decision
131 on any proposed project. All studies, records, documents
132 and other materials which are considered by the parkways
133 authority in making such findings shall be made available
134 for public inspection at the time of the publication of the
135 notice of public hearing and at a convenient location in
136 the county where the proposed project may be located.
137 The parkways authority shall promulgate rules in
138 accordance with chapter twenty-nine-a of this code for the
139 conduct of any hearing required by this section. Persons
140 attending any such hearing shall be afforded a reasonable
141 opportunity to speak and be heard on the proposed
142 project.

CHAPTER 164

(Com. Sub. for H. B. 4299—By Mr. Speaker, Mr. Kiss, and Delegates
Martin, Compton, Leach, Douglas, Staton and Capito)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen-b; to amend and reenact section two-b, article four-a, chapter nine of said code; and to further amend said article four-a by adding thereto a new section, designated section three, all relating to creating a children's health program; expanding access to health services to certain eligible children; requiring reporting; defining terms; creating division; creating a children's health policy board, specifying membership and qualifications of members, compensation and expenses, setting forth purpose, powers and duties; providing for employment of a director, setting forth powers and duties; requiring preparation of annual financial plan; creating a special revolving fund known as the West Virginia children's health fund; providing guidelines to be considered by the board and director in developing and planning the program; providing for termination and reauthorization of the program; expanding medicaid coverage to certain eligible children; and creating a special revolving fund known as the West Virginia Title XIX-Medicaid fund.

Be it enacted by the Legislature of West Virginia:

That chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article sixteen-b; that section two-b, article four-a, chapter nine of said code be amended and reenacted; and that said article four-a be further amended by adding thereto a new section, designated section three, 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.**
- 9. Human Services.**

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 16B. WEST VIRGINIA CHILDREN'S HEALTH PROGRAM.

- §5-16B-1. Expansion of health care coverage to children; creation of program; legislative directives.
- §5-16B-2. Definitions.
- §5-16B-3. Reporting requirements.
- §5-16B-4. Children's health policy board created; qualifications and removal of members; powers; duties; meetings; and compensation.
- §5-16B-5. Director of the children's health program; qualifications; powers and duties.
- §5-16B-6. Financial plans requirements.
- §5-16B-7. West Virginia children's health fund.
- §5-16B-8. Termination and reauthorization.
- §5-16B-9. Public-private partnerships.

§5-16B-1. Expansion of health care coverage to children; creation of program; legislative directives.

- 1 (a) It is the intent of the Legislature to expand access
 2 to health services for eligible children and to pay for this
 3 coverage by using private, state and federal funds to
 4 purchase those services or purchase insurance coverage
 5 for those services. To achieve this intention, the West
 6 Virginia children's health program is hereby created.
 7 The program shall be administered by the division of
 8 children's health within the bureau for medical services of
 9 the department of health and human resources in
 10 accordance with the provisions of this article and the
 11 applicable provisions of Title XXI of the Social Security
 12 Act of 1997. Participation in the program may be made

13 available to families of eligible children, subject to
14 eligibility criteria and processes to be established, which
15 shall not create an entitlement to coverage in any person.
16 Nothing in this article may be construed to require any
17 appropriation of state general revenue funds for the
18 payment of any benefit provided for in this article. In the
19 event that this article conflicts with the requirements of
20 federal law, federal law shall govern.

21 (b) In developing a children's health program that
22 operates with the highest degree of simplicity and
23 governmental efficiency, the board shall avoid duplicating
24 functions available in existing agencies and may enter into
25 interagency agreements for the performance of specific
26 tasks or duties at a specific or maximum contract price.

27 (c) In developing benefit plans, the board may
28 consider any cost savings, administrative efficiency or
29 other benefit to be gained by considering existing
30 contracts for services with state health plans and
31 negotiating modifications of those contracts to meet the
32 needs of the program.

§5-16B-2. Definitions.

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

3 (a) "Board" means the children's health policy
4 board;

5 (b) "Director" means the director of the children's
6 health program;

7 (c) "Division" means the division of children's health
8 created within the bureau for medical services in the
9 department of health and human resources;

10 (d) "Essential community health service provider"
11 means a health care provider that:

12 (1) Has historically served medically needy or
13 medically indigent patients and demonstrates a
14 commitment to serve low-income and medically indigent
15 populations which make up a significant portion of its
16 patient population, or, in the case of a sole community

17 provider, serves medically indigent patients within its
18 medical capability; and

19 (2) Either waives service fees or charges fees based on
20 a sliding scale and does not restrict access or services
21 because of a client's financial limitations including, but
22 not limited to, community mental health centers, school
23 health clinics, primary care centers, pediatric health clinics
24 or rural health clinics.

25 (e) "Program" means the West Virginia children's
26 health program.

§5-16B-3. Reporting requirements.

1 (a) On the first day of January, one thousand nine
2 hundred ninety-nine and annually thereafter, the director
3 shall report to the governor and the Legislature regarding
4 the number of children enrolled in the program or
5 programs; the average annual cost per child per program;
6 the number of children enrolled in the Medicaid program,
7 pursuant to Title XIX of the Social Security Act, the
8 public employees insurance agency and private sector
9 insurance programs; the number of remaining uninsured
10 children; and the effectiveness of the outreach activities
11 for the previous year. The report shall include any
12 information that can be obtained regarding the prior
13 insurance and health status of the children enrolled in
14 programs created pursuant to this article. Beginning with
15 the second annual report, the director shall include
16 information regarding the cost, quality and effectiveness
17 of the health care delivered to enrollees of this program;
18 satisfaction surveys; and health status improvement
19 indicators. The board, in conjunction with other state
20 health and insurance agencies, shall develop indicators
21 designed to measure the quality and effectiveness of
22 children's health programs, which information shall be
23 included in the annual report.

24 (b) On a quarterly basis, the director shall provide
25 reports to the legislative oversight commission on health
26 and human resources accountability on the number of
27 children served, including the number of newly enrolled
28 children for the reporting period and current projections

29 for future enrollees; outreach efforts and programs;
30 statistical profiles of the families served and health status
31 indicators of covered children; the average annual cost of
32 coverage per child, the total cost of children served by
33 provider type, service type and contract type; outcome
34 measures for children served; reductions in
35 uncompensated care; performance with respect to the
36 financial plan and any other information as the legislative
37 oversight commission on health and human resources
38 accountability may require.

39 (c) The director shall report initial statistical
40 information on the children's health program to the
41 legislative oversight commission on health and human
42 resources accountability. The report shall include, but not
43 be limited to, the number of uninsured children eligible
44 for the program, statistical information regarding the
45 families of eligible children, and the projected average
46 annual cost of coverage per child.

§5-16B-4. Children's health policy board created; qualifications and removal of members; powers; duties; meetings; and compensation.

1 (a) There is hereby created the West Virginia
2 children's health policy board, which shall consist of the
3 director of the public employees insurance agency, the
4 secretary of the department of health and human
5 resources or his or her designee, and five citizen members
6 appointed by the governor, one of whom shall represent
7 childrens' interests and one of whom shall be a certified
8 public accountant, to assume the duties of the office
9 immediately upon appointment, pending the advice and
10 consent of the Senate. A member of the Senate, as
11 appointed by the Senate president and a member of the
12 House of Delegates, as appointed by the speaker of the
13 House of Delegates, shall serve as nonvoting members. Of
14 the citizen members first appointed, one shall serve one
15 year, two shall serve two years and two shall serve three
16 years. All future appointments shall be for terms of three
17 years, except that an appointment to fill a vacancy shall be
18 for the unexpired term only. Three of the citizen
19 members shall have at least a bachelor's degree and

20 experience in the administration or design of public or
21 private employee or group benefit programs and the
22 children's representative shall have experience that
23 demonstrates knowledge in the health, educational and
24 social needs of children. No more than three citizen
25 members may be members of the same political party and
26 no board member shall represent or have a pecuniary
27 interest in an entity reasonably expected to compete for
28 contracts under this article. Members of the board shall
29 assume the duties of the office immediately upon
30 appointment and shall hold an initial meeting not later
31 than the thirtieth day of June, one thousand nine hundred
32 ninety-eight. The members shall elect a chairperson. No
33 member may be removed from office by the governor
34 except for official misconduct, incompetence, neglect of
35 duty, neglect of fiduciary duty or other specific
36 responsibility imposed by this article, or gross immorality.
37 Vacancies in the board shall be filled in the same manner
38 as the original appointment.

39 (b) The purpose of the board is to develop plans for
40 health services or health insurance that are specific to the
41 needs of children and to bring fiscal stability to this
42 program through development of an annual financial plan
43 designed in accordance with the provisions of this article.

44 (c) Notwithstanding any other provisions of this code
45 to the contrary, any insurance benefits offered as a part of
46 the programs designed by the board are exempt from the
47 minimum benefits and coverage requirements of articles
48 fifteen and sixteen, chapter thirty-three of this code.

49 (d) The board may consider adopting the maximum
50 period of continuous eligibility permitted by applicable
51 federal law, regardless of changes in a family's economic
52 status, so long as other group insurance does not become
53 available to a covered child.

54 (e) The board shall meet at the time and place as
55 specified by the call of the chairperson or upon the written
56 request to the chairperson by at least two members.
57 Notice of each meeting shall be given in writing to each
58 member by the chairperson at least three days in advance

59 of the meeting. Four voting members shall constitute a
60 quorum.

61 (f) For each day or portion of a day spent in the
62 discharge of duties pursuant to this article, the board shall
63 pay each of its citizen members the same compensation
64 and expense reimbursement as is paid to members of the
65 Legislature for their interim duties.

**§5-16B-5. Director of the children's health program;
qualifications; powers and duties.**

1 (a) A division director shall be appointed by the
2 governor, with the advice and consent of the Senate, and
3 shall be responsible for the implementation, administration
4 and management of the children's health insurance
5 program created under this article. The director shall have
6 at least a bachelor's degree and a minimum of three years
7 experience in health insurance administration.

8 (b) The director shall employ any administrative,
9 technical and clerical employees as are required for the
10 proper administration of the program and for the work of
11 the board. He or she shall present recommendations and
12 alternatives for the design of the initial and annual plans
13 and other actions undertaken by the board in furtherance
14 of this article.

15 (c) The director, under the supervision of the board, is
16 responsible for the administration and management of the
17 program and shall have the power and authority to make
18 all rules necessary to effectuate the provisions of this
19 article. Nothing in this article shall limit the director's
20 ability to manage the program on a day-to-day basis.

21 (d) The director shall have exclusive authority to
22 execute any contracts as are necessary to effectuate the
23 provisions of this article: *Provided*, That the board shall
24 approve all contracts for the provision of services or
25 insurance coverage under the program. The provisions of
26 article three, chapter five-a of this code, relating to the
27 division of purchases of the department of finance and
28 administration, shall not apply to any contracts for any
29 health insurance coverage, health services, or professional

30 services authorized to be executed under the provisions of
31 this article: *Provided, however,* That before entering into
32 any such contract the director shall invite competitive bids
33 from all qualified entities and shall deal directly with those
34 entities in presenting specifications and receiving
35 quotations for bid purposes. The director shall award
36 those contracts on a competitive basis taking into account
37 the experience of the offering agency, corporation,
38 insurance company or service organization. Before any
39 proposal to provide benefits or coverage under the plan is
40 selected, the offering agency, corporation, insurance
41 company or service organization shall provide assurances
42 of utilization of essential community health service
43 providers to the greatest extent practicable. In evaluating
44 these factors, the director may employ the services of
45 independent, professional consultants. The director shall
46 then award the contracts on a competitive basis.

47 (e) The director shall issue requests for proposals from
48 essential community health service providers for defined
49 portions of services under the children's health plan
50 regionally or statewide, and shall, to the greatest extent
51 practicable, either directly contract with, or require
52 participating providers to, contract with essential
53 community health service providers to provide the services
54 under the plan.

55 (f) Subject to the advice and consent of the board, the
56 director may require reinsurance of primary contracts, as
57 contemplated in the provisions of sections fifteen and
58 fifteen-a, article four, chapter thirty-three of this code.

§5-16B-6. Financial plans requirements.

1 (a) *Benefit plan design* — All financial plans required
2 by this section shall establish: (1) The design of a benefit
3 plan or plans; (2) the maximum levels of reimbursement
4 to categories of health care providers; (3) any cost
5 containment measures for implementation during the
6 applicable fiscal year; and (4) the types and levels of cost
7 to families of covered children. To the extent compatible
8 with simplicity of administration, fiscal stability and other
9 goals of the program established in this article, the

10 financial plans may provide for different levels of costs
11 based on ability to pay.

12 (b) *Initial plan* — For presentation to the board at the
13 first meeting, the governor shall prepare: (1) A statement
14 of goals and objectives of the children's health program;
15 and (2) an estimate of the total amount of general and
16 special revenues available to fund the program for the
17 fiscal year ending on the thirtieth day of June, one
18 thousand nine hundred ninety-nine. The initial plan is
19 subject to the following guidelines:

20 (1) The board shall establish a target date for
21 implementation of the program during the state fiscal year
22 one thousand nine hundred ninety-nine and may offer the
23 same benefit package as that offered to children of state
24 employees insured through the public employees
25 insurance agency.

26 (2) During state fiscal year one thousand nine
27 hundred ninety-nine, benefits under this program shall be
28 made available to children ages six through eighteen
29 whose custodial parents or guardians have an income
30 equal to or less than one hundred fifty percent of the
31 federal poverty level as determined according to eligibility
32 standards and other criteria approved by the board.

33 (3) All program costs, including the administration of
34 the program and incurred but unreported claims, shall not
35 exceed eighty-five percent of the funding available to the
36 program for the state fiscal year one thousand nine
37 hundred ninety-nine.

38 (4) The board shall afford interested and affected
39 persons an opportunity to offer comment on the plan at a
40 public meeting of the board and, in developing any
41 proposed plan under this article, shall solicit comments in
42 writing from interested and affected persons.

43 (c) *Actuary requirements* — Beginning with state fiscal
44 year two thousand, any financial plan, or modifications,
45 approved or proposed by the board shall be submitted to
46 and reviewed by an actuary before final approval. The
47 financial plan shall be submitted to the governor and h

48 Legislature with the actuary's written professional opinion
49 that all estimated program and administrative costs of the
50 agency under the plan, including incurred but unreported
51 claims, will not exceed ninety percent of the funding
52 available to the program for the fiscal year for which the
53 plan is proposed; and, that the financial plan allows for no
54 more than thirty days of accounts payable to be carried
55 over into the next fiscal year. This actuarial requirement
56 is in addition to any requirement imposed by Title XXI
57 of the Social Security Act of 1997.

58 (d) *Subsequent annual plans* — The board shall
59 review implementation of its initial or current financial
60 plan in light of actual experience and shall prepare an
61 annual financial plan for fiscal year two thousand and
62 each fiscal year thereafter during which the board remains
63 in existence. For each fiscal year, the governor shall
64 provide an estimate of requested appropriations and total
65 funding available to the board no later than the first day
66 of July of the preceding fiscal year. The board shall
67 submit its final, approved financial plan, subject to the
68 actuarial and public hearing requirements of this article, to
69 the governor and to the Legislature no later than the first
70 day of January preceding the fiscal year. The financial
71 plan for a fiscal year shall become effective and shall be
72 implemented by the director on the first day of July of
73 such fiscal year. Annual plans developed pursuant to this
74 subsection are subject to the provisions of subsections (a)
75 and (c) of this section and the following guidelines:

76 (1) The aggregate actuarial value of the plan
77 established as the benchmark plan should be considered as
78 a targeted maximum or limitation in developing the
79 benefits package.

80 (2) All estimated program and administrative costs,
81 including incurred but not reported claims, shall not
82 exceed ninety percent of the funding available to the
83 program for the applicable fiscal year.

84 (3) The state's interest in achieving health care
85 services for all its children at less than two hundred
86 percent of the federal poverty level shall take precedence
87 over enhancing the benefits available under this program.

88 (e) The provisions of chapter twenty-nine-a of this
89 code do not apply to the preparation, approval and
90 implementation of the financial plans required by this
91 section.

92 (f) The board shall meet no less than once each
93 quarter to review implementation of its current financial
94 plan and, using actuarial data, shall make those
95 modifications to the plan that are necessary to ensure its
96 fiscal stability and effectiveness of service. The board
97 may not increase the types and levels of cost to families of
98 covered children during its quarterly review except in the
99 event of a true emergency. The board may not expand
100 the population of children to whom the program is made
101 available except in its annual plan.

102 (g) For any fiscal year in which legislative
103 appropriations differ from the governor's estimate of
104 general and special revenues available to the agency, the
105 board shall, within thirty days after passage of the budget
106 bill, make any modifications to the plan necessary to
107 ensure that the total financial requirements of the agency
108 for the current fiscal year are met.

§5-16B-7. West Virginia children's health fund.

*1 (a) There is hereby created in the state treasury a
2 special revolving fund to be known as the "West Virginia
3 children's health fund", which shall be an interest-bearing
4 account. All moneys deposited or accrued in this fund
5 shall be used exclusively:

6 (1) To provide the state's share of the children's health
7 fund;

8 (2) To cover administrative costs associated with the
9 children's health program; and

10 (3) To cover outreach activities.

11 (b) Moneys from the following sources may be placed
12 into the fund:

13 (1) All public funds appropriated by the Legislature
14 or transferred by any public agency as contemplated or
15 permitted by applicable federal program laws;

16 (2) All private moneys contributed by corporations,
17 individuals or other entities to the fund as contemplated
18 and permitted by applicable federal and state laws;

19 (3) Any accrued interest; and

20 (4) Federal financial participation matching the
21 amounts referred to in subdivisions (1), (2) and (3) of this
22 subsection, in accordance with Section 1902 (a) (2) of the
23 Social Security Act.

24 (c) Any balance remaining in the children's health
25 fund at the end of any state fiscal year shall not revert to
26 the state treasury but shall remain in this fund and shall be
27 used only in a manner consistent with this article.

28 (d) Notwithstanding the provisions of section two,
29 article two, chapter twelve of this code, funds of the West
30 Virginia children's health fund may not be redesignated
31 for any purpose other than those set forth in this
32 subsection. All state and private moneys received by the
33 program shall be deposited in the West Virginia
34 consolidated investment pool with the West Virginia
35 investment management board, with the interest income a
36 proper credit to all such funds.

§5-16B-8. Termination and reauthorization.

1 (a) The program established in this article abrogates
2 and shall be of no further force and effect, without further
3 action by the Legislature, upon the occurrence of any of
4 the following:

5 (1) The date of entry of a final judgment or order by
6 a court of competent jurisdiction which disallows the
7 program;

8 (2) The effective date of any reduction in annual
9 federal funding levels below the amounts allocated and/or
10 projected in Title XXI of the Social Security Act of 1997;
11 or

12 (3) The effective date of any federal rule or regulation
13 negating the purposes or effect of this article.

14 (4) For purposes of subdivisions (2) and (3) of this
15 subsection, if a later effective date for such reduction or
16 negation is specified, such date will control.

17 (b) Pursuant to the provisions of article ten, chapter
18 four of this code, the board shall terminate on the first day
19 of July, two thousand four, unless extended by legislation
20 enacted before the termination date.

21 (c) Upon termination of the board and
22 notwithstanding any provisions to the contrary, the
23 director may change the levels of costs to covered families
24 only in accordance with rules proposed to the Legislature
25 pursuant to the provisions of chapter twenty-nine-a of this
26 code.

§5-16B-9. Public-private partnerships.

1 The board and the director are authorized to work in
2 conjunction with a nonprofit corporation organized
3 pursuant to the corporate laws of the state, structured to
4 permit qualification pursuant to section 501(c) of the
5 Internal Revenue Code for purposes of assisting the
6 children's health program and funded from sources other
7 than the state or federal government. Members of the
8 board may sit on the board of directors of the private
9 nonprofit corporation.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 4A. MEDICAID UNCOMPENSATED CARE FUND.

§9-4A-2b. Expansion of coverage to children and terminally ill; West Virginia children's health plan.

§9-4A-3. West Virginia Title XXI-Medicaid fund.

§9-4A-2b. Expansion of coverage to children and terminally ill; West Virginia children's health plan.

1 (a) It is the intent of the Legislature that steps be taken
2 to expand coverage to children and the terminally ill and
3 to pay for this coverage by fully utilizing federal funds.
4 To achieve this intention, the department of health and
5 human resources shall undertake the following:

6 (1) The department shall provide a streamlined
7 application form, which shall be no longer than two pages,
8 for all families applying for medical coverage for children
9 under any of the programs set forth in this section.

10 (2) The department shall provide the option of
11 hospice care to terminally ill West Virginians who
12 otherwise qualify for medicaid. The department shall
13 provide quarterly reports to the legislative oversight
14 commission on health and human resources accountability
15 created pursuant to section four, article twenty-nine-e,
16 chapter sixteen of this code regarding the program
17 provided for in this subdivision. The report shall include,
18 but not be limited to, the total number, by age, of newly
19 eligible clients served, the average annual cost of coverage
20 per client, and the total cost, by provider type, to serve all
21 clients.

22 (3) The department shall accelerate the medicaid
23 option for coverage of medicaid to all West Virginia
24 children whose family income is below one hundred
25 percent of the federal poverty level. The department shall
26 provide quarterly reports to the legislative oversight
27 commission on health and human resources accountability
28 regarding the program acceleration provided for in this
29 subdivision. The report shall include, but not be limited
30 to, the number of newly eligible clients, by age, served as a
31 result of the acceleration, the average annual cost of
32 coverage per client and the total cost of all clients served
33 by provider type.

34 (4) Effective the first day of July, one thousand nine
35 hundred ninety-eight, the department shall expand
36 medicaid coverage for only those West Virginia children
37 below the age of six years whose family income is below
38 one hundred fifty percent of the federal poverty level.
39 This program will be known as the Title XXI-Medicaid
40 program and administered in accordance with the
41 applicable provisions contained in Titles XIX and XXI of
42 the Social Security Act. The department shall coordinate
43 the eligibility determination, outreach efforts, purchasing
44 strategies, service delivery system and reporting

45 requirements with the Title XXI program created pursuant
46 to provisions of article sixteen-b, chapter five of this code.

47 (b) Notwithstanding the provisions of section two-a of
48 this article, the accruing interest in the medical services
49 trust fund may be utilized to pay for the programs
50 specified in subdivisions (2) and (3) of subsection (a) of
51 this section: *Provided*, That to the extent the accrued
52 interest is not sufficient to fully fund the specified
53 programs, the disproportionate share hospital funds paid
54 into the medical services trust fund after the thirtieth day
55 of June, one thousand nine hundred ninety-four, may be
56 applied to cover the cost of the specified programs.

57 (c) On the first day of January, one thousand nine
58 hundred ninety-five and annually thereafter, the
59 department shall report to the governor and to the
60 Legislature information regarding the number of children
61 and elderly covered by the programs in subdivisions (2)
62 and (3) of subsection (a), the cost of services by type of
63 service provided, a cost-benefit analysis of the acceleration
64 and expansion on other insurers and the reduction of
65 uncompensated care in hospitals as a result of the
66 programs.

67 (d) On the first day of January, one thousand nine
68 hundred ninety-nine, and annually thereafter, the
69 department shall report to the governor and to the
70 Legislature information regarding the number of children
71 enrolled in the Title XIX-Medicaid program as a result of
72 implementation of the provisions of subdivision (4),
73 subsection (a) of this section; the number of children
74 enrolled in the new Title XXI-Medicaid program; the
75 estimated number of children eligible for enrollment in
76 either program; the cost of services by type of service
77 provided in both programs; an analysis of the impact of
78 the programs on other insurers; and the reduction of
79 uncompensated care in hospitals as a result of the
80 programs. The annual report filed by the department
81 shall also include information relating to any proposed
82 expansion of the population to be served under the state's
83 medicaid program, other than the expansions specifically
84 authorized in this section. The department may not

85 expand the population to be served until sixty days
86 following the filing of the report required in this
87 subsection. The department shall make quarterly reports
88 to the legislative oversight commission on health and
89 human resources accountability, established pursuant to
90 section four, article twenty-nine-e, chapter sixteen of this
91 code regarding the development, implementation and
92 monitoring of the program.

§9-4A-3. West Virginia Title XXI-Medicaid fund.

1 (a) There is hereby created in the state treasury a
2 special revolving fund to be known as the "West Virginia
3 Title XXI-Medicaid Fund", which shall be an interest-
4 bearing account established and maintained to purchase
5 health services for low-income children.

6 (b) Funds paid into this account shall be derived from
7 the following sources:

8 (1) Any appropriations by the Legislature;

9 (2) All public funds transferred by any public agency
10 as permitted by applicable federal law;

11 (3) Any private funds contributed, donated or
12 bequeathed by corporations, individuals or other entities
13 to the fund as contemplated and permitted by applicable
14 federal law; and

15 (4) All interest or return on investments accruing to
16 the fund.

17 (c) Moneys from this fund shall be used exclusively
18 for the following purposes:

19 (1) To purchase health care services for the program
20 defined in subdivision (4), subsection (a) of this section,
21 associated administrative costs, outreach activities and
22 eligibility determination costs; and

23 (2) To provide the state's share of the enhanced
24 federal medical assistance percentage funds.

25 (d) Notwithstanding the provisions of section two,
26 article two, chapter twelve of this code, moneys with the
27 Title XXI-Medicaid program may not be redesignated for
28 any purpose other than those set forth in this subsection.

CHAPTER 165

(Com. Sub. for H. B. 4471—By Mr. Speaker, Mr. Kiss, and
Delegates Ashley and Michael)

[Passed March 11, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the conversion of rural hospital acute care beds to skilled nursing beds certified by both medicare and medicaid; exception to agency rules and certain statutory requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-5. Powers and duties of state agency.

- 1 (a) The state agency shall administer the certificate of
2 need program as provided by this article.
- 3 (b) The state agency is responsible for coordinating
4 and developing the health planning research efforts of the
5 state and for amending and modifying the state health
6 plan which includes the certificate of need standards.
- 7 (c) The state agency may seek advice and assistance of
8 other persons, organizations and other state agencies in the
9 performance of the state agency's responsibilities under
10 this article.
- 11 (d) For health services for which competition
12 appropriately allocates supply consistent with the state
13 health plan, the state agency shall, in the performance of
14 its functions under this article, give priority, where
15 appropriate to advance the purposes of quality assurance,
16 cost effectiveness and access, to actions which would

17 strengthen the effect of competition on the supply of the
18 services.

19 (e) For health services for which competition does not
20 or will not appropriately allocate supply consistent with
21 the state health plan, the state agency shall, in the exercise
22 of its functions under this article, take actions, where
23 appropriate to advance the purposes of quality assurance,
24 cost effectiveness and access and the other purposes of this
25 article, to allocate the supply of the services.

26 (f) Notwithstanding the provisions of section seven of
27 this article, the state agency may charge a fee for the filing
28 of any application, the filing of any notice in lieu of an
29 application, the filing of any exemption determination
30 request or the filing of any request for a declaratory
31 ruling. The fees charged may vary according to the type
32 of matter involved, the type of health service or facility
33 involved or the amount of capital expenditure involved.
34 The state agency shall implement this subsection by filing
35 procedural rules pursuant to chapter twenty-nine-a of this
36 code. The fees charged shall be deposited into a special
37 fund known as the certificate of need program fund to be
38 expended for the purposes of this article.

39 (g) No hospital, nursing home or other health care
40 facility shall add any intermediate care or skilled nursing
41 beds to its current licensed bed complement. This
42 prohibition also applies to the conversion of acute care or
43 other types of beds to intermediate care or skilled nursing
44 beds: *Provided*, That hospitals eligible under the
45 provisions of section four-a and subsection (i), section five
46 of this article may convert acute care beds to skilled
47 nursing beds in accordance with the provisions of these
48 sections, upon approval by the state agency. Furthermore,
49 no certificate of need shall be granted for the construction
50 or addition of any intermediate care or skilled nursing
51 beds except in the case of facilities designed to replace
52 existing beds in unsafe existing facilities. A health care
53 facility in receipt of a certificate of need for the
54 construction or addition of intermediate care or skilled
55 nursing beds which was approved prior to the effective
56 date of this section shall incur an obligation for a capital

57 expenditure within twelve months of the date of issuance
58 of the certificate of need. No extensions shall be granted
59 beyond the twelve-month period.

60 (h) No additional intermediate care facility for the
61 mentally retarded (ICF/MR) beds shall be granted a
62 certificate of need, except that prohibition does not apply
63 to ICF/MR beds approved under the Kanawha County
64 circuit court order of the third day of August, one
65 thousand nine hundred eighty-nine, civil action number
66 MISC-81-585 issued in the case of *E. H. v. Matin*, 168
67 W.V. 248, 284 S.E.2d 232 (1981).

68 (i) Notwithstanding the provisions of subsection (g),
69 section five of this article and, further notwithstanding the
70 provisions of subsection (b), section three of this article, an
71 existing acute care hospital may apply to the health care
72 authority for a certificate of need to convert acute care
73 beds to skilled nursing beds: *Provided*, That the proposed
74 skilled nursing beds are medicare certified only:
75 *Provided, however*, That any hospital which converts acute
76 care beds to medicare certified only skilled nursing beds
77 shall not bill for any medicaid reimbursement for any
78 converted beds. In converting beds, the hospital shall
79 convert a minimum of one acute care bed into one
80 medicare certified only skilled nursing bed. The health
81 care authority may require a hospital to convert up to and
82 including three acute care beds for each medicare certified
83 only skilled nursing bed: *Provided further*, That a
84 hospital designated or provisionally designated by the
85 state agency as a rural primary care hospital may convert
86 up to thirty beds to a distinct-part nursing facility,
87 including skilled nursing beds and intermediate care beds,
88 on a one-for-one basis if the rural primary care hospital is
89 located in a county without a certified free-standing
90 nursing facility and the hospital may bill for medicaid
91 reimbursement for the converted beds: *And provided*
92 *further*, That if the hospital rejects the designation as a
93 rural primary care hospital then the hospital may not bill
94 for medicaid reimbursement. The health care authority
95 shall adopt rules to implement this subsection which
96 require that:

97 (1) All acute care beds converted shall be permanently
98 deleted from the hospital's acute care bed complement and
99 the hospital may not thereafter add, by conversion or
100 otherwise, acute care beds to its bed complement without
101 satisfying the requirements of subsection (b), section three
102 of this article for which purposes an addition, whether by
103 conversion or otherwise, shall be considered a substantial
104 change to the bed capacity of the hospital notwithstanding
105 the definition of that term found in subsection (ff), section
106 two of this article.

107 (2) The hospital shall meet all federal and state
108 licensing certification and operational requirements
109 applicable to nursing homes including a requirement that
110 all skilled care beds created under this subsection shall be
111 located in distinct-part, long-term care units.

112 (3) The hospital shall demonstrate a need for the
113 project.

114 (4) The hospital shall use existing space for the
115 medicare certified only skilled nursing beds. Under no
116 circumstances shall the hospital construct, lease or acquire
117 additional space for purposes of this section.

118 (5) The hospital shall notify the acute care patient,
119 prior to discharge, of facilities with skilled nursing beds
120 which are located in or near the patient's county of
121 residence.

122 Nothing in this subsection negatively affects the rights
123 of inspection and certification which are otherwise
124 required by federal law or regulations or by this code or
125 duly adopted rules of an authorized state entity.

126 (j) (1) Notwithstanding the provisions of subsection
127 (g) of this section, a retirement life care center with no
128 skilled nursing beds may apply to the health care
129 authority for a certificate of need for up to sixty skilled
130 nursing beds provided the proposed skilled beds are
131 medicare certified only. On a statewide basis, a maximum
132 of one hundred eighty skilled beds which are medicare
133 certified only may be developed pursuant to this
134 subsection. The state health plan is not applicable to

135 projects submitted under this subsection. The health care
136 authority shall adopt rules to implement this subsection
137 which shall include a requirement that:

138 (A) The one hundred eighty beds are to be distributed
139 on a statewide basis;

140 (B) There be a minimum of twenty beds and a
141 maximum of sixty beds in each approved unit;

142 (C) The unit developed by the retirement life care
143 center meet all federal and state licensing certification and
144 operational requirements applicable to nursing homes;

145 (D) The retirement center demonstrate a need for the
146 project;

147 (E) The retirement center offer personal care, home
148 health services and other lower levels of care to its
149 residents; and

150 (F) The retirement center demonstrate both short and
151 long-term financial feasibility.

152 (2) Nothing in this subsection negatively affects the
153 rights of inspection and certification which are otherwise
154 required by federal law or regulations or by this code or
155 duly adopted rules of an authorized state entity.

156 (k) The state agency may order a moratorium upon
157 the processing of an application or applications for the
158 development of a new institutional health service filed
159 pursuant to section three of this article, when criteria and
160 guidelines for evaluating the need for the new institutional
161 health service have not yet been adopted or are obsolete.
162 The moratorium shall be declared by a written order
163 which shall detail the circumstances requiring the
164 moratorium. Upon the adoption of criteria for evaluating
165 the need for the new institutional health service affected
166 by the moratorium, or one hundred eighty days from the
167 declaration of a moratorium, whichever is less, the
168 moratorium shall be declared to be over and affected
169 applications shall be processed pursuant to section ..
170 this article.

171 (l) (1) The state agency shall coordinate the collection
172 of information needed to allow the state agency to develop
173 recommended modifications to certificate of need
174 standards as required in this article. When the state agency
175 proposes amendments or modifications to the certificate
176 of need standards, it shall file with the secretary of state,
177 for publication in the state register, a notice of proposed
178 action, including the text of all proposed amendments and
179 modifications, and a date, time and place for receipt of
180 general public comment. To comply with the public
181 comment requirement of this section, the state agency may
182 hold a public hearing or schedule a public comment
183 period for the receipt of written statements or documents.

184 (2) All proposed amendments and modifications to
185 the certificate of need standards, with a record of the
186 public hearing or written statements and documents
187 received pursuant to a public comment period, shall be
188 presented to the governor. Within thirty days of receiving
189 the proposed amendments or modifications, the governor
190 shall either approve or disapprove all or part of the
191 amendments and modifications, and, for any portion of
192 amendments or modifications not approved, shall specify
193 the reason or reasons for nonapproval. Any portions of
194 the amendments or modifications not approved by the
195 governor may be revised and resubmitted.

196 (m) The state agency may exempt from or expedite
197 rate review, certificate of need, and annual assessment
198 requirements and issue grants and loans to financially
199 vulnerable health care facilities located in underserved
200 areas that the state agency and the office of community
201 and rural health services determine are collaborating with
202 other providers in the service area to provide cost effective
203 health care services.

204 (n) Notwithstanding any provision contained in this
205 article or section and any rule issued by the state agency,
206 including compliance with certificate of need
207 requirements, any rural hospital with less than eighty
208 licensed acute care beds as of the first day of January, one
209 thousand nine hundred ninety-eight, may convert up to
210 forty-four percent of existing licensed acute care beds to

211 skilled nursing beds for certification by both medicare
212 and medicaid for reimbursement purposes provided that
213 the following conditions are met:

214 (1) There is no overall increase in the bed capacity of
215 the hospital; one acute care bed is converted to one dually
216 certified medicare and medicaid skilled nursing bed.

217 (2) All converted acute care beds shall be permanently
218 deleted from the acute care bed complement of the
219 hospital, which may not thereafter add, by conversion or
220 otherwise, acute care beds to its bed complement without
221 satisfying the requirements of subdivision (4), subsection
222 (b), section three of this article, for which purposes the
223 addition, whether by conversion or otherwise, shall be
224 considered a substantial change to the bed capacity of the
225 hospital notwithstanding the definition of that term as
226 found in subsection (e), section two of this article.

227 (3) Prior to the conversion, the occupancy rate for
228 licensed acute care beds cannot exceed forty percent for
229 twenty-four consecutive months prior to the first month in
230 which this section is effective.

231 (4) The hospital shall meet all federal and state
232 licensing requirements for the provision of skilled nursing
233 services. Additionally, all skilled nursing beds created
234 under this exemption shall be located in distinct long-term
235 care units in a previously constructed part of the hospital
236 that can be used for that purpose.

237 (5) The hospital is located in a nonmetropolitan
238 statistical area as defined by the bureau of the census of
239 the federal government and is located in the same city in
240 which a hospital providing mental health inpatient services
241 owned and operated by the state of West Virginia ceased
242 offering the inpatient services not later than one thousand
243 nine hundred ninety.

244 (6) Nothing in this section negatively affects the rules
245 of inspection and certification which are elsewhere
246 required by federal law or regulations.

CHAPTER 166

(H. B. 4503—By Delegates Hutchins, Compton, Fleischauer, Rowe,
Hubbard, Thomas and Miller)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and three, article three-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to AIDS/HIV-related medical testing, including the authorization for treating physicians to determine bona fide medical emergencies when HIV-related testing for medical diagnostic purposes is necessary; spousal notification regarding contact with a source patient tested positive for HIV; and mandating emergency regulations be proposed pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code on or before the first day of September, one thousand nine hundred ninety-eight, addressing confidentiality, costs associated with testing, documentation, post-test counseling, post-exposure prophylaxis and other matters.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3C. AIDS-RELATED MEDICAL TESTING AND RECORDS CONFIDENTIALITY ACT.

§16-3C-1. Definitions.

§16-3C-2. Testing.

§16-3C-3. Confidentiality of records; permitted disclosure; no duty to notify.

§16-3C-1. Definitions.

1 When used in this article:

2 (a) "AIDS" means acquired immunodeficiency
3 syndrome.

- 4 (b) "ARC" means AIDS-related complex.
- 5 (c) "Bureau" means the bureau of public health.
- 6 (d) "Commissioner" means the commissioner of the
7 bureau of public health.
- 8 (e) "Department" means the state department of health
9 and human resources.
- 10 (f) "Funeral director" shall have the same meaning
11 ascribed to such term in section four, article six, chapter
12 thirty of this code.
- 13 (g) "Convicted" includes pleas of guilty and pleas of
14 nolo contendere accepted by the court having jurisdiction
15 of the criminal prosecution, a finding of guilty following a
16 jury trial or a trial to a court, and an adjudicated juvenile
17 offender as defined in section three, article five-b, chapter
18 forty-nine of this code.
- 19 (h) "Funeral establishment" shall have the same
20 meaning ascribed to such term in section four, article six,
21 chapter thirty of this code.
- 22 (i) "HIV" means the human immunodeficiency virus
23 identified as the causative agent of AIDS.
- 24 (j) "HIV-related test" means a test for the HIV
25 antibody or antigen or any future valid test approved by
26 the bureau, the federal drug administration or the centers
27 for disease control.
- 28 (k) "Health facility" means a hospital, nursing home,
29 clinic, blood bank, blood center, sperm bank, laboratory
30 or other health care institution.
- 31 (l) "Health care provider" means any physician, dentist,
32 nurse, paramedic, psychologist or other person providing
33 medical, dental, nursing, psychological or other health
34 care services of any kind.
- 35 (m) "Infant" means a person under six years of age.
- 36 (n) "Medical or emergency responders" means paid
37 or volunteer firefighters, law-enforcement officers,
38 emergency medical technicians, paramedics, or other

39 emergency service personnel, providers or entities acting
40 within the usual course of their duties; good samaritans
41 and other nonmedical and nonemergency personnel
42 providing assistance in emergencies; funeral directors;
43 health care providers; commissioner of the bureau of
44 public health; and all employees thereof and volunteers
45 associated therewith.

46 (o) "Patient" or "test subject" or "subject of the
47 test" means the person upon whom a HIV test is
48 performed, or the person who has legal authority to make
49 health care decisions for the test subject.

50 (p) "Person" includes any natural person, partnership,
51 association, joint venture, trust, public or private
52 corporation or health facility.

53 (q) "Release of test results" means a written
54 authorization for disclosure of HIV-related test results that
55 is signed, dated and specifies to whom disclosure is
56 authorized and the time period the release is to be
57 effective.

58 (r) "Significant exposure" means:

59 (1) Exposure to blood or body fluids through
60 needlestick, instruments, sharps, surgery or traumatic
61 events; or

62 (2) Exposure of mucous membranes to visible blood
63 or body fluids, to which universal precautions apply
64 according to the national centers for disease control, and
65 laboratory specimens that contain HIV (e.g. suspensions
66 of concentrated virus); or

67 (3) Exposure of skin to visible blood or body fluids,
68 when the exposed skin is chapped, abraded or afflicted
69 with dermatitis or the contact is prolonged or involving an
70 extensive area.

71 (s) "Source patient" means any person whose body
72 fluids have been the source of a significant exposure to a
73 medical or emergency responder.

74 (t) "Victim" means the person or persons to whom
75 transmission of bodily fluids from the perpetrator of the

76 crimes of sexual abuse, sexual assault, incest or sexual
77 molestation occurred or was likely to have occurred in the
78 commission of such crimes.

§16-3C-2. Testing.

1 (a) HIV-related testing may be requested by a
2 physician, dentist or the commissioner for any of the
3 following:

4 (1) When there is cause to believe that the test could be
5 positive;

6 (2) When there is cause to believe that the test could
7 provide information important in the care of the patient;
8 or

9 (3) When there is cause to believe that the results of
10 HIV-testing of samples of blood or body fluids from a
11 source patient could provide information important in the
12 care of medical or emergency responders or other
13 persons identified in regulations proposed by the
14 department for approval by the Legislature in accordance
15 with the provisions of article three, chapter twenty-nine-a
16 of this code: *Provided*, That the source patient whose
17 blood or body fluids is being tested pursuant to this section
18 must have come into contact with a medical or emergency
19 responder or other person in such a way that a significant
20 exposure has occurred;

21 (4) When any person voluntarily consents to the test.

22 (b) The requesting physician, dentist or the
23 commissioner shall provide the patient with written
24 information in the form of a booklet or pamphlet
25 prepared or approved by the bureau or, in the case of
26 persons who are unable to read, shall either show a video
27 or film prepared or approved by the bureau to the patient,
28 or read or cause to be read to the patient the information
29 prepared or approved by the bureau which contains the
30 following information:

31 (1) An explanation of the test, including its purpose,
32 potential uses, limitations, the meaning of its results and
33 any special relevance to pregnancy and prenatal care;

- 34 (2) An explanation of the procedures to be followed;
- 35 (3) An explanation that the test is voluntary and may
36 be obtained anonymously;
- 37 (4) An explanation that the consent for the test may be
38 withdrawn at any time prior to drawing the sample for the
39 test and that such withdrawal of consent may be given
40 orally if the consent was given orally, or shall be in writing
41 if the consent was given in writing;
- 42 (5) An explanation of the nature and current
43 knowledge of asymptomatic HIV infection, ARC and
44 AIDS and the relationship between the test result and those
45 diseases; and
- 46 (6) Information about behaviors known to pose risks
47 for transmission of HIV infection.
- 48 (c) A person seeking an HIV-related test who wishes to
49 remain anonymous has the right to do so, and to provide
50 written, informed consent through use of a coded system
51 with no linking or individual identity to the test requests or
52 results. A health care provider who does not provide HIV-
53 related tests on an anonymous basis shall refer such a
54 person to a test site which does provide anonymous
55 testing, or to any local or county health department which
56 shall provide for performance of an HIV-related test and
57 counseling.
- 58 (d) At the time of learning of any test result, the
59 patient shall be provided with counseling or referral for
60 counseling for coping with the emotional consequences of
61 learning any test result. This may be done by brochure or
62 personally, or both.
- 63 (e) No consent for testing is required and the
64 provisions of subsection (b) of this section do not apply
65 for the following:
- 66 (1) A health care provider or health facility
67 performing an HIV-related test on the donor or recipient
68 when the health care provider or health facility procures,
69 processes, distributes or uses a human body part
70 (including tissue and blood or blood products) donated

71 for a purpose specified under the uniform anatomical gift
72 act, or for transplant recipients, or semen provided for the
73 purpose of artificial insemination and such test is
74 necessary to assure medical acceptability of a recipient or
75 such gift or semen for the purposes intended;

76 (2) The performance of an HIV-related test in
77 documented bona fide medical emergencies, as
78 determined by a treating physician taking into account the
79 nature and extent of the exposure to another person, when
80 the subject of the test is unable or unwilling to grant or
81 withhold consent, and the test results are necessary for
82 medical diagnostic purposes to provide appropriate
83 emergency care or treatment to a medical or emergency
84 responder, or any other person who has come into contact
85 with a source patient in such a way that a significant
86 exposure necessitates HIV-testing or to a source patient
87 who is unable to consent in accordance with regulations
88 proposed by the department for approval by the
89 Legislature in accordance with article three, chapter
90 twenty-nine-a of this code: *Provided*, That necessary
91 treatment may not be withheld pending HIV test results:
92 *Provided, however*, That all sampling and HIV-testing of
93 samples of blood and body fluids, without the expressed
94 written consent of the test subject, shall be through the use
95 of a pseudonym and in accordance with regulations
96 proposed by the department for approval by the
97 Legislature in accordance with article three, chapter
98 twenty-nine-a of this code: *Provided further*, That the
99 department shall propose emergency rules pursuant to the
100 provisions of section fifteen, article three, chapter twenty-
101 nine-a of this code on or before the first day of
102 September, one thousand nine hundred ninety-eight,
103 addressing such matters as, but not limited to:

104 (A) Sampling and testing of blood and body fluids for
105 HIV-related infections including: (i) The taking of
106 samples from source patients; (ii) testing samples; (iii)
107 confidentiality; (iv) documentation; (v) post-test
108 counseling; and (vi) notices to the department by health
109 care providers of: (I) Test results found to be positive and
110 situations where sampling; and (II) testing was performed
111 without the written consent of the test subject; and

112 (B) Costs associated with sampling, testing, counseling,
113 initial prophylactic treatment and compliance with this
114 article: *Provided, That:* (i) The ordering of samples of
115 blood or body fluids for HIV-test or testing of available
116 samples by: (I) A treating physician of a medical or
117 emergency responder; or (II) a treating physician of the
118 source patient; and (ii) the disclosure of the results of
119 HIV-testing of the source patient, in accordance with
120 regulations proposed by the department for approval by
121 the Legislature pursuant to article three, chapter twenty-
122 nine-a of this code, shall be deemed within acceptable
123 standards of medical care in the state of West Virginia and
124 shall not create a legal cause of action on the part of the
125 source patient against: (i) The treating physician of the
126 medical or emergency responder; or (ii) the treating
127 physician of the source patient; or (iii) any health care
128 provider or laboratory assisting such treating physicians.

129 (3) The performance of an HIV-related test for the
130 purpose of research if the testing is performed in a
131 manner by which the identity of the test subject is not
132 known and may not be retrieved by the researcher.

133 (f) Mandated testing:

134 (1) The performance of any HIV-related testing that is
135 or becomes mandatory shall not require consent of the
136 subject but will include counseling.

137 (2) The court having jurisdiction of the criminal
138 prosecution shall order that an HIV-related test be
139 performed on any persons convicted of any of the
140 following crimes or offenses:

141 (i) Prostitution; or

142 (ii) Sexual abuse, sexual assault, incest or sexual
143 molestation.

144 (3) HIV-related tests performed on persons convicted
145 of prostitution, sexual abuse, sexual assault, incest or
146 sexual molestation shall be confidentially administered by
147 a designee of the bureau or the local or county health
148 department having proper jurisdiction. The commissioner
149 may designate health care providers in regional jail

150 facilities to administer HIV-related tests on such convicted
151 persons if he or she deems it necessary and expedient.

152 (4) When the director of the department knows or has
153 reason to believe, because of medical or epidemiological
154 information, that a person, including, but not limited to, a
155 person such as an IV drug abuser, or a person who may
156 have a sexually transmitted disease, or a person who has
157 sexually molested, abused or assaulted another, has HIV
158 infection and is or may be a danger to the public health,
159 he may issue an order to:

160 (i) Require a person to be examined and tested to
161 determine whether the person has HIV infection;

162 (ii) Require a person with HIV infection to report to a
163 qualified physician or health worker for counseling; and

164 (iii) Direct a person with HIV infection to cease and
165 desist from specified conduct which endangers the health
166 of others.

167 (5) A person convicted of such offenses shall be
168 required to undergo HIV-related testing and counseling
169 immediately upon conviction and the court having
170 jurisdiction of the criminal prosecution shall not release
171 such convicted person from custody and shall revoke any
172 order admitting the defendant to bail until HIV-related
173 testing and counseling have been performed. The HIV-
174 related test result obtained from the convicted person is to
175 be transmitted to the court and, after the convicted person
176 is sentenced, made part of the court record. If the
177 convicted person is placed in the custody of the division
178 of corrections, the court shall transmit a copy of the
179 convicted person's HIV-related test results to the division
180 of corrections. The HIV-related test results shall be closed
181 and confidential and disclosed by the court and the
182 bureau only in accordance with the provisions of section
183 three of this article.

184 (6) A person charged with prostitution, sexual abuse,
185 sexual assault, incest or sexual molestation shall be
186 informed upon initial court appearance by the judge or
187 magistrate responsible for setting the person's condition of

188 release pending trial of the availability of voluntary HIV-
189 related testing and counseling conducted by the bureau.

190 (7) The prosecuting attorney shall inform the victim,
191 or parent or guardian of the victim, at the earliest stage of
192 the proceedings of the availability of voluntary HIV-
193 related testing and counseling conducted by the bureau
194 and that his or her best health interest would be served by
195 submitting to HIV-related testing and counseling. HIV-
196 related testing for the victim shall be administered at his or
197 her request on a confidential basis and shall be
198 administered in accordance with the centers for disease
199 control guidelines of the United States public health
200 service in effect at the time of such request. The victim
201 who obtains an HIV-related test shall be provided with
202 pre- and post-test counseling regarding the nature,
203 reliability and significance of the HIV-related test and the
204 confidential nature of the test. HIV-related testing and
205 counseling conducted pursuant to this subsection shall be
206 performed by the designee of the commissioner of the
207 bureau or by any local or county health department
208 having proper jurisdiction.

209 (8) If a person receives counseling or is tested under
210 this subsection and is found to be HIV infected, the person
211 shall be referred by the health care provider performing
212 the counseling or testing for appropriate medical care and
213 support services. The local or county health departments
214 or any other agency providing counseling or testing under
215 this subsection shall not be financially responsible for
216 medical care and support services received by a person as
217 a result of a referral made under this subsection.

218 (9) The commissioner of the bureau or his or her
219 designees may require an HIV test for the protection of a
220 person who was possibly exposed to HIV infected blood
221 or other body fluids as a result of receiving or rendering
222 emergency medical aid or who possibly received such
223 exposure as a funeral director. Results of such a test of
224 the person causing exposure may be used by the
225 requesting physician for the purpose of determining
226 appropriate therapy, counseling and psychological
227 support for the person rendering emergency medical aid

228 including good Samaritans, as well as for the patient, or
229 individual receiving the emergency medical aid.

230 (10) If an HIV-related test required on persons
231 convicted of prostitution, sexual abuse, sexual assault,
232 incest or sexual molestation results in a negative reaction,
233 upon motion of the state, the court having jurisdiction
234 over the criminal prosecution may require the subject of
235 the test to submit to further HIV-related tests performed
236 under the direction of the bureau in accordance with the
237 centers for disease control guidelines of the United States
238 public health service in effect at the time of the motion of
239 the state.

240 (11) The costs of mandated testing and counseling
241 provided under this subsection and pre- and
242 postconviction HIV-related testing and counseling
243 provided the victim under the direction of the bureau
244 pursuant to this subsection shall be paid by the bureau.

245 (12) The court having jurisdiction of the criminal
246 prosecution shall order a person convicted of prostitution,
247 sexual abuse, sexual assault, incest or sexual molestation to
248 pay restitution to the state for the costs of any HIV-related
249 testing and counseling provided the convicted person and
250 the victim, unless the court has determined such convicted
251 person to be indigent.

252 (13) Any funds recovered by the state as a result of an
253 award of restitution under this subsection shall be paid
254 into the state treasury to the credit of a special revenue
255 fund to be known as the "HIV-testing fund" which is
256 hereby created. The moneys so credited to such fund
257 may be used solely by the bureau for the purposes of
258 facilitating the performance of HIV-related testing and
259 counseling under the provisions of this article.

260 (g) Premarital screening:

261 (1) Every person who is empowered to issue a
262 marriage license shall, at the time of issuance thereof,
263 distribute to the applicants for the license, information
264 concerning acquired immunodeficiency syndrome
265 (AIDS) and inform them of the availability of HIV-related

266 testing and counseling. The informational brochures shall
267 be furnished by the bureau.

268 (2) A notation that each applicant has received the
269 AIDS informational brochure shall be placed on file with
270 the marriage license on forms provided by the bureau.

271 (h) The commissioner of the bureau may obtain and
272 test specimens for AIDS or HIV infection for research or
273 epidemiological purposes without consent of the person
274 from whom the specimen is obtained if all personal
275 identifying information is removed from the specimen
276 prior to testing.

277 (i) Nothing in this section is applicable to any insurer
278 regulated under chapter thirty-three of this code:
279 *Provided*, That the commissioner of insurance shall
280 develop standards regarding consent for use by insurers
281 which test for the presence of the HIV antibody.

282 (j) Whenever consent of the subject to the
283 performance of HIV-related testing is required under this
284 article, any such consent obtained, whether orally or in
285 writing, shall be deemed to be a valid and informed
286 consent if it is given after compliance with the provisions
287 of subsection (b) of this section.

**§16-3C-3. Confidentiality of records; permitted disclosure; no
duty to notify.**

1 (a) No person may disclose or be compelled to
2 disclose the identity of any person upon whom an HIV-
3 related test is performed, or the results of such a test in a
4 manner which permits identification of the subject of the
5 test, except to the following persons:

6 (1) The subject of the test;

7 (2) The victim of the crimes of sexual abuse, sexual
8 assault, incest or sexual molestation at the request of the
9 victim or the victim's legal guardian, or of the parent or
10 legal guardian of the victim if the victim is an infant where
11 disclosure of the HIV-related test results of the convicted
12 sex offender are requested;

13 (3) Any person who secures a specific release of test
14 results executed by the subject of the test;

15 (4) A funeral director or an authorized agent or
16 employee of a health facility or health care provider if the
17 funeral establishment, health facility or health care
18 provider itself is authorized to obtain the test results, the
19 agent or employee provides patient care or handles or
20 processes specimens of body fluids or tissues and the
21 agent or employee has a need to know such information:
22 *Provided*, That such funeral director, agent or employee
23 shall maintain the confidentiality of such information;

24 (5) Licensed medical personnel or appropriate health
25 care personnel providing care to the subject of the test,
26 when knowledge of the test results is necessary or useful to
27 provide appropriate care or treatment, in an appropriate
28 manner: *Provided*, That such personnel shall maintain the
29 confidentiality of such test results. The entry on a
30 patient's chart of an HIV-related illness by the attending or
31 other treating physician or other health care provider shall
32 not constitute a breach of confidentiality requirements
33 imposed by this article;

34 (6) The bureau or the centers for disease control of
35 the United States public health service in accordance with
36 reporting requirements for a diagnosed case of AIDS, or a
37 related condition;

38 (7) A health facility or health care provider which
39 procures, processes, distributes or uses: (A) A human
40 body part from a deceased person with respect to medical
41 information regarding that person; (B) semen provided
42 prior to the effective date of this article for the purpose of
43 artificial insemination; (C) blood or blood products for
44 transfusion or injection; or (D) human body parts for
45 transplant with respect to medical information regarding
46 the donor or recipient;

47 (8) Health facility staff committees or accreditation or
48 oversight review organizations which are conducting
49 program monitoring, program evaluation or service
50 reviews so long as any identity remains anonymous; and

51 (9) A person allowed access to said record by a court
52 order which is issued in compliance with the following
53 provisions:

54 (i) No court of this state may issue such order unless
55 the court finds that the person seeking the test results has
56 demonstrated a compelling need for the test results which
57 cannot be accommodated by other means. In assessing
58 compelling need, the court shall weigh the need for
59 disclosure against the privacy interest of the test subject
60 and the public interest;

61 (ii) Pleadings pertaining to disclosure of test results
62 shall substitute a pseudonym for the true name of the test
63 subject of the test. The disclosure to the parties of the test
64 subject's true name shall be communicated confidentially
65 in documents not filed with the court;

66 (iii) Before granting any such order, the court shall, if
67 possible, provide the individual whose test result is in
68 question with notice and a reasonable opportunity to
69 participate in the proceedings if he or she is not already a
70 party;

71 (iv) Court proceedings as to disclosure of test results
72 shall be conducted in camera unless the subject of the test
73 agrees to a hearing in open court or unless the court
74 determines that the public hearing is necessary to the
75 public interest and the proper administration of justice;
76 and

77 (v) Upon the issuance of an order to disclose test
78 results, the court shall impose appropriate safeguards
79 against unauthorized disclosure, which shall specify the
80 person who may have access to the information, the
81 purposes for which the information may be used and
82 appropriate prohibitions on future disclosure.

83 (b) No person to whom the results of an HIV-related
84 test have been disclosed pursuant to subsection (a) of this
85 section may disclose the test results to another person
86 except as authorized by said subsection.

87 (c) Whenever disclosure is made pursuant to this
88 section, except when such disclosure is made to persons in

89 accordance with subdivisions (1) and (6), subsection (a) of
90 this section, it shall be accompanied by a statement in
91 writing which includes the following or substantially
92 similar language: "This information has been disclosed to
93 you from records whose confidentiality is protected by
94 state law. State law prohibits you from making any
95 further disclosure of the information without the specific
96 written consent of the person to whom it pertains, or as
97 otherwise permitted by law. A general authorization for
98 the release of medical or other information is NOT
99 sufficient for this purpose."

100 (d) Notwithstanding the provisions set forth in
101 subsections (a) through (c) of this section, the use of HIV
102 test results to inform individuals named or identified as
103 spouses, sex partners or contacts, or persons who have
104 shared needles that they may be at risk of having acquired
105 the HIV infection as a result of possible exchange of body
106 fluids, is permitted: *Provided*, That the bureau shall make
107 a good faith effort to inform spouses, sex partners,
108 contacts or persons who have shared needles that they may
109 be at risk of having acquired the HIV infection as a result
110 of possible exchange of body fluids: *Provided, however*,
111 That the bureau shall have no notification obligations
112 when the bureau determines that there has been no likely
113 exposure of such persons to HIV from the infected test
114 subject within the ten-year period immediately prior to the
115 diagnosis of the infection. The name or identity of the
116 person whose HIV test result was positive is to remain
117 confidential. Spouses, contacts, or sex partners or
118 persons who have shared needles may be tested
119 anonymously at the state bureau of public health's
120 designated test sites, or at their own expense by a health
121 care provider or an approved laboratory of their choice.
122 A cause of action will not arise against the bureau, a
123 physician or other health care provider from any such
124 notification.

125 (e) There is no duty on the part of the physician or
126 health care provider to notify the spouse or other sexual
127 partner of, or persons who have shared needles with, an
128 infected individual of their HIV infection and a cause of
129 action will not arise from any failure to make such
130 notification. However, if contact is not made, the bureau
131 will be so notified.

CHAPTER 167

(H. B. 4483—By Delegates Capito, Hubbard, Douglas, Mahan
Hutchins, Compton and Caputo)

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, four, six, nine, eleven, fifteen and twenty-four, article four, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to sexually transmitted disease; changing the phrase "venereal disease" to "sexually transmitted disease"; authorizing the secretary of the department of health and human resources to designate the diseases which are sexually transmitted; modifying the time frame for mailing diagnostic reports; permitting the sale of federally approved over-the-counter drugs for treatment of sexually transmitted diseases; and making various technical and drafting changes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SEXUALLY TRANSMITTED DISEASES.

- §16-4-1. Diseases designated as sexually transmitted.
- §16-4-2. Investigations by local health officers.
- §16-4-4. Evidence of infection.
- §16-4-6. Reports by physicians.
- §16-4-9. Treatment.
- §16-4-11. Precautions as to exposure to disease.
- §16-4-15. Form and execution of warrant.
- §16-4-24. Offenses by druggists.

§16-4-1. Diseases designated as sexually transmitted.

- 1 Sexually transmitted diseases, as designated by the
- 2 secretary of the department of health and human
- 3 resources in rules proposed for legislative approval in

4 accordance with the provisions of article three, chapter
5 twenty-nine-a of this code, are hereby declared to be
6 infectious, contagious, communicable and dangerous to
7 the public health. If a conflict exists between a provision
8 of this article and a provision of article three-c of this
9 chapter, the provision of article three-c prevails.

§16-4-2. Investigations by local health officers.

1 (a) All municipal and county health officers shall:

2 (1) Use every available means to ascertain the
3 existence of, and to investigate all cases of sexually
4 transmitted disease coming within their respective
5 jurisdictions and, when it is necessary, have all cases
6 treated, if they are not already under treatment;

7 (2) To ascertain the sources and transmission of the
8 infection; and

9 (3) To institute measures for the protection of other
10 persons from infection by the infected person, or from
11 persons reasonably suspected of being so infected, and for
12 the protection of the public health at all times.

13 (b) A municipal health officer may designate any
14 member of the city police or health department to make
15 any investigation required by the provisions of this
16 section. A county health officer may designate any
17 discreet person to make any investigation required by the
18 provisions of this section. Any person conducting an
19 investigation has all authority necessary for the purpose,
20 the same as the health officer.

§16-4-4. Evidence of infection.

1 The following are prima facie grounds and reasons for
2 suspecting that a person is infected with a sexually
3 transmitted disease:

4 (a) Being a person who has been convicted in any
5 court, or before a police judge, or before a magistrate,
6 upon any charge growing out of sexual behavior;

7 (b) Being a person reported by a physician as infected
8 with a sexually transmitted disease, where the person is

9 afterwards reported as having failed to return for
10 treatment; and

11 (c) Being a person designated in a sexually transmitted
12 disease report as having a sexual exposure to the infected
13 person reported.

§16-4-6. Reports by physicians.

1 (a) Every practicing physician or other person who
2 makes a diagnosis in or treats a case of sexually
3 transmitted disease and every superintendent or manager
4 of a hospital, dispensary or charitable or penal institution
5 in which there is a case of sexually transmitted disease
6 shall make two reports of the case, as follows:

7 (1) One report shall be made to the local municipal
8 health officer, if the party for whom the diagnosis was
9 made or case treated lives within any municipality having
10 a health officer, and if the municipality has no health
11 officer, or if the party lives outside of a municipality, then
12 to the health officer of the county in which the person
13 lives;

14 (2) The second report shall be made to the director of
15 health of the state.

16 (b) The reports required by this section shall state: (1)
17 The street number and address of the person reported as
18 diseased; (2) the age, sex, color, race, marital state and
19 occupation of the person; (3) the date of the onset of the
20 disease; (4) the anatomical site of the infection and the
21 date and type of treatment; and (5) persons having a
22 sexual exposure to the infected person reported, if any are
23 identified by the infected person. The reports shall be
24 mailed or delivered to the parties to whom they are
25 directed within the specifications and time frame
26 established by the director pursuant to rules proposed for
27 legislative approval in accordance with the provisions of
28 article three, chapter twenty-nine-a of this code.

29 (c) Municipal and county health officers shall file and
30 preserve the reports required by this section: *Provided,*
31 That all records, reports and other information provided
32 under this section shall be confidential and exempt from

33 public disclosure under the provisions of chapter twenty-
34 nine-b of this code: *Provided, however,* That all reports
35 shall be open to inspection by the director of the division
36 of health, and by local health officers, or officers whose
37 duties are connected with executing the laws against these
38 diseases: *Provided further,* That any person who
39 knowingly and willfully divulges or discloses any
40 information entitled to protection under this section is
41 guilty of a misdemeanor and, upon conviction thereof,
42 shall be fined not more than five thousand dollars, or
43 imprisoned in the county jail for not more than one year,
44 or both fined and imprisoned: *And provided further,* That
45 the department shall propose regulations relating hereto
46 for approval by the Legislature in accordance with article
47 three, chapter twenty-nine-a and such regulations shall
48 include, but not be limited to, provisions for the
49 implementation of the confidentiality provisions
50 pertaining to this section.

§16-4-9. Treatment.

1 (a) Every physician or other person who examines or
2 treats a person having a sexually transmitted disease shall
3 instruct the person in measures for preventing the spread
4 of the disease, and to inform him or her of the necessity of
5 taking treatment until cured.

6 (b) Any person who has been examined and found
7 infected, or is being treated for a sexually transmitted
8 disease as provided by this section, shall follow the
9 directions given by the treating physician or other person
10 and take precautions as are necessary and are
11 recommended. Any person starting to take treatment shall
12 continue the treatment until discharged by the physician
13 or other person treating him or her.

14 (c) Any infected person who fails to return for further
15 treatment within ten days after the last date set by the
16 physician or other person for the patient to return for
17 further treatment, without lawful excuse therefor, is guilty
18 of a misdemeanor and shall be punished as provided in
19 section twenty-six of this article.

20 (d) After the expiration of the ten days .1

21 subsection (c) of this section, the physician or other
22 person to whom the patient should have returned for
23 treatment shall, unless he or she has knowledge of good
24 reasons why the patient failed to return, make a report of
25 the facts in the case to the local health officer having
26 proper jurisdiction. The local health officer shall at once
27 make an investigation to ascertain why the patient failed to
28 return, and shall take any steps necessary in the matter to
29 protect the public health, including obtaining the arrest,
30 detention and quarantine of the patient.

§16-4-11. Precautions as to exposure to disease.

1 Whenever any attending physician or other person
2 knows or has good reasons to believe that any person
3 having a sexually transmitted disease is conducting
4 himself or herself, or is about to conduct himself or
5 herself, in a manner as to expose other persons to
6 infection, the physician or other person shall at once
7 notify the local health officer having jurisdiction of the
8 facts in the case, giving the name and address of the
9 person. The local health officer, upon receipt of the
10 notice, shall at once cause an investigation to be made to
11 ascertain what should be done in the premises, and may do
12 whatever is necessary to protect the public health.

§16-4-15. Form and execution of warrant.

1 (a) Any warrant or order issued pursuant to the
2 provisions of section fourteen of this article shall be
3 directed to the chief of police if within a municipality, or
4 to the county sheriff if not in a municipality or to any
5 other officer qualified to execute process, directing the
6 officer to apprehend the person mentioned, and to bring
7 him or her before the health officer at a time and place set
8 out in the warrant or order, there to be further dealt with as
9 provided by law. The officer to whom the warrant is
10 directed shall execute the warrant in the same manner as
11 other papers of like character or kind.

12 (b) Pending a hearing in the matter the officer may
13 for safekeeping, lodge the person apprehended under
14 warrant, in jail or in any other place of detention that has
15 been provided for such persons. The health officer may

16 at his or her discretion and by indorsement on the warrant
17 at the time of its issuance, direct any other disposition to
18 be made of the person arrested, before trial. The officer
19 executing the warrant shall be guided by the warrant, but
20 may not be held responsible if the person arrested escapes.

21 (c) The warrant is sufficient if it is in words and
22 figures as follows (the blanks to be filled as necessary in
23 each case):

24 State of West Virginia, Office of

25 County (or City) of County (or City) of
26 Officer.

27 To....., Chief of Police or Sheriff of
28 City, of County of

29 It having been brought to the attention of the
30 undersigned health officer for (city or county) of
31, West Virginia, that, reported as living
32 or residing at in(city or county), is infected, or
33 is reasonably suspected of being infected, with one or
34 more sexually transmitted diseases by reason of the fact
35 that has been reported as (set out any reasons
36 set in section fourteen of this article, or other reasons)

37

38

39 and therefore reasonably suspected of being infected; and
40 as the diseases have been declared to be infectious,
41 contagious, communicable and dangerous to the public
42 health.

43 This warrant commands you to apprehend
44, if found within your jurisdiction and to
45 bring before me at my office in the city or
46 county of on the day of,
47 19, at o'clock, M, there to be further dealt with
48 as provided by law.

49 Given under my hand, this the day of
50, 19

51
 52 Health Officer or Commissioner.
 53 City (or County) of
 54 West Virginia.

§16-4-24. Offenses by druggists.

1 (a) No druggist, pharmacist or other person, not a
 2 licensed physician under the laws of the state, may
 3 prescribe, recommend, sell, compound or mix any drugs,
 4 medicines or other substances to be used for the cure or
 5 alleviation of a sexually transmitted disease, including
 6 drugs, medicines or substances that are patented,
 7 proprietary or otherwise, unless:

8 (1) The druggist or pharmacist receives a written
 9 prescription, formula or order written for the person for
 10 whom the drugs or medicines are compounded and signed
 11 by a physician licensed to practice under the laws of the
 12 state; or

13 (2) The drug being recommended or sold has received
 14 federal food and drug administration approval for over-
 15 the-counter use.

16 (b) All drugs, medicines or substances that are known
 17 to the medical profession as being commonly used for the
 18 cure or alleviation of sexually transmitted diseases,
 19 whether the name is on the bottles or labels or not, is
 20 subject to the prohibitions established pursuant to the
 21 provisions of this section.

22 (c) All drugstores shall be at all times open to the
 23 inspection of any local health officer, or to any party
 24 designated by the director of the sexually transmitted
 25 diseases program of the state, to determine whether the
 26 provisions of this section are being carried out by the
 27 druggists or stores. A sale by a clerk is considered a sale
 28 by the owner or proprietor, and both may be prosecuted
 29 under the provisions of this article for a misdemeanor.

CHAPTER 168

(S. B. 627—By Senators Ross and Helmick)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and two, article five-h, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the licensure of residential board and care homes; and defining terms.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5H. RESIDENTIAL BOARD AND CARE HOMES.

§16-5H-1. Purpose.

§16-5H-2. Definitions.

§16-5H-1. Purpose.

1 It is the policy of this state to encourage and promote
2 the development and utilization of resources to ensure the
3 effective care and treatment of persons who are dependent
4 upon the services of others by reason of physical or
5 mental impairment or who may require limited and
6 intermittent nursing care, including those individuals who
7 qualify for and are receiving services coordinated by a
8 licensed hospice. Such care and treatment requires a living
9 environment for such persons which, to the extent
10 practicable, will approximate a normal home environment.
11 To this end, the guiding principle for administration of the
12 laws of the state is that such persons shall be encouraged
13 and assisted in securing necessary care and treatment in
14 noninstitutional surroundings. In recognition that for
15 many such persons effective care and treatment can only
16 be secured from proprietary and voluntary residential

17 board and care homes, it is the policy of this state to
18 encourage, promote and require the maintenance of
19 residential board and care homes so as to ensure
20 protection of the rights and dignity of those using the
21 services of such residential board and care homes.

22 The provisions of this article are hereby declared to be
23 remedial and shall be liberally construed to effectuate its
24 purposes and intents.

§16-5H-2. Definitions.

1 As used in this article, unless a different meaning
2 appears from the context:

3 (a) "Deficiency" means a statement of the rule and the
4 fact that compliance has not been established and the
5 reasons therefor;

6 (b) "Department" means the state department of health
7 and human resources;

8 (c) "Director" means the secretary of the department
9 of health and human resources or his or her designee;

10 (d) "Division" means the division of health of the state
11 department of health and human resources;

12 (e) "Limited and intermittent nursing care" means
13 direct hands on nursing care of an individual who needs
14 no more than two hours of nursing care per day for a
15 period of time no longer than ninety consecutive days per
16 episode which may only be provided when the need for
17 such care meets these factors: (1) The resident requests to
18 remain in the residential board and care home; (2) the
19 resident is advised of the availability of other specialized
20 health care facilities to treat his or her condition; and (3)
21 the need for such care is the result of a medical pathology
22 or a result of the normal aging process. Limited and
23 intermittent nursing care shall only be provided by or
24 under the supervision of a registered professional nurse
25 and in accordance with rules promulgated by the
26 secretary;

27 (f) "Nursing care" means those procedures commonly
28 employed in providing for the physical, emotional and

29 rehabilitational needs of the ill or otherwise incapacitated
30 which require technical skills and knowledge beyond that
31 which the untrained person possesses, including, but not
32 limited to, such procedures as: Irrigations, catheterization,
33 special procedures contributing to rehabilitation and
34 administration of medication by any method which
35 involves a level of complexity and skill in administration
36 not possessed by the untrained person;

37 (g) "Person" means an individual and every form of
38 organization, whether incorporated or unincorporated,
39 including any partnership, corporation, trust, association
40 or political subdivision of the state;

41 (h) "Personal assistance" means personal services,
42 including, but not limited to, the following: Help in
43 walking, bathing, dressing, feeding or getting in or out of
44 bed, or supervision required because of the age or mental
45 impairment of the resident;

46 (i) "Resident" means an individual living in a
47 residential board and care home for the purpose of
48 receiving personal assistance or limited and intermittent
49 nursing services from the home;

50 (j) "Residential board and care home" means any
51 residence or place or any part or unit thereof, however
52 named, in this state which is advertised, offered,
53 maintained or operated by the ownership or management,
54 whether for a consideration or not, for the express or
55 implied purpose of providing accommodations, personal
56 assistance and supervision, for a period of more than
57 twenty-four hours, to four or more persons who are
58 dependent upon the services of others by reason of
59 physical or mental impairment or who may require limited
60 and intermittent nursing care, including those individuals
61 who qualify for and are receiving services coordinated by
62 a licensed hospice: *Provided*, That services utilizing
63 equipment which requires auxiliary electrical power in the
64 event of a power failure may not be used unless the
65 residential board and care home has a backup power
66 generator: *Provided, however*, That the care or treatment
67 in a household, whether for compensation or not, of any
68 person related by blood or marriage, within the degree of

69 consanguinity of second cousin to the head of the
70 household, or his or her spouse, may not be deemed to
71 constitute a residential board and care home within the
72 meaning of this article. Nothing contained in this article
73 applies to hospitals, as defined under section one, article
74 five-b of this chapter; or state institutions, as defined under
75 section three, article one, chapter twenty-five of this code
76 or section six, article one, chapter twenty-seven of this
77 code; or residential board and care homes operated by the
78 federal government or the state government; or institutions
79 operated for the treatment and care of alcoholic patients;
80 or offices of physicians; or hotels, boarding homes or
81 other similar places that furnish to their guests only room
82 and board; or to homes or asylums operated by fraternal
83 orders pursuant to article three, chapter thirty-five of this
84 code;

85 (k) "Secretary" means the secretary of the state
86 department of health and human resources or his or her
87 designee; and

88 (l) The term "substantial compliance" means a level of
89 compliance with the rules such that identified deficiencies
90 pose no greater risk to resident health or safety than the
91 potential for causing minimal harm.

92 The secretary may define in rules any term used
93 herein which is not expressly defined.

CHAPTER 169

(H. B. 4102—By Delegates Compton, Hutchins, Caputo,
Fleischauer, Manuel, Rowe and Leach)

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and seven, article five-1, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to long-term care ombudsmen; regional long-term care ombudsmen; qualifications; duties; training; certification; definitions; defining a pecuniary interest in the provision of

long-term care; modifying the prohibition against certain prior employment in the field of long-term care of regional long-term care ombudsmen; and expanding the qualifications for regional long-term care ombudsmen.

Be it enacted by the Legislature of West Virginia:

That sections three and seven, article five-1, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5L. LONG-TERM CARE OMBUDSMAN PROGRAM.

§16-5L-3. Definitions.

§16-5L-7. Regional long-term care ombudsmen; qualifications; duties; training; certification.

§16-5L-3. Definitions.

1 As used in this article, unless a different meaning
2 appears from the context:

3 (a) "Government agency" means any department,
4 division, office, bureau, board, commission, council,
5 authority, or any other agency or instrumentality created
6 by the state or political subdivision thereof or to which the
7 state is a party or by any county or municipality which is
8 responsible for the regulation, visitation, inspection, or
9 supervision of long-term care facilities or which provides
10 services to residents or long-term care facilities;

11 (b) "Long-term care facility" means any nursing
12 home, personal care home, or residential board and care
13 home as defined in section two, article five-c of this
14 chapter; nursing homes operated by the federal
15 government or the state government; extended care
16 facilities operated in connection with hospitals; and any
17 similar institution, residence or place, or any part or unit
18 thereof, however named, in this state which is advertised,
19 offered, maintained or operated by the ownership or
20 management for consideration, for the express and
21 implied purpose of providing accommodations and care
22 or personal assistance to one or more persons who are ill
23 or otherwise incapacitated or are dependent upon the
24 services of others by reasons of physical or mental

25 impairment and who are not related within the degree of
26 consanguinity of second cousin to the owner or manager
27 of the institution, residence or place;

28 (c) "Long-term care ombudsman volunteer" or
29 "ombudsman volunteer" means any uncompensated
30 individual who performs the duties enumerated under
31 section eight of this article: *Provided*, That the individual
32 has received appropriate certification as set forth in section
33 nine of this article;

34 (d) "Pecuniary interest" means holding a financial
35 interest in or deriving financial benefit from the provision
36 of long-term care, but does not include employment in the
37 long-term care industry or in the home health care
38 industry;

39 (e) "Personal assistance" means personal services,
40 including, but not limited to, the following: Help in
41 walking, bathing, dressing, feeding or getting in or out of
42 bed, or supervision required because of the age or mental
43 impairment of the resident;

44 (f) "Regional long-term care ombudsman" means any
45 paid staff of a designated regional long-term care
46 ombudsman program who has obtained appropriate
47 certification from the state commission on aging and
48 meets the qualifications set forth in section seven of this
49 article;

50 (g) "Resident" means an individual living in a nursing
51 home, personal care home, residential board and care
52 home, or any long-term care facility as defined in
53 subsection (b) of this section, or who has lived in such a
54 setting, or who has made application to live in such a
55 setting: *Provided*, That nothing in this article may be
56 construed to give a long-term care ombudsman the right
57 to obtain the waiting list of a long-term care facility;

58 (h) "State long-term care ombudsman" means an
59 individual who meets the qualifications of section five of
60 this article and who is employed by the state commission
61 on aging to implement the state long-term care
62 ombudsman program as set forth in this article; and

63 (i) "Guardian" means a person lawfully invested with
64 the power and charged with the duty of taking care of
65 another person and managing the property and rights of
66 another person who for some peculiarity of status or
67 defect of age, understanding or self control is considered
68 incapable of administering his or her own affairs, to
69 include committees or other references under the code.

§16-5L-7. Regional long-term care ombudsmen; qualifications; duties; training; certification.

1 (a) Each regional long-term care ombudsman
2 program shall employ one or more regional long-term
3 care ombudsmen to effect the purposes of this article.
4 The regional long-term care ombudsman shall have either:
5 (1) At least a four-year degree in gerontology, social
6 work, health, or a related field and demonstrated
7 experience in one of the following areas: (A) The field of
8 aging; (B) health care or social service programs; (C)
9 community programs; or (D) long-term care issues; or (2)
10 at least a four-year degree in any field and at least three
11 years of experience in gerontology, social work, health or
12 a related field. Persons employed in a designated regional
13 long-term care ombudsman program on the date of
14 enactment of this article may be given a waiver from these
15 requirements provided that within one year from the date
16 of enactment of this article they enter into a program
17 leading to a degree in gerontology, social work, health or
18 a related field or complete fifty hours of continuing
19 education units in gerontology, social work, health or a
20 related field every two calendar year periods. The
21 regional long-term care ombudsman shall participate in
22 ongoing training programs related to his or her duties or
23 responsibilities. The regional long-term care ombudsman
24 may not have been employed within the past two years
25 prior to the date of his or her employment under this
26 section by any association of long-term care facilities. If a
27 regional long-term care ombudsman has been employed
28 within the past two years prior to the date of his or her
29 employment under this section by a long-term care
30 facility, or by any organization or corporation that
31 directly or indirectly regulates, owns or operates a long-
32 term care facility, that ombudsman may not act with the

33 authority of a regional long-term care ombudsman in the
34 facility of prior employment or in any other facility
35 regulated, owned or operated by the same ownership as
36 the facility of prior employment.

37 (b) Neither the regional long-term care ombudsman
38 nor any member of his or her immediate family may have,
39 or have had within the two years preceding his or her
40 employment under this section, any pecuniary interest in
41 the provision of long-term care. For the purposes of this
42 section, the term "immediate family" shall mean the
43 spouse, children, natural mother, natural father, natural
44 brothers or natural sisters of the regional long-term care
45 ombudsman.

46 (c) The duties of the regional long-term care
47 ombudsman shall include, but are not limited to, the
48 following:

49 (1) Regularly monitoring long-term care facilities and
50 investigating complaints filed on behalf of a resident, or
51 filed on the regional long-term care ombudsman's own
52 initiative, relating to the health, safety, welfare and rights
53 of such residents, in accordance with complaint
54 investigation procedures developed by the state long-term
55 ombudsman care program: *Provided*, That nothing in this
56 section shall be construed as to grant a regional long-term
57 care ombudsman the right of entry to a long-term care
58 facility's drug rooms or to treatment rooms occupied by a
59 resident unless prior consent has been obtained from the
60 resident;

61 (2) Monitoring the development and implementation
62 of federal, state and local laws, regulations and policies
63 with respect to long-term care facilities;

64 (3) Training certified volunteers in accordance with
65 the training and certification program developed by the
66 state long-term care ombudsman program;

67 (4) Encouraging, cooperating with, and assisting the
68 development and operation of referral services which can
69 provide current, valid and reliable information on
70 long-term care facilities and alternatives to
71 institutionalization to persons in need of these services and
72 the general public;

73 (5) Submitting reports as required by the state
74 long-term care ombudsman program; and

75 (6) Other duties as mandated by the Older Americans
76 Act of 1965, as amended.

77 (d) The state long-term care ombudsman shall develop
78 and implement procedures for training and certification of
79 regional long-term care ombudsmen. Regional long-term
80 care ombudsmen who satisfactorily complete the training
81 requirements shall be certified by the state commission on
82 aging and shall be given identification cards which shall
83 be presented to employees of a long-term care facility
84 upon request. No regional long-term care ombudsman
85 may investigate any complaint filed with the West Virginia
86 long-term care ombudsman program unless such person
87 has been certified by the state commission on aging.
88 Consistent with the provisions of this article and any rules
89 and regulations promulgated pursuant to section
90 twenty-one, certified regional long-term ombudsmen
91 shall be representatives of the state long-term care
92 ombudsman program.

CHAPTER 170

(H. B. 4626—By Delegate Michael)

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and three, article thirteen-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the drinking water treatment revolving fund; requiring that set-aside accounts be created for activities required by the federal safe drinking water act; authorizing the division of health to draw federal capitalization awards and deposit the moneys in the fund and the set-aside accounts; authorizing the division of health to administer the set-aside accounts; and eliminating certain requirements for fund moneys.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13C. DRINKING WATER TREATMENT REVOLVING FUND ACT.

§16-13C-1. Definitions.

§16-13C-3. Drinking water treatment revolving fund; duties of division of health and water development authority; set-aside accounts.

§16-13C-1. Definitions.

1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 (1) "Authority" means the water development
4 authority provided for in section four, article one, chapter
5 twenty-two-c of this code.

6 (2) "Capacity development" means the technical,
7 managerial and financial capability of a public water
8 system.

9 (3) "Cost" means the cost of all labor, materials,
10 machinery, equipment, lands, property, rights and
11 easements, plans and specifications and all other expenses
12 necessary or incident to the acquisition, construction,
13 improvement, expansion, extension, repair or
14 rehabilitation of all or part of a project.

15 (4) "Disadvantaged community" means the service
16 area of a public water system that meets affordability
17 criteria established after public review and comment by
18 the state.

19 (5) "Federal safe drinking water act" means the federal
20 statute commonly known as the "Safe Drinking Water
21 Act", 42 U.S.C. 300f et seq., as enacted, amended, and as
22 may be subsequently amended.

23 (6) "Fund" means the West Virginia drinking water
24 treatment revolving fund created in this article.

25 (7) "Instrumentality" means the division of health
26 which has the primary responsibility for administering the

27 fund and this article pursuant to requirements of the
28 federal safe drinking water act.

29 (8) "Local entity" means any municipality, public
30 utility, or person, including any individual, firm,
31 partnership, association, not-for-profit corporation or
32 other corporation organized and existing under the laws
33 of the state which may construct and operate an eligible
34 project.

35 (9) "Public water system" means that term as defined
36 in section nine-a, article one, chapter sixteen of the code.

37 (10) "Project" means a project for improving a
38 drinking water system for the purpose of achieving or
39 maintaining compliance with applicable state and federal
40 drinking water regulations.

41 (11) "Set-aside accounts" means those accounts that
42 shall be set up for activities required by the federal Safe
43 Drinking Water Act and the moneys for these accounts
44 may be taken from the federal capitalization grant for
45 these nonproject activities before the capitalization grant is
46 deposited into the fund.

47 (12) "Small system" means a public water system
48 serving ten thousand or fewer persons.

**§16-13C-3. Drinking water treatment revolving fund; duties of
division of health and water development
authority; set-aside accounts.**

1 (a) There is continued in the office of the state
2 treasurer a permanent and perpetual special fund to be
3 known as the "West Virginia drinking water treatment
4 revolving fund". The fund shall be administered and
5 managed in accordance with the provisions of the federal
6 Safe Drinking Water Act. The division of health may
7 draw all or a portion of those moneys available under
8 capitalization agreements and with the capitalization grant
9 awards from the United States environmental protection
10 agency under the federal Safe Drinking Water Act and to
11 deposit such moneys into the fund and the set-aside
12 accounts.

13 (b) The fund, less the set-aside account moneys, shall
14 be administered and managed by the water development
15 authority under the direction of the division of health.
16 The fund shall be comprised of moneys appropriated to
17 the fund by the Legislature, moneys allocated to the state
18 by the federal government expressly for the purpose of
19 establishing and maintaining a drinking water treatment
20 revolving fund and set-aside accounts, all receipts from
21 loans made from the fund, all income from the investment
22 of moneys held in the fund, and all other sums designated
23 for deposits to the fund from any source, public or
24 private. Moneys in the fund shall be used solely to make
25 loans or provide other allowable financial assistance to
26 eligible projects for public water systems, as described in
27 the federal Safe Drinking Water Act.

28 (c) In order to carry out the administration and
29 management of the fund, the authority and the division of
30 health are authorized to employ officers, employees,
31 agents, advisors and consultants, including attorneys,
32 financial advisors, engineers, other technical advisors and
33 public accountants, and notwithstanding any provisions of
34 this code to the contrary, to determine their duties and
35 compensation without the approval of any other agency or
36 instrumentality.

37 (d) The authority shall propose legislative rules for
38 promulgation in accordance with the provisions of article
39 three, chapter twenty-nine-a of this code to govern the
40 pledge of loans to secure bonds of the authority.

41 (e) Disbursements from the fund shall be authorized
42 for payment by the director of the authority or the
43 director's designee. Moneys in the fund shall not be
44 commingled with other money of the authority. If not
45 needed for immediate use or disbursement, moneys in the
46 fund may be invested or reinvested by the authority in
47 obligations or securities which are considered lawful
48 investments for public funds under this code.

49 (f) Pursuant to the provisions of the federal Safe
50 Drinking Water Act, set-aside accounts shall be set up in
51 accounts separate from the drinking water treatment
52 revolving fund. These set-aside accounts shall include, but

53 not be limited to, administration costs, source water
54 protection, operator training and certification, technical
55 assistance to systems, local assistance, and other state
56 activities permitted by the federal Safe Drinking Water
57 Act. The division of health shall establish and administer
58 the set-aside accounts as permitted by the federal Safe
59 Drinking Water Act. An application fee may be charged
60 and deposited into the administrative account to defray the
61 cost of administering the program.

CHAPTER 171

(Com. Sub. for H. B. 2388—By Delegates Jenkins, Mezzatesta and Spencer)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new articles, designated article twenty-two-a and article twenty-two-b, relating to the administration of hearing loss testing for newborn infants; requiring certain payment for testing; authorizing the director of health to promulgate legislative rules to establish testing protocols and reasonable fee schedules; authorizing an advisory committee; establishing the West Virginia birth score program; establishing legislative findings and intent; authorizing the division of health to establish and implement a birth score program which identifies newborn children at high risk for postneonatal mortality, debilitating conditions and developmental delays and refers those children to primary care physicians for subsequent follow-up care; requiring hospitals, birthing facilities, attending physicians and other persons attending a birth to require and ensure that a birth score is determined; providing an exemption to program participation when it conflicts with religious beliefs; authorizing the division of health to provide necessary medical and other needed referrals; and authorizing the division of health to propose legislative rules, including

penalties, to ensure implementation of and compliance with the birth score program.

Be it enacted by the Legislature of West Virginia:

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

Article

22A. Testing of Newborn Infants for Hearing Impairments.

22B. Birth Score Program.

ARTICLE 22A. TESTING OF NEWBORN INFANTS FOR HEARING IMPAIRMENTS.

§16-22A-1. Testing required.

§16-22A-2. Rule making authorized.

§16-22A-3. Fees for testing; payment of same.

§16-22A-4. Hearing impairment testing advisory committee established.

§16-22A-1. Testing required.

1 The physician or midwife in attendance at, or present
2 immediately after, a live birth shall perform, or cause to be
3 performed, a test for hearing loss in the infant unless the
4 infant's parents refuse under subsection (c), section three
5 of this article to have the testing performed. For any
6 infant delivered at a nonlicensed facility, including home
7 births, the physician or other health care provider shall
8 inform the parents of the need to obtain testing within the
9 first month of life. The director of the division of health
10 shall prescribe the test or tests to be administered in
11 accordance with this article.

§16-22A-2. Rule making authorized.

1 The director of the division of health shall propose
2 legislative rules for promulgation in accordance with the
3 provisions of article three, chapter twenty-nine-a of this
4 code to: (1) Establish a reasonable fee schedule for tests
5 administered pursuant to this article, which shall be used to
6 cover program costs not otherwise covered by federal
7 grant funds specifically secured for this purpose; (2)
8 establish a cost-effective testing protocol based upon

9 available technology and national standards; (3) establish
10 reporting and referral requirements; and (4) establish a
11 date for implementation of the testing protocol, which
12 shall not be later than the first day of July, one thousand
13 nine hundred ninety-nine.

§16-22A-3. Fees for testing; payment of same.

1 (a) Testing required under this article shall be a
2 covered benefit reimbursable by all health insurers except
3 for health insurers that offer only supplemental coverage
4 policies or policies which cover only specified diseases.
5 All policies issued pursuant to articles fifteen, sixteen,
6 twenty-four and twenty-five-a of chapter thirty-three of
7 this code shall provide coverage for the testing required
8 under this article.

9 (b) The department of health and human resources
10 shall pay for testing required under this article when the
11 newborn infant is eligible for medical assistance under the
12 provisions of section twelve, article five, chapter nine of
13 this code.

14 (c) In the absence of a third-party payor, the parents
15 of a newborn infant shall be informed of the testing
16 availability and its costs and they may refuse to have the
17 testing performed. Charges for the testing required under
18 this article shall be paid by the hospital or other health
19 care facility where the infant's birth occurred: *Provided,*
20 That nothing contained in this section may be construed
21 to preclude the hospital or other health care facility from
22 billing the infant's parents directly.

**§16-22A-4. Hearing impairment testing advisory committee
established.**

1 (a) There is hereby established a West Virginia hearing
2 impairment testing advisory committee which shall advise
3 the director of the division of health regarding the
4 protocol, validity, monitoring and cost of testing
5 procedures required under this article. This committee is
6 to meet four times per year for the initial two years and on
7 the call of the director thereafter. The director shall . . .

8 as the chair and shall appoint twelve members, one
9 representing each of the following groups:

10 (1) A representative of the health insurance industry;

11 (2) An otolaryngologist or otologist;

12 (3) An audiologist with experience in evaluating
13 infants;

14 (4) A neonatologist;

15 (5) A pediatrician;

16 (6) A hospital administrator;

17 (7) A speech or language pathologist;

18 (8) A teacher or administrative representative from the
19 West Virginia school of the deaf;

20 (9) A parent of a hearing-impaired child;

21 (10) A representative from the office of early
22 intervention services within the department of health and
23 human resources;

24 (11) A representative from the state department of
25 education; and

26 (12) A representative from the West Virginia
27 commission for the deaf and hard-of-hearing.

28 (b) Members of this advisory committee shall serve
29 without compensation. A majority of members constitutes
30 a quorum for the transaction of all business. Members
31 shall serve for two-year terms and may not serve for more
32 than two consecutive terms.

ARTICLE 22B. BIRTH SCORE PROGRAM.

§16-22B-1. Legislative findings; intent; purpose.

§16-22B-2. Birth score program established.

§16-22B-3. Determination of birth score; referral to physician.

§16-22B-4. Rules.

§16-22B-1. Legislative findings; intent; purpose.

1 (a) The Legislature hereby finds that until 1984, West
2 Virginia had one of the highest rates of postneonatal
3 mortality in the United States, which is defined as infants
4 dying between one month and one year of age. In the
5 early 1980s, studies in West Virginia showed that infants at
6 greatest risk of dying during the first year after birth had
7 poor attendance at regular physician visits and often
8 received minimal health care. The system for assessing
9 infants at risk for postneonatal mortality, debilitating
10 conditions and developmental delays was erratic and many
11 West Virginia physicians were poorly trained about risk
12 assessment. Uniform guidelines for at-risk infants to enter
13 care did not exist.

14 (b) In 1985, the birth scoring system, a cooperative
15 effort between the division of health and the West Virginia
16 university department of pediatrics was initiated. The
17 goals of the scoring system were: (1) To identify
18 newborns at greatest risk for death between one month
19 and one year of age; and (2) to link high risk infants with
20 physicians for close follow-up during the first year of life.

21 (c) Since its inception, the birth scoring system has
22 been expanded to identify and link infants at risk for
23 debilitating conditions and developmental delays with
24 necessary and available services. The program has been
25 greatly successful in identifying at-risk newborns and in
26 obtaining appropriate medical care for those infants.

27 (d) With the success of the birth scoring system at
28 reducing postneonatal mortality rates in the state, it is the
29 intention of the Legislature to establish the birth score
30 system as a universal, preventive program to be enacted at
31 the delivery of each newborn in the state. The purpose of
32 this article is to ensure that all of the state's birthing
33 hospitals and facilities adopt and implement this
34 prevention program.

§16-22B-2. Birth score program established.

1 (a) The division of health within the department of
2 health and human resources is hereby authorized to
3 establish and implement a birth score program designed to
4 combat postneonatal mortality and to detect debilitating

5 conditions and possible developmental delays in newborn
6 infants in the state.

7 (b) The purpose and goals of the birth score program
8 are to reduce the incidence of postneonatal mortality and
9 disease by:

10 (1) Identifying newborns at greatest risk for death
11 between one month and one year of age; and

12 (2) Linking these infants with physicians for close
13 follow-up during the first year of life.

14 (c) The birth score of a newborn infant shall be
15 determined pursuant to the program established by the
16 division of health by trained hospital or birthing facility
17 personnel immediately after the infant is delivered.

§16-22B-3. Determination of birth score; referral to physician.

1 (a) Any hospital or birthing facility in which an infant
2 is born, any physician attending the infant, or any other
3 person attending the infant if not under the care of a
4 physician, shall require and ensure that a birth score is
5 determined for the newborn infant in order to assess the
6 level of risk for postneonatal mortality, debilitating
7 conditions and developmental delays: *Provided*, That no
8 birth score shall be determined or birth score program
9 implemented if the parent or guardian objects to the birth
10 score program on the grounds that it conflicts with their
11 religious tenets and practices. Any infant delivered at a
12 nonlicensed facility, including, but not limited to, home
13 births, shall have a birth score determined by the child's
14 primary physician within ten days of birth, subject to the
15 exception set forth in this subsection.

16 (b) When any infant receives a high risk birth score, as
17 determined by the program established by this article, the
18 parents shall be informed of the birth score and its
19 implications, and then linked with a local primary care
20 physician for a recommended six visits in the first six
21 months of the infant's life.

22 (c) The division of health, in cooperation with other
23 state departments and agencies, may provide necessary
24 medical and other referrals for services related to infants
25 determined to be at high risk for postneonatal mortality
26 and other debilitating conditions and developmental
27 delays.

§16-22B-4. Rules.

1 On or before the thirtieth day of June, one thousand
2 nine hundred ninety-eight, the division of health shall
3 propose rules for legislative approval in accordance with
4 the provisions of article three, chapter twenty-nine-a of
5 this code as may be needed to establish the program,
6 ensure compliance and assess penalties as needed to
7 implement the provisions of this article.

CHAPTER 172

(H. B. 4300—By Delegates Boggs, Shelton, Osborne, Beach,
C. White, Hall and Harrison)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article sixteen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to enabling the rural health advisory panel and vice chancellor of health sciences to assume statewide and interagency as well as intra-agency responsibility for and coordination of primary care physician and other health care provider recruitment and retention efforts; including the creation of a committee on recruitment and retention within the rural health advisory panel contained in section six, article sixteen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to include more representatives from health care providers, consumers and community leaders for purposes of addressing the requirements of this article as amended herein; providing an annual report to the legislative oversight commission on education accountability which shall address the success of such recruitment and retention efforts; recommendations for improvements in all related areas of recruitment and retention efforts, as well as permission to work cooperatively with all agencies involved in the economic development of the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. HEALTH CARE EDUCATION.

§18B-16-6. Creation of the West Virginia rural health advisory panel.

1 (a) The West Virginia rural health advisory panel is
2 hereby created and the rural health initiative advisory
3 panel is hereby terminated as of the first day of July, one
4 thousand nine hundred ninety-five. The advisory panel,
5 which shall be appointed by the governor after consulting
6 with the vice chancellor, shall consist of one community
7 representative from each of the consortia of primary
8 health care education sites; five members shall be rural
9 health care providers, two of whom shall be representatives
10 of rural health care facilities selected from such lists as
11 may be submitted by associations interested or involved in
12 the provision of rural health care, two of whom shall be
13 physicians engaged in the private practice of rural
14 medicine, and one of whom shall be an advanced nurse
15 practitioner or a nurse midwife with experience in rural
16 health care delivery; the dean or designee from each of
17 the participating health sciences schools, ex officio; one
18 representative from private colleges; one representative
19 from the state college system; one site coordinator; the
20 commissioner of public health, ex officio; and the director
21 of the office of community and rural health services, ex
22 officio. Except for the ex officio members, members of
23 the panel shall serve for staggered three-year terms:
24 *Provided*, That one third of the initial appointments shall
25 be designated by the governor for one-year terms and one
26 third of the initial appointments shall be designated by the
27 governor for two-year terms.

28 Members of the advisory panel shall be reimbursed
29 for the cost of reasonable and necessary expenses actually
30 incurred in the performance of their duties: *Provided*,
31 That members of the panel who are employed by the state

32 of West Virginia shall not be reimbursed for their
33 expenses under the provisions of this section.

34 (b) The functions and duties of the panel are to
35 recommend policies and procedures to the vice chancellor
36 related to the rural health initiative and to oversee and
37 coordinate implementation of those policies and proced-
38 ures.

39 (c) Pursuant to the provisions of article ten, chapter
40 four of this code, the West Virginia rural health advisory
41 panel shall continue to exist until the first day of July, two
42 thousand one, to allow for the completion of a preliminary
43 performance review by the joint committee on govern-
44 ment operations.

45 (d) The advisory panel has the power and the duty to
46 recommend rural health care facilities to be established as
47 primary health care education sites. Such recommen-
48 dation shall be made to the vice chancellor in accordance
49 with the criteria set forth in section seven of this article.
50 After review of the proposals submitted to the vice
51 chancellor by the schools of medicine pursuant to section
52 eight of this article, the panel's recommendation shall
53 include an estimation of the costs to be allocated per site
54 from available funds in the university of West Virginia
55 health sciences account in the line item designated for
56 rural health initiative site support.

57 (e) The advisory panel shall adopt guidelines
58 regarding the application by rural health care facilities for
59 selection as primary health care education sites and shall
60 approve an application form which provides the panel with
61 sufficient information to consider the criteria set forth in
62 section eight of this article. The guidelines and applica-
63 tion shall be sent by registered mail to each rural health
64 care facility in the state as soon as practicable after the
65 effective date of this section.

66 (f) The advisory panel shall provide an ongoing
67 evaluation of the rural health initiative and shall make the
68 reports required under this article.

69 (g) For purposes of addressing primary care physician
70 and other health care provider recruitment and retention
71 efforts, there is hereby created within the rural health
72 advisory panel a committee on recruitment and retention,
73 which shall include member representatives of health care
74 providers, consumers, members of the advisory panel and
75 the health sciences schools. All member representatives
76 shall be selected by the vice chancellor for health sciences
77 in conjunction with the director of the office of
78 community and rural health. All operational costs of the
79 recruitment and retention committee shall be paid by the
80 rural health advisory panel.

81 (1) The recruitment and retention committee and the
82 vice chancellor of health sciences, in conjunction with the
83 director of the office of community and rural health
84 services, may facilitate statewide and interagency
85 coordination of the recruitment and retention of primary
86 care physicians and other health care related providers to
87 serve the state of West Virginia.

88 (2) Such responsibility for and coordination of
89 primary care physician recruitment and retention efforts
90 shall include, but are not limited to, working cooperatively
91 with health care agencies and economic development
92 agencies of the state.

93 (3) As part of its duties, the recruitment and retention
94 committee shall provide by the thirty-first day of
95 December, one thousand nine hundred ninety-eight, and
96 no less than annually thereafter, a report of its findings to
97 the legislative oversight commission on education
98 accountability and the legislative oversight commission on
99 health and human resources accountability. The report
100 shall address the success of the state's primary care
101 physician and other health care related provider
102 recruitment and retention efforts, recommendations for
103 improvements in all related areas of recruitment and
104 retention efforts, recommendations for statutory or
105 regulatory changes, as well as any other matters which the
106 recruitment and retention committee or the rural health
107 advisory panel deems relevant to carrying out the intent of
108 this article.

CHAPTER 173

(Com. Sub. for S. B. 25—By Senators Boley, Hunter, Minear, Deem,
White and Scott)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

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 forty-three, relating to women's access to health care; defining terms; legislative findings and purpose; requiring providers of health benefits policies to provide coverage for direct access to women's health care providers and specified services without referral or additional deductibles or copayments; disclosure of female enrollees' rights to direct access to certain health care services; disclosure of certain exclusions from coverage; disclosure of right to limit coverage to medically necessary and appropriate services; prohibiting certain cost-sharing; permitting limitations on the number of women's health care providers in a network under certain conditions; prohibiting partial-birth abortions; definition of terms; establishing criminal penalties; creating exceptions; and short title.

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 forty-three, to read as follows:

ARTICLE 43. WOMEN'S ACCESS TO HEALTH CARE ACT.

- §33-43-1. Short title.
- §33-43-2. Legislative findings and purpose.
- §33-43-3. Definitions.
- §33-43-4. Limitations on conditions of coverage.
- §33-43-5. Required disclosure.
- §33-43-6. Certain cost-sharing prohibited.
- §33-43-7. Limitation on number of women's health care providers.

§33-43-8. Partial-birth abortions prohibited; criminal penalties; exceptions; hearings by state board of medicine.

§33-43-1. Short title.

1 This article shall be known and may be cited as the
2 "Women's Access To Health Care Act".

§33-43-2. Legislative findings and purpose.

1 The Legislature finds and declares that adequate
2 delivery of health care services to women requires direct
3 access to primary and preventative obstetrical and
4 gynecological services, which services may be provided as
5 "well woman examinations", direct access without prior
6 authorization to prenatal and obstetrical services for
7 pregnant women and access to certain services essential to
8 the physical and psychological integrity of women.

§33-43-3. Definitions.

1 For purposes of this article:

2 (1) "Advanced nurse practitioner" means a certified
3 nurse-midwife, or an advanced nurse practitioner certified
4 to practice in family practice, women's health (ob/gyn), or
5 primary care adult, geriatric or pediatric practice,
6 practicing within the lawful scope of that provider's
7 practice.

8 (2) "Health benefits policy" means any individual or
9 group plan, policy or contract for health care services
10 issued, delivered, issued for delivery or renewed in this
11 state by a health care corporation, health maintenance
12 organization, accident and sickness insurer, fraternal
13 benefit society, nonprofit hospital service corporation,
14 nonprofit medical service corporation or similar entity,
15 when the policy or plan covers hospital, medical or
16 surgical expenses.

17 (3) "Partial-birth abortion" means an abortion in
18 which the person performing the abortion partially
19 vaginally delivers a living fetus before killing the fetus and
20 completing the delivery.

21 (4) "Physician performing a partial-birth abortion"
22 means a doctor of medicine or osteopathy legally
23 authorized to practice medicine and surgery in West
24 Virginia, or any other individual who is legally authorized
25 by the state to perform abortions: *Provided*, That any
26 individual who is not a physician or not otherwise legally
27 authorized by the state to perform abortions, but who
28 nevertheless directly performs a partial-birth abortion, is
29 subject to the provisions of this article.

30 (5) "Vaginally delivers a living fetus before killing
31 the fetus" means deliberately and intentionally delivering
32 into the vagina a living fetus, or a substantial portion
33 thereof, for the purpose of performing a procedure that
34 the physician or person delivering the living fetus knows
35 will kill the fetus, and kills the fetus.

36 (6) "Women's health care provider" means an
37 obstetrician/gynecologist, advanced nurse practitioner
38 certified to practice in women's health (ob/gyn), certified
39 nurse-midwife or physician assistant-midwife practicing
40 within the lawful scope of that provider's practice.

§33-43-4. Limitations on conditions of coverage.

1 No health benefits policy may require as a condition
2 to the coverage of basic primary and preventative
3 obstetrical and gynecological services that a woman first
4 obtain a referral from a primary care physician: *Provided*,
5 That for a health maintenance organization authorized
6 under article twenty-five-a of this chapter, direct access, at
7 least annually, to a women's health care provider for
8 purposes of a well woman examination shall satisfy the
9 foregoing requirement. No health benefits policy may
10 require as a condition to the coverage of prenatal or
11 obstetrical care that a woman first obtain a referral for
12 those services by a primary care physician. No health
13 benefit policy providing coverage for surgical services in a
14 hospital inpatient or outpatient setting may deny coverage
15 for: (1) Reconstruction of the breast following
16 mastectomy; or (2) reconstructive or cosmetic surgery
17 required as a result of an injury caused by an act of family
18 violence as defined in section three, article two-a, chapter
19 forty-eight of this code, when the person inflicting the

20 injury was convicted of a felony, a lesser included
21 misdemeanor offense, or a charge of domestic battery for
22 inflicting the injury.

§33-43-5. Required disclosure.

1 Every health benefits policy that is issued, delivered,
2 issued for delivery or renewed in this state on or after the
3 first day of July, one thousand nine hundred ninety-eight,
4 shall disclose in writing to enrollees, subscribers and
5 insureds, in clear and accurate language, the female
6 enrollee's right of direct access to a women's health care
7 provider of her choice. The information required to be
8 disclosed shall include, at a minimum, any specific
9 women's health care services that are excluded from
10 coverage and the health benefits policy's right to limit
11 coverage to medically necessary and appropriate women's
12 health care services.

§33-43-6. Certain cost-sharing prohibited.

1 No health benefits policy may impose additional
2 copayments or deductibles for female enrollees' direct
3 access to in-network, participating women's health care
4 providers unless the same additional cost-sharing is
5 imposed for other types of health care services not
6 delineated in this article.

§33-43-7. Limitation on number of women's health care providers.

1 A health benefits policy may limit the number of
2 women's health care providers in a network: *Provided,*
3 That a sufficient number of providers are available to
4 serve a defined population or geographic service area so
5 that female enrollees will have direct and timely access to
6 women's health care providers.

§33-43-8. Partial-birth abortions prohibited; criminal penalties; exceptions; hearings by state board of medicine.

1 (a) Any person who knowingly performs a partial-
2 birth abortion and thereby kills a human fetus is guilty of
3 a felony and shall be fined not less than ten thousand

4 dollars, nor more than fifty thousand dollars, or
5 imprisoned not more than two years, or both fined and
6 imprisoned. This section does not apply to a partial-birth
7 abortion that is necessary to save the life of a mother when
8 her life is endangered by a physical disorder, illness or
9 injury.

10 (b) A physician charged pursuant to this section may
11 seek a hearing before the West Virginia board of medicine
12 on the issue of whether the physician's act was necessary
13 to save the life of a mother pursuant to the provisions of
14 subsection (a) of this section. The findings of the board
15 of medicine are admissible on this issue at the trial of the
16 physician. Upon a motion by the defendant, the court
17 shall delay the beginning of trial for not more than thirty
18 days to permit the board of medicine hearing to take
19 place.

20 (c) No woman may be prosecuted under the
21 provisions of this section for having a partial-birth
22 abortion, nor may she be prosecuted for conspiring to
23 violate the provisions of this section.

CHAPTER 174

(H. B. 4518—By Delegates Beane, Mezzatesta and Michael)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to business and occupation or privilege tax; limitation on rates; treatment of health maintenance organizations; effective date of tax on health maintenance organizations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. TAXATION AND FINANCE.

§8-13-5. Business and occupation or privilege tax; limitation on rates; effective date of tax; exemptions; activity in two or more municipalities; administrative provisions.

1 (a) *Authorization to impose tax.* — (1) Whenever any
2 business activity or occupation, for which the state
3 imposed its annual business and occupation or privilege
4 tax under article thirteen, chapter eleven of this code, prior
5 to July one, one thousand nine hundred eighty-seven, is
6 engaged in or carried on within the corporate limits of any
7 municipality, the governing body thereof shall have
8 plenary power and authority, unless prohibited by general
9 law, to impose a similar business and occupation tax
10 thereon for the use of the municipality.

11 (2) Municipalities may impose a business and
12 occupation or privilege tax upon every person engaging
13 or continuing within the municipality in the business of
14 aircraft repair, remodeling, maintenance, modification and
15 refurbishing services to any aircraft or to an engine or
16 other component part of any aircraft as a separate business
17 activity.

18 (b) *Maximum tax rates.* — In no case shall the rate of
19 such municipal business and occupation or privilege tax
20 on a particular activity exceed the maximum rate imposed
21 by the state, exclusive of surtaxes, upon any business
22 activities or privileges taxed under sections two-a, two-b,
23 two-c, two-d, two-e, two-g, two-h, two-i and two-j, article
24 thirteen of said chapter eleven, as such rates were in effect
25 under said article thirteen, on January one, one thousand
26 nine hundred fifty-nine, or in excess of one percent of
27 gross income under section two-k of said article thirteen,
28 or in excess of three tenths of one percent of gross value
29 or gross proceeds of sale under section two-m of said
30 article thirteen. The rate of municipal business and
31 occupation or privilege tax on the activity described in

32 subdivision (2), subsection (a) of this section shall be ten
33 one-hundredths of one percent. The rate of municipal
34 business and occupation or privilege tax on the activity of
35 a health maintenance organization holding a certificate of
36 authority under the provisions of article twenty-five-a,
37 chapter thirty-three of this code, shall not exceed one half
38 of one percent to be applied solely to that portion of gross
39 income received from the medicaid program pursuant to
40 Title XIX of the Social Security Act, the state employee
41 programs administered by the public employees insurance
42 agency pursuant to article sixteen, chapter five of this
43 code, and other federal programs, for health care items or
44 services provided directly or indirectly by the health
45 maintenance organization, that is expended for
46 administrative expenses; and shall not exceed one half of
47 one percent to be applied to the gross income received
48 from enrollees, or from employers on behalf of enrollees,
49 from sources other than medicaid, state employee
50 programs administered by the public employees insurance
51 agency and other federal programs for health care items
52 or services provided directly or indirectly by the health
53 maintenance organization: *Provided*, That this tax rate
54 limitation shall not extend to that part of the gross income
55 of health maintenance organizations which is received
56 from the use of real property other than property in which
57 any such company maintains its office or offices in this
58 state, whether such income is in the form of rentals or
59 royalties. This provision concerning the maximum
60 municipal business and occupation tax rate on the
61 activities of health maintenance organizations is effective
62 beginning after the thirty-first day of December, one
63 thousand nine hundred ninety-six. Any payments of
64 business and occupation tax made by a health
65 maintenance organization to a municipality for calendar
66 year one thousand nine hundred ninety-seven shall not be
67 subject to recovery by the health maintenance
68 organization. Administrative expenses shall include all
69 expenditures made by a health maintenance organization
70 other than expenses paid for claims incurred or payments
71 made to providers for the benefits received by enrollees.

72 (c) *Effective date of local tax.* — Any taxes levied
73 pursuant to the authority of this section may be made
74 operative as of the first day of the then current fiscal year
75 or any date thereafter: *Provided*, That any new imposition
76 of tax or any increase in the rate of tax upon any business,
77 occupation or privilege taxed under section two-e of said
78 article thirteen shall apply only to gross income derived
79 from contracts entered into after the effective date of such
80 imposition of tax or rate increase, and which effective date
81 shall not be retroactive in any respect: *Provided, however*,
82 That no tax imposed or revised under this section upon
83 public utility services may be effective unless and until the
84 municipality provides written notice of the same by
85 certified mail to said public utility at least sixty days prior
86 to the effective date of said tax or revision thereof.

87 (d) *Exemptions.* — A municipality shall not impose its
88 business and occupation or privilege tax on any activity
89 that was exempt from the state's business and occupation
90 tax under the provisions of section three, article thirteen of
91 said chapter eleven, prior to July one, one thousand nine
92 hundred eighty-seven, and determined without regard to
93 any annual or monthly monetary exemption also specified
94 therein.

95 (e) *Activity in two or more municipalities.* — Whenever
96 the business activity or occupation of the taxpayer is
97 engaged in or carried on in two or more municipalities of
98 this state, the amount of gross income, or gross proceeds
99 of sales, taxable by each municipality shall be determined
100 in accordance with such legislative regulations as the tax
101 commissioner may prescribe. It being the intent of the
102 Legislature that multiple taxation of the same gross
103 income, or gross proceeds of sale, under the same
104 classification by two or more municipalities shall not be
105 allowed, and that gross income, or gross proceeds of sales,
106 derived from activity engaged in or carried on within this
107 state, that is presently subject to state tax under section
108 two-c or two-h, article thirteen, chapter eleven of this code,
109 which is not taxed or taxable by any other municipality of
110 this state, may be included in the measure of tax for any
111 municipality in this state, from which the activity was
112 directed, or in the absence thereof, the municipality in this

113 state in which the principal office of the taxpayer is
114 located. Nothing in this subsection shall be construed as
115 permitting any municipality to tax gross income or gross
116 proceeds of sales in violation of the constitution and laws
117 of this state or the United States, or as permitting a
118 municipality to tax any activity that has a definite situs
119 outside its taxing jurisdiction.

120 (f) Where the governing body of a municipality
121 imposes a tax authorized by this section, such governing
122 body shall have the authority to offer tax credits from
123 such tax as incentives for new and expanding businesses
124 located within the corporate limits of the municipality.

125 (g) *Administrative provisions.* — The ordinance of a
126 municipality imposing a business and occupation or
127 privilege tax shall provide procedures for the assessment
128 and collection of such tax, which shall be similar to those
129 procedures in article thirteen, chapter eleven of this code,
130 as in existence on June thirtieth, one thousand nine
131 hundred seventy-eight, or to those procedures in article
132 ten, chapter eleven of this code, and shall conform with
133 such provisions as they relate to waiver of penalties and
134 additions to tax.

CHAPTER 175

(H. B. 4113—By Mr. Speaker, Mr. Kiss, and Delegate Michael)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve-c, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to simulcasting of horse and dog races and pari-mutuel wagering on simulcast races; providing for a negotiated signal transmission fee as consideration for a host racing association's televised racing services; providing for payments into racetrack employees' pension funds, the

thoroughbred development fund and purse funds; and making technical corrections to clarify current law.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE AND DOG RACING.

§19-23-12c. Interstate simulcasts by licensed racetracks.

1 (a) Any licensed racing association may be authorized
2 by the commission to transmit broadcasts of races
3 conducted at its racetrack to legal wagering entities located
4 outside this state, which legal wagering entities located
5 outside this state shall not be subject to the provisions of
6 subsection (e), section twelve-b of this article: *Provided,*
7 That as consideration for the televised racing services it
8 provides, the host racing association shall receive a signal
9 transmission fee to be paid by the receiving legal wagering
10 entity which shall be in an amount agreed upon by the
11 receiving legal wagering entity and the host racing
12 association. All broadcasts of horse races shall be in
13 accordance with all of the provisions of the "Federal
14 Interstate Horseracing Act of 1978", also known as
15 Public Law 95-515, Section 3001-3007 of Title 15 of the
16 United States Code.

17 (b) One percent of the total signal transmission fee
18 provided in subsection (a) of this section shall be paid into
19 a special fund to be established by the racing commission
20 for and on behalf of all employees of the licensed racing
21 association to be used for payments into the pension plan
22 for all employees of the licensed racing association, and
23 any thoroughbred horse racetrack which has participated
24 in the West Virginia thoroughbred development fund for a
25 period of more than four consecutive calendar years prior
26 to the thirty-first day of December, one thousand nine
27 hundred ninety-two shall pay seven and one-half percent
28 of the signal transmission fee into the West Virginia
29 thoroughbred development fund established by the racing
30 commission according to section thirteen-b of this article.
31 After deducting: (i) The amounts required to be placed

32 into the pension plan for all employees of the licensed
33 racing association under this section; (ii) the amounts, if
34 any, required to be paid into the West Virginia
35 thoroughbred development fund under this section; and
36 (iii) the direct costs necessary to send a live audio and
37 visual signal of horse races or dog races from any
38 racetrack licensed under the provisions of section one of
39 this article to any legal wagering entities outside this state
40 for the purpose of pari-mutuel wagering, which direct
41 costs shall include the cost of satellite equipment necessary
42 to transmit the signal, a satellite operator and the satellite
43 time necessary to broadcast the signal and the cost of
44 telecommunication and facsimile services needed to
45 communicate necessary information to all legal wagering
46 entities for the purpose of pari-mutuel wagering,
47 thoroughbred horseracing associations shall make a
48 deposit equal to fifty percent of the remainder into the
49 purse fund established under the provisions of subdivision
50 (1), subsection (b), section nine of this article.

CHAPTER 176

**(S. B. 252—By Senators Wooton, Ball, Bowman, Dittmar, Fanning, Hunter,
Kessler, Oliverio, Ross, Schoonover, Snyder, White, Buckalew, Deem,
Kimble and Scott)**

[Passed February 24, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section one-a, article fifteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, three, four, six, seven, seven-a, seven-b, eight, nine, ten, eleven, twelve, fourteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four and twenty-five of said article; and to further amend said article by adding thereto two new sections, designated sections three-a and thirteen, all relating to creating and operating housing authorities; defining terms; repealing section defining other terms; declaring necessity for housing

authorities; providing for creation of city and county housing authorities; transacting business; exercising powers; determining need for housing authority; requiring resolution of governing body; appointing members; establishing terms of office; providing for expenses; providing for removal of commissioners; providing for regional housing authorities; requiring adoption of resolution to create regional housing authorities; providing for withdrawal from regional housing authority; prohibiting certain persons from acquiring interest in property or contracts; requiring disclosure of prior interest; prohibiting compensation of commissioners; providing for reimbursement of necessary expenditures; providing that housing authority is body corporate and politic; providing authority with powers necessary to effectuate purposes of article; authorizing authority to investigate living and housing conditions in area or operation; authorizing authority to study and make recommendations concerning the city or county plan; authorizing authority to form and operate nonprofit corporations; allowing authority to participate in cooperative arrangements with persons and for-profit entities; allowing authority to participate as a general or limited partner, co-venturer, shareholder; allowing authority to require contractors to comply with requirements of minimum wages and maximum hours of labor; providing for joint undertakings by authorities; establishing areas of operation; providing for the acquisition of land by purchase or by right of eminent domain; providing that developments are subject to ordinances of locality in which situated; providing that restrictions regarding acquisition, operation or disposition of property by public bodies do not apply to an authority unless specified by the Legislature; providing for the amount and nature of indebtedness; establishing rights of creditors; allowing authority to enter into agreement for supervision and control of development; requiring authority to report to mayor or county governing body; authorizing creation of community and economic development fund; providing for tax and licensing exemptions; providing for the security of funds of authority deposited in bank; establishing policy of state as to rentals; providing for occupancy standards and requirements to prohibit any criminal or other activity that threatens health, safety or right to peaceful enjoyment of

premises; authorizing provision of housing, rental, supportive services and programs to advance social, educational and economic self-sufficiency; encouraging increased availability of financing for purchase of dwellings; home improvements and repairs for persons of low or moderate income; establishing duties and limiting powers of authority; providing for an authority to lease or rent property; providing that rent will be established in appropriate manner; permitting existing tenants to occupy property upon terms and conditions set by authority; authorizing programs to increase home ownership by residents of developments; allowing authority to acquire, own and operate nonresidential property for certain limited purposes; providing for programs to rehabilitate, maintain, procure, and preserve existing affordable housing; requiring authority to conduct affairs in accordance with sound financial and business practices; providing power to issue bonds; establishing how bonds secured; providing for bonds to be authorized by resolution; establishing interest rate and life; providing for redemption; providing for payment; providing for sale; providing for presumption of validity of commissioners signatures; establishing powers of authority in connection with issuance of bonds; incurring obligations under leases; securing payment of bonds; providing for enforcement of performance of contracts; enjoining unlawful acts; surrendering possession of development upon default by authority; appointing a receiver; requiring accounting by commissioners; authorizing housing assistance for farmers of low and moderate income; and providing for application for low-cost housing by farmers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. STATE HOUSING LAW.

- §16-15-1. Definitions.
- §16-15-2. Legislative declaration of necessity for creation of housing authority corporations.
- §16-15-3. City and county housing authorities created; when to transact business or exercise powers; determination of need for housing authority; resolution of governing body proof of establishment; appointment, term, expenses and removal of commissioners.
- §16-15-3a. Regional housing authorities.
- §16-15-4. Persons prohibited from acquiring interest in property or contracts; disclosure of prior interest.
- §16-15-6. Commissioner to receive no compensation; reimbursement for necessary expenditures.
- §16-15-7. Authority a body corporate and politic; powers; investigations or examinations.
- §16-15-7a. Power of authority to include certain stipulations in contracts.
- §16-15-7b. Joint undertakings by authorities; areas of operation.
- §16-15-8. Power to acquire lands, etc., by purchase or by right of eminent domain.
- §16-15-9. Developments subject to ordinances, etc., of locality in which situated; restrictions on acquisition, etc., of property; securities need not be offered to sinking fund commission.
- §16-15-10. Amount and nature of indebtedness; rights of creditors.
- §16-15-11. Agreement with federal government providing for supervision and control of authority or development.
- §16-15-12. Report to mayor or county governing body.
- §16-15-13. Community and economic development fund.
- §16-15-14. Tax and licensing exemptions.
- §16-15-17. Policy of state as to rentals.
- §16-15-18. Duties of authority and limitation of powers.
- §16-15-19. Power to issue bonds; how bonds secured.
- §16-15-20. Bonds authorized by resolution; interest rate and life; forms; denominations; redemption; how payable; sale; signatures of commissioners or officers ceasing to be such before delivery; presumptions in suit, etc., involving validity.
- §16-15-21. Powers of authority in connection with the issuance of bonds, incurring obligations under leases and securing payment of bonds.
- §16-15-22. Actions by obligee of authority to enforce performance of contracts and to enjoin unlawful acts.
- §16-15-23. Surrender of possession of development to obligee upon default by authority; appointment of receiver; accounting.
- §16-15-24. Housing authorities empowered to provide housing for farmers of low and moderate income.

§16-15-25. Application for low-cost housing for farmers.

§16-15-1. Definitions.

1 The following terms, wherever used or referred to in
2 this article, shall have the following respective meanings,
3 unless in any case a different meaning clearly appears
4 from the context:

5 (1) "Affiliate" means any corporation, entity,
6 partnership, venture, syndicate or arrangement in which a
7 housing authority participates by holding an ownership
8 interest or participating in its governance, including both
9 controlled and noncontrolled affiliates as herein defined.

10 (2) "Affordable housing" means dwelling units that
11 may be rented or purchased, as the case may be, by
12 persons of eligible income, as defined herein.

13 (3) "Annual sinking fund payment" means the
14 amount of money specified in the resolution or
15 resolutions authorizing term bonds as payable into a
16 sinking fund during a particular calendar year for the
17 retirement of term bonds at maturity after such calendar
18 year, but shall not include any amount payable by reason
19 only of the maturity of a bond.

20 (4) "Area of operation" means the geographical area
21 within which a housing authority owns or operates
22 housing developments or administers other housing
23 programs including any city, county or combination
24 thereof in which it was operating on the effective date of
25 this article.

26 (5) "Arrangement" means a legal relationship with
27 another party that may include, but not be limited to, a
28 general or limited partnership; joint venture; syndicate or
29 syndication; corporation; limited liability cooperative,
30 corporation or partnership; an unincorporated association;
31 a cooperative; a consortium; and all other structures,
32 organizations, and forms of legal relationships with third
33 parties.

34 (6) "Authority" or "housing authority" means a
35 corporate body organized in accordance with the

36 provisions of this article for the purposes, with the powers,
37 and subject to the restrictions hereinafter set forth. Where
38 the context requires or permits, this term shall be deemed
39 to include regional housing authorities and/or controlled
40 affiliates of a housing authority.

41 (7) "Bond" or "bonds" means any bonds, notes,
42 interim certificates, debentures, or other obligations issued
43 by an authority pursuant to this article.

44 (8) "City" means and includes any political subdivision
45 of this state, whether incorporated or unincorporated,
46 known as a city, municipality, town or village. With
47 respect to the provisions of other sections of this article
48 and their application to housing authorities of counties,
49 the term "city" shall be construed as referring to a county
50 unless a different meaning clearly appears from the
51 context.

52 (9) "Clerk" means the clerk or recorder of the city or
53 the clerk of the county, as the case may be, or the officer
54 charged with the duties customarily imposed on the clerk
55 or recorder.

56 (10) "Commissioner" means one of the members of
57 the governing board of a housing authority appointed in
58 accordance with the provisions of this article.

59 (11) "Community facilities" means lands, buildings
60 and equipment, real and personal property suitable for
61 recreational, or social assembly, for educational, health, or
62 welfare purposes and other necessary activities for the use
63 and benefit of the occupants of housing developments and
64 the public.

65 (12) "Controlled affiliate" means any affiliate of a
66 housing authority: (i) In which commissioners, officers,
67 employees and agents of the authority constitute a
68 majority of the governing body; or (ii) in which the
69 authority holds a majority of the ownership interests.

70 (13) "Council" means the chief legislative body of
71 the city.

72 (14) "County" means and includes any political
73 subdivision of this state known as a county.

74 (15) "Development" or "housing development"
75 means and includes all dwellings and associated
76 appurtenances, including real and personal property, and
77 all other facilities and improvements of every kind and
78 description, which a housing authority may own or
79 operate or in which it may hold an interest under the
80 provisions of this article, all land upon which such
81 dwellings, appurtenances, and facilities are situate; all work
82 and activities undertaken by a housing authority or others
83 relating to the creation of such property; all tangible and
84 intangible personal property relating thereto, including all
85 leases, licenses, agreements, and other instruments and all
86 rights and obligations arising thereunder, establishing or
87 confirming ownership, title, or right of use or possession
88 in or to any such property by a housing authority, all as
89 more particularly described and authorized in this article.

90 (16) "Farmers of low or moderate income" means
91 persons or families who at the time of their admission to
92 occupancy in a dwelling of the authority: (A) Live under
93 unsafe and unsanitary housing conditions; (B) derive their
94 principal income from operating or working upon a farm;
95 and (C) had an aggregate average annual net income for
96 the three years preceding their admission that was less than
97 the amount determined by the authority to be necessary,
98 within its area of operation, to enable them, without
99 financial assistance, to obtain decent, safe and sanitary
100 housing.

101 (17) "Governing body" means, in the case of a city,
102 the council of the city, and in the case of a county, the
103 county commission.

104 (18) "Government" means the state and federal
105 governments and any subdivisions, authority or
106 instrumentality, corporate or otherwise, of either of them.

107 (19) "Guest" means any person, not a resident of the
108 development, who is present within the development, or
109 within a dwelling in a development, as an invitee of or

110 otherwise with the express or implied consent of a resident
111 of the development or dwelling.

112 (20) "Hold an interest" means ownership or control
113 of, or participation in an arrangement with respect to, a
114 development by a housing authority or any affiliate
115 thereof.

116 (21) "Low-cost housing" shall include any housing
117 accommodations which are or are to be rented at not in
118 excess of a maximum rate per room, or maximum average
119 rate per room, which shall be specified or provided by the
120 housing authority of the city in which such housing
121 accommodations are or are to be located, or the
122 Legislature, or a duly constituted agency of the state, or of
123 the United States of America.

124 (22) "Mayor" means the chief executive of the city,
125 whether the official designation of his office be mayor,
126 city manager or otherwise: *Provided*, That the term
127 "mayor" may also be the chief elected officer of the
128 municipality regardless of whether or not the corporate
129 charter provides for a city manager appointed by the city
130 council who is the chief executive officer.

131 (23) "Noncontrolled affiliate" means affiliate in
132 which a housing authority participates, but does not
133 constitute a majority of the governing body nor have a
134 majority ownership interest.

135 (24) "Obligee of the authority" or "obligee" means
136 any bondholder, trustee or trustees for any bondholders,
137 or lessor demising to an authority property used in
138 connection with a housing development, or any assignee
139 or assignees of the lessor's interest or any part thereof, and
140 the federal government when it is a party to any contract
141 with the authority.

142 (25) "Person" means a family and, where the context
143 so requires, a household.

144 (26) "Persons of eligible income" means individuals
145 or families as defined by a public housing authority within
146 the applicable local, state and federal funding guidelines.

147 (27) "Public agency" means and includes: (i) Any
148 county; city; village; township; any school, drainage, tax,
149 improvement or other district; any department, division, or
150 political subdivision of this state or another state; any
151 housing authority, housing finance authority, or housing
152 trust of this state or another state; and any other agency,
153 bureau, office, authority, or instrumentality of this state or
154 another state; (ii) any board, agency, commission, division
155 or other instrumentality of a city or county; and (iii) any
156 board, commission, agency, department, or other
157 instrumentality of the United States, or any political
158 subdivision or governmental unit of any of them.

159 (28) "Regional housing authority" means a housing
160 authority formed by two or more cities or counties
161 pursuant to the authority provided in section three-a of
162 this article.

163 (29) "Resident" means a person residing in a
164 development of a housing authority, with the consent of
165 such authority, according to its policies, rules and
166 procedures.

167 (30) "Slum clearance" means the removal of housing
168 conditions which shall be considered by the housing
169 authority of the city in which such conditions exist to be
170 unsanitary or substandard or a menace to public health.

171 (31) "State" means the state of West Virginia and its
172 duly constituted government.

**§16-15-2. Legislative declaration of necessity for creation of
housing authority corporations.**

1 It is hereby declared as a matter of legislative
2 determination that in order to promote and protect the
3 health, safety, morals and welfare of the public, it is
4 necessary in the public interest to provide for the creation
5 of public corporate bodies to be known as housing
6 authorities, and to confer upon and vest in said housing
7 authorities all powers necessary or appropriate in order
8 that they may engage in low and moderate cost housing
9 development and slum clearance projects; and that the
10 powers herein conferred upon the housing authorities.

11 including the power to acquire and dispose of property, to
12 remove unsanitary or substandard conditions, to construct
13 and operate housing developments and to borrow, expend
14 and repay moneys for the purpose herein set forth, are
15 public objects essential to the public interest.

§16-15-3. City and county housing authorities created; when to transact business or exercise powers; determination of need for housing authority; resolution of governing body proof of establishment; appointment, term, expenses and removal of commissioners.

1 (a) In each city and in each county there is hereby
2 created a housing authority which shall be a public body
3 corporate and politic. No authority hereby created shall
4 transact any business or exercise its powers hereunder
5 until or unless the governing body of the city or the
6 county, by proper resolution, determines that there is need
7 for an authority: *Provided*, That nothing contained herein
8 shall be construed as creating an additional housing
9 authority in a city where a housing authority has been
10 created pursuant to prior law, but each housing authority
11 shall continue as a public body corporate and politic and
12 shall have the area of operation defined in section one of
13 this article for a city or county housing authority. Each
14 housing authority created pursuant to this section shall
15 adopt a name for all legal and operating purposes.

16 (b) The determination as to whether or not there is a
17 need for an authority: (1) May be made by the governing
18 body on its own motion; or (2) shall be made by the
19 governing body upon the filing of a petition signed by
20 twenty-five residents of the city or county asserting that
21 there is need for an authority to function in the city or
22 county and requesting that the governing body so declare.
23 The governing body shall adopt a resolution declaring
24 that there is need for a housing authority in the city or
25 county if it finds: (1) That unsanitary or unsafe inhabited
26 dwellings exist in the city or county; or (2) that there is a
27 shortage of safe or sanitary dwellings in the city or county
28 available to persons of low or moderate income at rental
29 rates or purchase prices they can afford. In determining

30 whether dwellings are unsafe or unsanitary the governing
31 body may take into consideration the degree of
32 overcrowding, the percentage of land coverage, the light,
33 air, space and access available to the inhabitants of the
34 dwellings, the size and arrangement of the rooms, the
35 sanitary facilities, and the extent to which conditions exist
36 in the dwellings which endanger life or property by fire or
37 other cause.

38 (c) In any suit, action or proceeding involving the
39 validity or enforcement of or relating to any contract of
40 the authority, the authority shall be conclusively deemed
41 to have become established and authorized to transact
42 business and exercise its powers hereunder upon proof of
43 the adoption of a resolution by the governing body
44 declaring the need for the authority. An adopted
45 resolution shall be deemed sufficient if it declares that
46 there is need for an authority and finds in substantially the
47 foregoing terms (no further detail being necessary) that
48 either or both of the above-enumerated conditions exist.
49 A copy of a resolution duly certified by the clerk shall be
50 admissible in evidence in any suit, action or proceeding.

51 (d) When the governing body of a city adopts a
52 resolution as aforesaid, it shall promptly notify the mayor
53 of the adoption. Upon receiving the notice, the mayor
54 shall appoint five persons as commissioners of the
55 authority created for the city. When the governing body
56 of a county adopts a resolution as aforesaid, it shall
57 appoint five persons as commissioners of the authority
58 created for the county. The commissioners who are first
59 appointed shall be designated to serve for terms of one,
60 two, three, four and five years, respectively, from the date
61 of their appointment. Thereafter commissioners shall be
62 appointed for a term of office of five years, except that all
63 vacancies shall be filled for the unexpired term. No
64 commissioner of an authority may be an officer or
65 employee of the city or county for which the authority is
66 created. A commissioner shall hold office until his or her
67 successor has been appointed and has qualified, unless
68 sooner removed according to this article. A certificate of
69 the appointment or reappointment of any commissioner
70 shall be filed with the clerk and shall be conclusive

71 evidence of the due and proper appointment of a
72 commissioner. A commissioner shall receive no
73 compensation for his or her services, but he or she shall be
74 entitled to the necessary expenses, including traveling
75 expenses, incurred in the discharge of his or her duties.

76 (e) For inefficiency or neglect of duty or misconduct
77 in office, a commissioner of an authority may be removed
78 by the mayor or by the county commission. A
79 commissioner shall be removed only after being given a
80 copy of the charges and notice of a hearing. The charges
81 shall be sent to the commissioner at least ten days prior to
82 the hearing and shall notify the commissioner that he or
83 she has an opportunity to be heard in person or by
84 counsel. In the event of the removal of any commissioner,
85 a record of the proceedings, together with the charges and
86 findings thereon, shall be filed in the office of the clerk.
87 The powers of each authority shall be vested in its
88 commissioners.

§16-15-3a. Regional housing authorities.

1 (a) Any two or more cities or counties, or any
2 combination thereof, may, by resolution of their separate
3 governing bodies, establish a regional housing authority,
4 by adopting a joint resolution declaring that there is a
5 need for a regional housing authority to provide decent,
6 safe and sanitary housing that is affordable to persons of
7 low and moderate income residing in a multijurisdictional
8 area and that this need would be more efficiently served
9 by the establishment of a regional housing authority:
10 *Provided*, That any authority in existence prior to the
11 effective date of this article that is providing services
12 outside of the city or county boundaries will continue to
13 have jurisdiction in the areas where the authority is
14 providing services on the effective date of this article.

15 (b) Upon adoption of a resolution by two or more
16 cities or counties, or a combination thereof, a regional
17 housing authority shall be established and, except as
18 otherwise provided in this article, the regional housing
19 authority shall have perpetual existence, unless dissolved
20 in accordance with law. Each regional housing authority

21 established pursuant to this section, shall adopt a name for
22 all legal and operating purposes.

23 (c) A certified copy of the resolutions establishing a
24 regional housing authority shall serve as conclusive
25 evidence that the authority has been properly established,
26 is authorized to transact business, and exercise its powers
27 under this article.

28 (d) After a regional housing authority has been
29 established, any additional city or county may elect to
30 participate as a member of the regional housing authority,
31 upon adoption of a resolution to that effect: *Provided,*
32 That a majority of the existing commissioners of the
33 regional housing authority and all participating political
34 subdivisions, by action of their respective governing
35 bodies, shall consent to the additional member or
36 members.

37 (e) Any city or county may withdraw from
38 participation in the regional housing authority by
39 resolution of its governing body. Any withdrawal from
40 participation shall be subject to the following conditions:

41 (1) The regional housing authority has no bonds,
42 notes, or other obligations outstanding, or adequate
43 provision for payment of bonds, notes, or other
44 obligations, by escrow or otherwise, has been made. Past
45 performance without breach or default of an obligation
46 secured only by one or more developments or the income
47 thereof shall be deemed to be "adequate provision";

48 (2) The withdrawing city or county shall make
49 adequate provision for the performance of all of its
50 outstanding obligations and responsibilities as a
51 participant in the regional housing authority;

52 (3) The withdrawing city or county shall give six
53 months written notice to the regional housing authority
54 and all other cities and counties participating therein; or

55 (4) The commissioner or commissioners appointed by
56 the withdrawing city or county shall be deemed to have
57 resigned as of the date upon which the withdrawal is
58 effective. Vacancies on the board of commissioners

59 created by withdrawal of a city or county shall be filled in
60 such manner as the cities and counties remaining as
61 participants shall agree.

62 Notwithstanding the withdrawal of any participating
63 city or county, the legal title to and operating
64 responsibility for any development located outside the
65 area of operation of the regional housing authority
66 remaining after such withdrawal has occurred shall
67 continue to be vested in the regional housing authority,
68 unless a different arrangement is made.

69 (f) If only one city or county remains as a participant
70 in any regional housing authority, the regional housing
71 authority shall become the housing authority of the
72 remaining city or county at the discretion of its governing
73 body, or the regional housing authority shall be dissolved
74 and its assets and liabilities transferred to another existing
75 housing authority or to a city or county or other public
76 agency.

**§16-15-4. Persons prohibited from acquiring interest in
property or contracts; disclosure of prior interest.**

1 No commissioner or employee of an authority shall
2 acquire any interest direct or indirect in any development
3 or in any property included or planned to be included in
4 any development, nor shall he or she have any interest
5 direct or indirect in any contract or proposed contract for
6 materials or services to be furnished or used in connection
7 with any development. If any member or employee of
8 any authority owns or controls an interest direct or
9 indirect in any property included in any development,
10 which was acquired prior to his or her appointment or
11 employment, he or she shall disclose the same in writing to
12 the authority. The disclosure shall be entered upon the
13 minutes of the authority.

**§16-15-6. Commissioner to receive no compensation;
reimbursement for necessary expenditures.**

1 No commissioner shall receive any compensation
2 whether in form of salary, per diem allowances or
3 otherwise, for or in connection with his or her services as

4 commissioner. Each commissioner shall, however, be
5 entitled to reimbursement, to the extent of appropriations
6 or other funds available therefor, for any necessary
7 expenditures in connection with the performance of his or
8 her general duties or in connection with the construction
9 or operation of any development. The authority may
10 allocate such expenses among its developments in such
11 manner as it may consider proper.

**§16-15-7. Authority a body corporate and politic; powers;
investigations or examinations.**

1 (a) An authority shall constitute a body both corporate
2 and politic, exercising public powers, and having all the
3 powers necessary or convenient to carry out and effectuate
4 the purposes and provisions of this article, including the
5 following powers in addition to others herein granted:

6 (1) To investigate living and housing conditions in the
7 authority's area of operation and the means and methods
8 of improving such conditions;

9 (2) To determine whether unsanitary or substandard
10 housing conditions exist;

11 (3) To study and make recommendations concerning
12 the city or county plan in relation to the problems of
13 clearing, replanning, redevelopment and reconstruction of
14 areas in which unsanitary or substandard conditions exist,
15 and the providing of housing accommodations for
16 persons of low and moderate income, and to cooperate
17 with any city, county or regional planning agency, to
18 prepare, carry out and operate developments;

19 (4) To provide for the construction, reconstruction,
20 redevelopment, improvement, alteration or repair of any
21 development or any part thereof;

22 (5) To take over by purchase, lease or otherwise any
23 development undertaken by any government;

24 (6) To act as agent for the federal government in
25 connection with the acquisition, construction, operation
26 and/or management of a development or any part thereof;

27 (7) To arrange with the city or with a government for
28 the furnishing, planning, replanning, opening or closing
29 of streets, roads, roadways, alleys or other places or
30 facilities, or for the acquisition by the city, county, state or
31 federal government or any agency, instrumentality or
32 subdivision thereof, of property, options or property rights
33 or for the furnishing of property or services in connection
34 with a development;

35 (8) To sell, lease or rent any of the housing or other
36 accommodations of any of the lands, buildings, structures
37 or facilities embraced in any development, and to establish
38 and revise the rents or charges therefor;

39 (9) To enter upon any building or property in order
40 to conduct investigations or to make surveys or soundings;
41 to purchase, lease, obtain options upon, acquire by
42 eminent domain or otherwise, sell, exchange, transfer,
43 assign or mortgage any property real or personal or any
44 interest therein;

45 (10) To acquire any property real or personal or any
46 interest therein from any person, firm, corporation, or the
47 city, county, state or federal government or any agency,
48 instrumentality or subdivision thereof, by gift, grant,
49 bequest or devise; to own, hold, clear and improve
50 property; in its discretion, to insure or provide for the
51 insurance of the property or operations of the authority
52 against such risks as the authority may deem advisable;

53 (11) To borrow money upon its bonds, notes,
54 debentures or other evidences of indebtedness, and to
55 secure the same by mortgages upon property held or to be
56 held by it or by pledge of its revenues, or in any other
57 manner;

58 (12) To invest any funds held in reserves or sinking
59 funds, or any funds not required for immediate
60 disbursement in property or securities in which savings
61 banks may legally invest funds subject to their control;

62 (13) To sue and be sued;

63 (14) To have a seal, and to alter it;

64 (15) To have perpetual succession;

65 (16) To make and execute contracts and other
66 instruments necessary or convenient to the exercise of the
67 powers of the authority;

68 (17) To form and operate nonprofit corporations and
69 other affiliates of every kind and description, which may
70 be wholly or partially owned or controlled, for carrying
71 out the purposes of this article and in connection with the
72 exercise of any of the powers of a housing authority;

73 (18) To participate in cooperative arrangements with
74 persons and for-profit entities whose purpose is solely that
75 of pecuniary gain, as well as with nonprofit entities and
76 persons who seek no pecuniary gain. The participation of
77 a housing authority in any arrangement with other persons
78 or entities, including for-profit persons and entities, shall
79 not cause any activity engaged in by the authority to be
80 characterized as proprietary nor deprive the authority of
81 any privilege or immunity otherwise existing under law;

82 (19) To participate as a general or limited partner, co-
83 venturer, shareholder, or otherwise as a principal, an
84 investor, a lender, a guarantor, a contracting party, or in
85 any other manner, all upon such terms and conditions, and
86 with such rights and obligations, as the governing board of
87 the housing authority shall, from time to time, in its
88 discretion determine to be appropriate;

89 (20) To make and, from time to time, amend and
90 repeal bylaws and rules not inconsistent with this article to
91 carry into effect the powers and purposes of the authority;

92 (21) To conduct examinations and investigations and
93 to hear testimony and take proof under oath at public or
94 private hearings on any matter material for its
95 information;

96 (22) To issue subpoenas requiring the attendance of
97 witnesses or the production of documents and things, for
98 the examination of witnesses who are out of the state or
99 unable to attend before the authority, or excused from
100 attendance; and

102 (23) To do all things necessary or convenient to carry
103 out the powers given in this article.

104 (b) Any of the investigations or examinations
105 provided for in this article may be conducted by the
106 authority or by a committee appointed by it, consisting of
107 one or more members thereof, or by counsel, or by an
108 officer or employee specifically authorized by the
109 authority to conduct it. Any member of the authority, its
110 counsel, or any person designated by it to conduct an
111 investigation or examination, shall have power to
112 administer oaths, take affidavits and issue subpoenas.

**§16-15-7a. Power of authority to include certain stipulations
in contracts.**

1 A housing authority, in addition to its other powers,
2 shall have the power, notwithstanding any provisions of
3 this code to the contrary, to include in any contract let in
4 connection with a development, stipulations requiring that
5 the contractor and any subcontractors comply with
6 requirements as to minimum wages and maximum hours
7 of labor, and comply with any conditions which the
8 federal government may have attached to its financial aid
9 of the development.

**§16-15-7b. Joint undertakings by authorities; areas of
operation.**

1 (a) Any two or more authorities may join or cooperate
2 with one another in the exercise of any or all of their
3 powers for the purpose of financing, planning,
4 undertaking, constructing or operating a housing
5 development or developments located within the area of
6 operation of any one or more such authorities or for the
7 administration of other housing programs.

8 (b) The area of operation of a housing authority shall
9 be one of the following:

10 (1) In the case of a housing authority established by a
11 city, the authority's area of operation shall be the city and
12 the area within ten miles from the territorial boundaries
13 thereof. Depending upon the geographical location of the
14 city, the area of operation may include portions of one or

15 more counties. It may also include areas lying within the
16 territorial boundaries of cities outside the city establishing
17 the housing authority. In order to resolve territorial
18 conflicts, the following rules shall apply:

19 (A) In the case of the housing authority's home
20 county, it may operate outside of the area described in this
21 subsection in the unincorporated areas of the home
22 county without the need for the county's consent unless
23 the home county has established its own housing
24 authority. If the home county has established a housing
25 authority, then the city's housing authority may operate
26 outside the area described above only with the consent of
27 the county housing authority;

28 (B) In the case of incorporated areas of a home
29 county, the housing authority may only operate within the
30 territorial boundaries thereof by consent of the other city
31 and its housing authority, if any;

32 (C) In the case of unincorporated portions of counties
33 other than the housing authority's home county, it may
34 operate only with the consent of the governing body of
35 the other county, regardless of whether the other county
36 has established a housing authority;

37 (D) In the case of incorporated areas within other
38 counties, it may operate only with the consent of the
39 governing body of any city incorporating such areas, and,
40 if the other city has also established its own housing
41 authority, with the consent of the other housing authority;

42 (E) Notwithstanding any other provision of this
43 section, a housing authority may, subject to the limitations
44 stated in this article, provide rental assistance to persons
45 residing outside the authority's area of operation as
46 defined in this section.

47 For purposes of this section, the term "home county"
48 means the county in which the city establishing the
49 housing authority is situated.

50 (2) In the case of a housing authority established by a
51 county, the authority's area of operation shall be all of the
52 county except that portion which lies within the territorial

53 boundaries of any city in which a housing authority has
54 been established.

55 (3) In the case of a regional housing authority, the
56 authority's area of operation shall be an area equivalent to
57 the total areas of operation which the housing authorities,
58 if created separately by political subdivisions establishing
59 the regional housing authority, would have, when
60 aggregated. The area of operation of a regional housing
61 authority shall not include any area which lies within the
62 territorial boundaries of any city or county in which a
63 housing authority has been established and which city or
64 county is not a participant in the regional authority:
65 *Provided, That the housing authority of the city or county*
66 *and its governing body may consent to the operation of*
67 *one or more developments by the regional housing*
68 *authority within the city's or county's territorial*
69 *boundaries.*

70 (4) Whether due to changes in the boundaries of cities
71 or counties which have established housing authorities, or
72 the establishment of new housing authorities, or for any
73 other reason, territories may exist that include the area of
74 operation of two or more housing authorities. Such areas
75 shall be areas of concurrent jurisdiction. No housing
76 authority whose area of operation includes an area of
77 concurrent jurisdiction shall construct, acquire or develop
78 any new housing development within the area of
79 concurrent jurisdiction without the written agreement of
80 the other authority.

81 (5) Any housing development established by a
82 housing authority pursuant to law shall continue to be
83 maintained and operated by the housing authority
84 establishing the development or its designee, unless the
85 development is conveyed to another housing authority or
86 to a city, county or other public agency or is otherwise
87 disposed of in accordance with law.

88 (6) Notwithstanding the area of operation as defined
89 herein, all housing authorities shall have the jurisdiction
90 and authority to cooperate and contract with any other
91 housing authorities and other public agencies within this
92 state and any public agencies of any other state, with the

93 federal government, and with any person, or entity, public
94 or private, and wherever located, in order to carry out the
95 purposes of this article. Such cooperation may include,
96 but shall not be limited to, activities and operations
97 conducted with the agreement of any public agency.

§16-15-8. Power to acquire lands, etc., by purchase or by right of eminent domain.

1 Whenever it shall be deemed necessary by an authority
2 in connection with the exercise of its powers herein
3 conferred to take or acquire any lands, structures or
4 buildings or other rights, either in fee or as easements for
5 any housing development or slum clearance, the authority
6 may purchase the same directly or through its agent from
7 the owner or owners thereof, or failing to agree with the
8 owner or owners thereof, such authority may exercise the
9 power of eminent domain in the manner provided for
10 condemnation proceedings, in section eight, article one
11 and sections nine and twelve, article two, chapter fifty-four
12 of this code.

§16-15-9. Developments subject to ordinances, etc., of locality in which situated; restrictions on acquisition, etc., of property; securities need not be offered to sinking fund commission.

1 All developments of an authority shall be subject to
2 the planning, zoning, sanitary and building laws,
3 ordinances and regulations applicable to the locality in
4 which the development is situated. No provisions with
5 respect to the acquisition, operation or disposition of
6 property by public bodies shall be applicable to an
7 authority unless the Legislature shall specifically so state.
8 No authority shall be required to offer its securities to the
9 state sinking fund commission at any time, nor shall any
10 authority be required to turn over any surplus or sinking
11 funds to the state sinking fund commission.

§16-15-10. Amount and nature of indebtedness; rights of creditors.

1 Subject to the restrictions set forth in this article, the
2 authority may incur any indebtedness and issue any

3 obligations and give any security therefor which it may
4 deem necessary or advisable in connection with any
5 development undertaken by it. No statutory limitation
6 with respect to the nature or amount of indebtedness
7 which may be incurred by municipalities or other public
8 bodies shall apply to indebtedness of an authority, unless
9 the Legislature shall specifically so provide. No
10 indebtedness of any nature of an authority shall constitute
11 a debt or obligation of a municipality or the state or any
12 other subdivision or authority or instrumentality thereof,
13 or a charge against any property of such municipality, the
14 state, or other subdivision, agency or instrumentality
15 thereof. No obligation incurred by the authority shall
16 give any right against any commissioner of such authority,
17 but a commissioner shall be liable only for his own
18 malfeasance. The rights of creditors of an authority shall
19 be solely against such authority as a corporate body and
20 shall be satisfied only out of property held by it in its
21 corporate capacity, and the enforcement of such rights
22 shall be subject to all the provisions of this article.

§16-15-11. Agreement with federal government providing for supervision and control of authority or development.

1 An authority may, in connection with the borrowing
2 of funds, or otherwise, enter into any agreement with the
3 federal government or any agency or subdivision thereof,
4 providing for supervision and control of the authority or
5 of any development, and containing such other covenants,
6 terms and conditions as the authority may deem advisable.

§16-15-12. Report to mayor or county governing body.

1 At least once a year, an authority shall file with the
2 mayor, or the county commission, as appropriate, a report
3 of its activities for the preceding year, and shall make
4 recommendations with reference to any legislation or
5 other action as it deems necessary in order to carry out the
6 purposes of this article.

§16-15-13. Community and economic development fund.

1 (a) The governing body of a housing authority may,
2 by resolution, create a fund which may be available
3 through gifts, contributions, grants, bequests, loans, loan
4 proceeds or other sources. The fund shall be governed by
5 and administered by the authority as a general purpose
6 account separate and distinct from any other moneys,
7 funds or accounts owned or managed by the housing
8 authority in conjunction or cooperation with any local,
9 state or federal governmental agency.

10 (b) The fund may be utilized to provide a source from
11 which the authority may issue grants or loans to enhance
12 community and economic development in the authority's
13 area of operation. The grants and/or loans may include,
14 but are not limited to, housing rehabilitation,
15 redevelopment reconstruction, community improvement,
16 home ownership, training and counseling for persons of
17 eligible income, elimination of public health or safety
18 hazards, repayment of the authority's bonds or loans and
19 other like things which fulfill the purposes of this article.

20 (c) The authority shall have an audit of the fund
21 preformed at the end of each fiscal year conducted in
22 accordance with generally accepted accounting principles
23 as part of the authority's annual audit established by the
24 governing board.

§16-15-14. Tax and licensing exemptions.

1 (a) The authority shall be exempt from the payment
2 of any taxes or fees to the state or any subdivision thereof,
3 or to any officer or employee of the state or any
4 subdivision thereof. The property of an authority shall be
5 exempt from all local and municipal taxes. Bonds, notes,
6 debentures and other evidences of indebtedness of an
7 authority are declared to be issued for a public purpose
8 and to be public instrumentalities and, together with
9 interest thereon, shall be exempt from taxes.

10 (b) All representatives of a housing authority, acting
11 within the scope of carrying out the business and
12 conducting the affairs of a housing authority, shall be
13 exempt from all licensing requirements imposed by any
14 law with respect to the sale, rental or management of real

15 property or the improvement or development thereof,
16 including requirements imposing any fee or charge.

§16-15-17. Policy of state as to rentals.

1 (a) It is hereby declared to be the policy of this state
2 that each housing authority shall manage and operate its
3 housing developments in an efficient manner so as to
4 enable it to fix the rentals, leases or purchase prices for
5 dwellings at the lowest possible rates consistent with its
6 providing decent, safe and sanitary dwellings, and that no
7 housing authority shall construct or operate any
8 development for profit, or as a source of revenue to the
9 city or county.

10 (b) It is the goal of this state to provide access to
11 decent, safe, sanitary and affordable housing to its
12 residents. The benefits of this article are not a matter of
13 right, but of privilege. Persons accepting assistance under
14 this article shall, by such acceptance thereof, recognize
15 their responsibilities to the housing authorities providing
16 such assistance and to other persons living in their vicinity.
17 Persons accepting benefits are responsible for their own
18 conduct and for the actions of other members of their
19 households and of their guests. Housing authorities may
20 impose and enforce occupancy standards and
21 requirements to prohibit any criminal or other activity
22 which threatens the health, safety or right to peaceful
23 enjoyment of the premises or development by other
24 residents. If eviction or lease termination are possible
25 outcomes of the housing authority's enforcement of its
26 occupancy standards, unless federal law or regulation
27 provides otherwise, in any eviction or lease termination
28 proceeding, there must be a finding of either: (1) The
29 tenant's participation in; or (2) the tenant's knowledge of
30 the participation of a member of the tenant's household
31 or a tenant's guest in, criminal activities or other activities
32 which threaten the health, safety or right to peaceful
33 enjoyment of the premises or development by other
34 residents. Unless, otherwise provided by federal law or
35 regulation, any act done by a guest or member of a
36 tenant's household is presumed to be known to the tenant.
37 This presumption may be rebutted by clear and

38 convincing evidence that the tenant could not reasonably
39 have known that the act would occur or that the tenant
40 took reasonable measures to prevent the act from
41 occurring. In all cases of eviction or lease termination, the
42 housing authority shall consider all circumstances
43 surrounding the individual eviction, including the
44 seriousness of the offense, extent of participation by
45 household members, and effect of eviction on household
46 members not involved. In appropriate cases, housing
47 authorities may allow the tenant and the members of his or
48 her household to remain. Even if there is no finding of
49 knowledge, the tenant may be required to: (1) Prohibit
50 any guest from visiting; and (2) remove any member of
51 the household from the unit, if that individual participated
52 in criminal activities or other activities which threaten the
53 health, safety or right to peaceful enjoyment of the
54 premises or development by other residents.

55 (c) An authority shall provide housing, rental, and
56 other assistance to persons of low and moderate income,
57 and assistance to properties and entities, in accordance
58 with the provisions of this article, and, subject to standards
59 and procedures adopted by the housing authority, to
60 authorize the provision by housing authorities of
61 supportive services and programs of every kind and
62 description to advance the social, educational, and
63 economic well-being and the economic and social self-
64 sufficiency of persons receiving housing assistance under
65 this article, so as to create wholesome living environments,
66 eliminate long-term poverty, encourage gainful
67 employment, develop social and economic self-sufficiency
68 (including living independently of housing assistance),
69 and enhance personal responsibility on the part of such
70 persons;

71 (d) Housing authorities shall encourage the use of
72 entrepreneurial methods and approaches and to stimulate
73 and increase private sector initiatives and joint public-
74 private sector initiatives by housing authorities in carrying
75 out the purposes and provisions of this article.

76 (e) Housing authorities shall endeavor to increase the
77 availability, from both public and private sector sources, of

78 financing for the purchase of dwellings, and the financing
79 for home improvements, and repairs for persons of low or
80 moderate income; and to further endeavor to increase the
81 availability of sources of equity and other financing for
82 the development and operation by housing authorities and
83 private sector entities of decent, safe, and sanitary rental
84 housing that is affordable to persons of low and moderate
85 income.

§16-15-18. Duties of authority and limitation of powers.

1 (a) In the operation or management of housing
2 developments an authority shall at all times observe the
3 following duties with respect to rentals, tenant selection
4 and home ownership:

5 (1) It may rent or lease dwellings therein only to
6 persons of eligible income and at rentals within the
7 financial reach of such persons;

8 (2) It may rent or lease to a tenant housing consisting
9 of the number of rooms, but no greater number, which it
10 deems necessary to provide safe and sanitary
11 accommodations to the proposed occupants thereof,
12 without overcrowding;

13 (3) Subject only to the limitations contained in this
14 article or imposed by the federal government, an authority
15 may lease or rent any dwellings, facilities or other real or
16 personal property owned, controlled, or possessed by the
17 authority, or with respect to which the authority has
18 contractual rights permitting such lease or rental, for such
19 terms, upon such conditions and lease terms and in
20 exchange for such rentals as the authority may from time
21 to time in its discretion determine; further, and without
22 limiting the foregoing, to establish rents in such manner
23 and in such amounts as the authority may deem
24 appropriate, including, but not limited to, rents based upon
25 family income (determined with such adjustments and
26 exclusions as the authority deems appropriate), minimum
27 rents, flat rents, graduated rents, rent ranges, and
28 maximum rents (any of which may vary among the
29 authority's developments), and to establish any other
30 standards and conditions relating to rentals that the

31 authority may deem appropriate to carry out the purposes
32 of this article;

33 (4) At and subsequent to an acquisition of occupied
34 property, a housing authority may permit existing tenants
35 therein to remain in occupancy upon such terms and
36 conditions and for such periods as the authority shall
37 deem appropriate, notwithstanding that such tenants do
38 not qualify as persons of eligible income;

39 (5) A housing authority may operate programs to
40 increase home ownership by residents of its developments
41 and by other persons of eligible income; and in such
42 regard, the housing authority may acquire, rehabilitate,
43 construct, reconstruct, sell, convey, lease, option, and take
44 all other actions deemed appropriate to achieve home
45 ownership of dwellings and associated property by
46 persons of eligible income. In connection with any
47 program to encourage such ownership, a housing
48 authority may dispose of dwellings and other associated
49 property in exchange or for fair market purchase prices,
50 and upon such terms and conditions, as the authority
51 deems appropriate;

52 (6) To develop, acquire, own, lease, and operate
53 properties and facilities that are nonresidential in
54 character, which are used for office, administrative,
55 management, maintenance, commercial, or educational
56 purposes, or providing services, or carrying out any other
57 purpose authorized under this article; to acquire, own,
58 lease, and operate properties and facilities that are both
59 residential and nonresidential in character;

60 (7) To develop, acquire, own, or lease community
61 facilities, and to provide such facilities to any public
62 agency or to any person, agency, institution, or
63 organization, public or private, for recreational,
64 educational, health or welfare purposes for the benefit and
65 use of the housing authority or occupants of its
66 developments, or persons of eligible income, elderly or
67 handicapped persons, or any combination of the
68 foregoing; to operate or manage community facilities,
69 itself, or as agent or any public agency, or any person,
70 institution, or organization, public or private; and to

71 receive compensation therefor, if any, as the parties may
72 agree; community facilities may be utilized by private
73 persons or organizations with or without charge, upon a
74 determination by the authority that the utilization would
75 be advisable to promote the public purposes of this article;
76 and

77 (8) To carry out plans, programs, contracts and
78 agreements of every kind and description and to provide
79 grants, loans, guarantees and other financial assistance to
80 public or private persons or entities, whether nonprofit or
81 for-profit, in order to rehabilitate, maintain, procure, and
82 preserve existing affordable housing stocks in safe, decent
83 and sanitary condition and to ensure that they remain
84 affordable to persons of eligible income.

85 (b) A housing authority shall conduct its affairs in
86 accordance with sound financial and business practices,
87 taking into account the nature of its activities and intended
88 purpose. Therefore, a housing authority shall establish
89 and charge rents no higher than it shall determine to be
90 necessary to produce revenue which, together with all
91 other available money, revenue, income and receipts of the
92 authority from whatever source derived, will be sufficient:

93 (1) To pay when due all indebtedness of the authority;

94 (2) To pay all administrative and other costs of
95 operating the authority's developments and programs of
96 assistance;

97 (3) To pay the administrative and other costs of the
98 maintenance, rehabilitation, renovation, repair, and
99 replacement of the authority's developments and other
100 property;

101 (4) To otherwise carry out its purposes under this
102 article, including acquiring or creating additional housing
103 developments and acquiring or improving property for
104 other purposes authorized under this article, including
105 community facilities, commercial facilities, and all other
106 facilities and developments authorized under this article;

107 (5) To pay the costs of insurance, including the costs
108 of claims, liabilities, losses and other expenses incurred in
109 connection with any self-insurance program;

110 (6) To provide funds for all required payments in lieu
111 of taxes;

112 (7) To make all payments required under and
113 otherwise fully perform the authority's obligations under
114 any contract, agreement, or arrangement entered into by
115 the authority, including without limitation, those required
116 in connection with any partnership or joint venture
117 entered into by the authority;

118 (8) To perform the terms of any commitment or
119 guarantee issued or given by the authority;

120 (9) To provide a reasonable return on the value of the
121 property so as to enable the housing authority to continue
122 to fulfill its duties, including, but not limited to, the
123 acquisition of additional housing developments, land
124 acquisition, acquisition or construction of buildings,
125 equipment, facilities or other real or personal property for
126 public purposes, including parks or other recreational,
127 educational, welfare or community facilities within its area
128 of operation;

129 (10) To accommodate economic factors which affect
130 the financial stability and solvency of the authority's
131 developments and programs;

132 (11) To pay the cost of actions occasioned by natural
133 disasters and other emergencies; and

134 (12) To create and maintain operating and capital
135 reserves that are reasonable and adequate to ensure the
136 authority's ability to make all payments referred to herein
137 and any other matter with respect to which the authority,
138 in its discretion reasonably exercised, determines that the
139 creation and maintenance of a reserve is appropriate.

140 Nothing herein shall be construed to limit the amount
141 which a housing authority may charge for nondwelling
142 facilities or for dwelling facilities that are not rented to
143 persons of eligible income: *Provided*, That the authority's

144 actions do not conflict with the purposes of this article:
145 *Provided, however,* That a housing authority may allow
146 police officers and maintenance and management
147 employees, not otherwise eligible for residence, to reside
148 in its developments.

§16-15-19. Power to issue bonds; how bonds secured.

1 An authority shall have power to issue bonds from
2 time to time, in its discretion, for any of its corporate
3 purposes. An authority shall also have power to issue or
4 exchange refunding bonds for the purpose of paying,
5 retiring, extending or renewing bonds previously issued
6 by it. An authority may issue such types of bonds as it
7 may determine, including without limiting the generality
8 of the foregoing, bonds on which the principal and
9 interest are payable from income and revenues of the
10 authority and from grants or contributions from the
11 federal government or other source. Such income and
12 revenues securing the bonds may be: Exclusively the
13 income and revenues of the housing developments
14 financed, in whole or in part, with the proceeds of such
15 bonds; exclusively the income and revenues of certain
16 designated housing developments, whether or not they are
17 financed, in whole or in part, with the proceeds of such
18 bonds; or the income and revenues of the authority
19 generally. Any such bonds may be additionally secured
20 by a pledge of any income or revenues of the authority, or
21 a mortgage of any housing development, developments or
22 other property of the authority.

**§16-15-20. Bonds authorized by resolution; interest rate and
life; forms; denominations; redemption; how
payable; sale; signatures of commissioners or
officers ceasing to be such before delivery;
presumptions in suit, etc., involving validity.**

1 (a) Bonds of an authority shall be authorized by its
2 resolution and may be issued in one or more series and
3 shall bear such date or dates, mature at such time or times,
4 bear interest at such rate or rates, be in such denomination
5 or denominations, be in such form, either coupon or
6 registered, carry such conversion or registration privileges,
7 have such rank or priority, be executed in such manner, be

8 payable in such medium of payment, at such place or
9 places, and be subject to such terms of redemption (with
10 or without premium) as such resolution, its trust indenture
11 or mortgage may provide. Bonds of a housing authority
12 may be issued in zero coupon form or subject to federal
13 taxation of interest thereon if the resolution authorizing
14 issuance so provides.

15 (b) The bonds may be sold at public sale held after
16 notice prior to such sale promulgated in the manner as the
17 authority deems appropriate or, if the resolution
18 authorizing issuance of the bonds so provides, they may
19 be sold on a negotiated basis or at private sale without any
20 public advertisement. At the discretion of the housing
21 authority, the bonds may be sold at par, or at any discount
22 or premium, as the resolution authorizing them provides.
23 A housing authority issuing bonds may enter into
24 agreements and arrangements with third parties for the
25 marketing of its bonds as it shall deem appropriate.

26 (c) In case any of the commissioners or officers of the
27 authority whose signatures appear on any bonds or
28 coupons shall cease to be such commissioners or officers
29 before the delivery of such bonds, such signatures shall,
30 nevertheless, be valid and sufficient for all purposes, the
31 same as if they had remained in office until such delivery.
32 Any provisions of any law to the contrary notwithstanding,
33 any bonds issued pursuant to this article shall be
34 negotiable.

35 (d) In any suit, action or proceedings involving the
36 validity or enforceability of any bond of an authority or
37 the security therefor, any such bond reciting in substance
38 that it has been issued by the authority to aid in financing
39 a housing development to provide housing for persons of
40 eligible income shall be conclusively deemed to have been
41 issued for a housing development of such character, and
42 the development shall be conclusively deemed to have
43 been planned, located and constructed in accordance with
44 the purposes and provisions of this article.

**§16-15-21. Powers of authority in connection with the issuance
of bonds, incurring obligations under leases and
securing payment of bonds.**

1 In connection with the issuance of bonds or the
2 incurring of obligations under leases and in order to
3 secure the payment of bonds or obligations, any authority,
4 in addition to its other powers shall have power:

5 (1) To pledge all or any part of its gross or net rents,
6 fees or revenues to which its right then exists or may
7 thereafter come into existence;

8 (2) To mortgage all or any part of its real or personal
9 property, then owned or thereafter acquired;

10 (3) To covenant against pledging all or any part of its
11 rents, fees and revenues, or against mortgaging all or any
12 part of its real or personal property, to which its right or
13 title then exists or may thereafter come into existence or
14 against permitting or suffering any lien on revenues or
15 property; to covenant with respect to limitations on its
16 right to sell, lease or otherwise dispose of any housing
17 development or any part thereof; and to covenant as to
18 what other, or additional debts or obligations may be
19 incurred by it;

20 (4) To covenant as to the bonds to be issued and as to
21 the issuance of bonds or otherwise, and as to the issuance
22 of bonds in escrow or otherwise and as to the use and
23 disposition of the proceeds thereof; to provide for the
24 replacement of lost, destroyed or mutilated bonds; to
25 covenant against extending the time for the payment of its
26 bonds or interest thereon; and to redeem the bonds, and to
27 covenant for their redemption and to provide the terms
28 and conditions thereof;

29 (5) To covenant, subject to the limitations contained in
30 this article, as to the rents, purchase prices, and fees to be
31 charged in the operation of a housing development or
32 developments, the amount to be raised each year or other
33 period of time by rents, fees, and other revenues, and as to
34 the use and disposition to be made thereof; to create or to
35 authorize the creation of special funds for moneys held
36 for construction or operating costs, debt service, reserves,
37 or other purposes, and to covenant as to the use and
38 disposition of the moneys held in such funds;

39 (6) To prescribe the procedure, if any, by which the
40 terms of any contract with bondholders may be amended

41 or abrogated, the amount of bonds the holders of which
42 must consent thereto and the manner in which such
43 consent may be given;

44 (7) To covenant as to use of any or all of its real or
45 personal property; and to covenant as to the maintenance
46 of its real and personal property, the replacement thereof,
47 the insurance to be carried thereon and the use and
48 disposition of insurance moneys;

49 (8) To covenant as to the rights, liabilities, powers and
50 duties arising upon the breach by it of any covenant,
51 condition, or obligation; and to covenant and prescribe as
52 to events of default and terms and conditions upon which
53 any or all of its bonds or obligations shall become or may
54 be declared due before maturity, and as to the terms and
55 conditions upon which the declaration and its
56 consequences may be waived;

57 (9) To vest in a trustee or trustees or the holders of
58 bonds or any proportion of them the right to enforce the
59 payment of the bonds or any covenants securing or
60 relating to the bonds; to vest in a trustee or trustees the
61 right, in the event of a default by said authority, to take
62 possession and, as long as the authority is in default, to
63 retain possession and to use, operate and manage any
64 housing development or part thereof, and to collect the
65 rents and revenues arising therefrom and to dispose of
66 such moneys in accordance with the agreement of the
67 authority with said trustees; to provide for the powers and
68 duties of a trustee or trustees and to limit the liabilities
69 thereof; and to provide the terms and conditions upon
70 which the trustee or trustees or the holders of bonds or
71 any proportion of them may enforce any covenant or
72 rights securing or relating to the bonds; and

73 (10) To exercise all or any part or combination of the
74 powers herein granted; to make covenants other than and
75 in addition to the covenants herein expressly authorized,
76 of like or different character; to make covenants and to do
77 any and all acts and things as may be necessary or
78 convenient or desirable in order to secure its bonds, or, in
79 the absolute discretion of said authority, as will tend to
80 make the bonds more marketable notwithstanding that the
81 covenants, acts or things may not be enumerated herein.

§16-15-22. Actions by obligee of authority to enforce performance of contracts and to enjoin unlawful acts.

1 An obligee of an authority shall have the right in
2 addition to all other rights which may be conferred on the
3 obligee, subject only to any contractual restrictions
4 binding upon the obligee:

5 (1) By mandamus, suit, action or proceeding at law or
6 in equity to compel said authority and the commissioners,
7 officers, agents or employees thereof to perform each and
8 every term, provision and covenant contained in any
9 contract of said authority with or for the benefit of the
10 obligee, and to require the carrying out of any or all
11 covenants and agreements of the authority and the
12 fulfillment of all duties imposed upon said authority by
13 this article; and

14 (2) By suit, action or proceeding in equity, to enjoin
15 any acts or things which may be unlawful, or the violation
16 of any of the rights of an obligee of the authority.

§16-15-23. Surrender of possession of development to obligee upon default by authority; appointment of receiver; accounting.

1 An authority shall have power by its resolution, trust
2 indenture, mortgage, lease or other contract to confer
3 upon any obligee holding or representing a specified
4 amount in bonds, or holding a lease, the right, in addition
5 to all rights that may otherwise be conferred, upon the
6 happening of an event of default as defined in such
7 resolution or instrument, by suit, action or proceeding in
8 any court of competent jurisdiction:

9 (1) To cause possession of any housing development
10 or any part thereof to be surrendered to the obligee;
11 possession may be retained by the bondholder or trustee
12 so long as the authority shall continue in default;

13 (2) To obtain the appointment of a receiver of any
14 housing development of the authority or any part thereof
15 and of the rents and profits therefrom. If a receiver is
16 appointed, he or she may enter and take possession of the
17 housing development or any part thereof and, so long as
18 the authority shall continue in default, operate and

19 maintain same, and collect and receive all fees, rents,
20 revenues, or other charges thereafter arising therefrom,
21 and shall keep such moneys in a separate account or
22 accounts and apply the same in accordance with the
23 obligations of the authority as the court shall direct; and

24 (3) To require the authority and the commissioners
25 thereof to account as if it and they were the trustees of an
26 express trust.

§16-15-24. Housing authorities empowered to provide housing for farmers of low and moderate income.

1 Housing authorities created for counties and other
2 authorities whose jurisdiction includes rural areas are
3 specifically empowered and authorized to borrow money,
4 accept grants and exercise their other powers to provide
5 housing for farmers of low and moderate income. In
6 connection with such developments, housing authorities
7 may enter into leases or purchase agreements, accept such
8 conveyances and rent or sell dwellings forming part of
9 developments to or for farmers of low and moderate
10 income, as the housing authority deems necessary in order
11 to assure the achievement of the objectives of this article.
12 Leases, agreements or conveyances may include such
13 covenants as the housing authority deems appropriate
14 regarding dwellings and the tracts of land described in any
15 such instrument, which covenants shall be deemed to run
16 with the land where the housing authority deems it
17 necessary and the parties to such instrument so stipulate.
18 Nothing contained in this section shall be construed as
19 limiting any other powers of any housing authority.

§16-15-25. Application for low-cost housing for farmers.

1 The owner of any farm operated, or worked upon, by
2 farmers of low and moderate income in need of safe and
3 sanitary housing may file an application with a housing
4 authority requesting that it provide for a safe and sanitary
5 dwelling or dwellings for occupancy by farmers of low
6 and moderate income. The applications shall be received
7 and examined by housing authorities in connection with
8 the formulation of developments or programs to provide
9 housing for farmers of low and moderate income.