

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1999
First Extraordinary Session, 1999
Second Extraordinary Session, 1999
Third Extraordinary Session, 1999

Volume I
Chapters 1 — 169

**COMPILED AND PUBLISHED
UNDER THE DIRECTION
OF
GREGORY M. GRAY**
Clerk & Parliamentarian

* * * * *

EDDIE HAMBRICK
Editor

Legislative Assistants

BILLIE J. MURRAY

BO HOOVER

NANCY J. REYNOLDS

ANDREW PRIEST

*The Printing
Press, Ltd.*

The Printing Press, Ltd. - Charleston, WV

FOREWORD

These volumes contain the Acts of the First Regular Session and the First, Second and Third Extraordinary Sessions of the 74th Legislature, 1999.

First Regular Session, 1999

The First Regular Session of the 74th Legislature convened on January 13, 1999. The Constitutional sixty-day limit on the duration of the session was midnight, March 13, 1999. The Governor issued a proclamation on March 10, 1999, extending the session for a period not to exceed seven days for the purpose of considering the Budget and supplementary appropriation bills. Subsequent proclamations were issued extending the session, and the Legislature adjourned *sine die* on March 22, 1999.

Bills totaling 1756 were introduced in the two houses during the session (1045 House and 711 Senate). The Legislature passed 306 bills, 164 House and 142 Senate.

The Governor vetoed eleven bills (H. B. 2005, Revision and clarification of the open governmental proceedings law; Com. Sub. for H. B. 2533, Authorization for the bureau of environment to promulgate legislative rules; Com. Sub. for H. B. 2678, Adopting the Uniform Child Custody Jurisdiction and Enforcement Act; H. B. 2761, Authorizing optical image media preservation of county records; Com. Sub. for H. B. 2832, Sales tax exemption for certain purchases intended to counteract negative effects of cancer or cancer treatment; H. B. 3019, Establishing the Eastern West Virginia Community and Technical College; H. B. 3037, Special income tax refund reserve fund account; S. B. 152, Relating to information regarding federally mandated changes in state law; Com. Sub. for S. B. 198, Authorizing landlords to dispose of abandoned personal property; S. B. 431, Establishing West Virginia providing real opportunities for maximizing in-state student excellence scholarship program; and S. B. 589, Requiring moneys appropriated for alternative education programs distributed with net enrollment). The Legislature amended and again passed H. B. 2005, Com. Sub. for H. B. 2533, Com. Sub. for H. B. 2678, H. B. 3019, Com. Sub. for S. B. 198, S. B. 431 and S. B. 589. The Governor again vetoed Com. Sub.

for H. B. 2678, leaving a net total of 301 bills, 160 House and 141 Senate, which became law. One bill, H. B. 3029, became law without the signature of the Governor.

There were 119 Concurrent Resolutions introduced during the session, 76 House and 43 Senate, of which 35 House and 18 Senate were adopted. Thirty House Joint Resolutions and eight Senate Joint Resolutions were introduced, proposing amendments to the State Constitution. One Joint Resolution, H. J. R. 30, Unified Family Court Amendment, was adopted by the Legislature. The House introduced 32 House Resolutions, and the Senate introduced 35 Senate Resolutions, of which 27 House and 32 Senate were adopted.

The Senate failed to pass 77 House bills passed by the House, and 62 Senate bills failed passage by the House. Five House bills and five Senate bills died in conference: Com. Sub. for H. B. 2266, Removing the requirement of blowing a vehicle horn in certain instances; Com. Sub. for H. B. 2807, Strengthening child pornography laws; H. B. 2896, Relating to reducing the maximum tax credits available for qualified West Virginia capital companies; H. B. 2989, Increasing the number of members on the Greater Huntington Park and Recreation District Board; H. B. 3038, Prohibiting assessors in those counties where the assessed value of all property in the county is not maintained at sixty percent of the appraised value from receiving additional funding; Com. Sub. for S. B. 536, Setting forth responsibility of division of juvenile services for care and evaluation of juvenile delinquents; S. B. 692, Revising laws governing domestic relations generally; S. B. 706, Increasing salaries of state police; S. B. 709, Providing salary increase to certain state officials; and S. B. 711, Increasing salary of superintendent of schools.

First Extraordinary Session, 1999

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

The Legislature passed 9 bills, 6 House and 3 Senate. The House adopted one House Resolution and the Senate adopted four Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* on March 22, 1999.

Second Extraordinary Session, 1999

The Proclamation calling the Legislature into Extraordinary Session at 5:00 P.M., May 18, 1999, contained four items for consideration.

The Legislature passed eleven bills, eight House Bills and three Senate Bills. The Legislature adopted one concurrent resolution, House Concurrent Resolution 1, providing for an adjournment of the Legislature until the 19th day of June, 1999, unless reconvened prior thereto by a majority vote of the Committee on Rules of the House and the Committee on Rules of the Senate. The House adopted one House Resolution and the Senate adopted four Senate Resolutions.

Sine die adjournment came on June 19, 1999.

Third Extraordinary Session, 1999

The Legislature met in Extraordinary Session at 6:00 P.M., August 17, 1999, to address the issues of the severe drought which has plagued the State and insurance benefits covered under the Public Employees Insurance Agency.

The Legislature passed one bill, H. B. 301, which appropriates moneys for the aforementioned purposes. The House adopted one House Resolution and the Senate adopted four Senate Resolutions.

Sine die adjournment occurred seventy-five minutes later the same day.

* * * * *

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, 212 Main Unit, State Capitol, Charleston, West Virginia 25305.

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

TABLE OF CONTENTS
ACTS AND RESOLUTIONS

Regular Session, 1999

GENERAL LAWS

Chapter	Bill No.		Page
AGRICULTURE			
1.	(*HB2805)	Allowing the Department of Agriculture to Continue to Deposit Agricultural Moneys into a Central Fund	1
2.	(*HB2206)	Prohibiting the Sale of Perishable Products at Full Retail Price After the Packer's Expiration Date	2
3.	(*SB219)	Authorizing Civil Penalties for Violations of Meat and Poultry Inspections	7
4.	(*HB2972)	Regulation of Traditional Cheese-making Methods	9
ALCOHOLIC LIQUORS			
5.	(HB3023)	Relating Generally to the Sale of Liquor by Retail	11
ANIMALS			
6.	(*HB2790)	Requiring Confinement and Vaccination of Animals Suspected of Being Rabid or Bitten by Another Animal With Rabies	32
APPROPRIATIONS			
7.	(*HB2200)	Budget Bill, Making Appropriations of Public Money for Fiscal Year Beginning July 1, 1999	33
8.	(HB3044)	Governor's Office, Fund 0101	170
9.	(HB3042)	Supplementing and Amending the General Revenue Appropriation for FY 1999 With Funds Expired from the Income Tax Refund Reserve Fund	172

VIII

TABLE OF CONTENTS

10.	(HB3012)	Prosecuting Attorneys Institute, Transfers	179
11.	(HB3017)	Auditor's Office, Purchasing Card Administration Fund	180
12.	(HB3043)	Expiring Funds to the Balance of the Auditor's Office, Chief Inspector's Fund	181
13.	(SB683)	Expiring Funds from Board of Risk and Insurance Management into General Fund	182
14.	(HB3045)	Department of Health and Human Resources, Human Services-Medical Services Trust Fund . . .	183
15.	(SB684)	Expiring Funds from Insurance Commission—Examination Revolving Fund into General Fund	185
16.	(SB685)	Expiring Funds from Insurance Commission—Insurance Commission Fund into General Fund	186
17.	(SB686)	Expiring Funds from Public Service Commission into General Fund	187
18.	(SB687)	Supplementing, Amending and Reducing Items in Public Service Commission, Fund 8623	188
19.	(SB688)	Supplementing, Amending and Reducing Items in Public Service Commission, Fund 8625	189
20.	(SB587)	Making Supplemental Appropriation to Division of Rehabilitation	190
21.	(HB3013)	Department of Transportation, State Rail Authority	192
22.	(HB3010)	Development Office, Community Development . . .	193
23.	(HB3014)	Division of Motor Vehicles, Unclassified	194
24.	(HB3016)	Auditor's Office, Unclassified	196
25.	(HB3011)	Division of Corrections, Correctional Units	197
26.	(HB3015)	Prosecuting Attorneys Institute, Unclassified	198
27.	(HB3026)	Bureau of Employment Programs, Unemployment Insurance or Job Service	200
28.	(SB400)	Expiring Funds from Department of Transpor- tation, Division of Motor Vehicles	201
29.	(SB401)	Expiring Funds from Department of Transpor- tation, Division of Motor Vehicles	202

TABLE OF CONTENTS

IX

30. (SB402) Supplementing and Reducing Existing Appropriations from Department of Transportation—
Capital Outlay Building 203
31. (SB690) Supplementing, Amending and Reducing Items
in Division of Highways, Fund 9017 204
32. (SB689) Supplementing, Amending and Reducing Items
in Division of Highways, Fund 9018 207

ATHLETICS

33. (HB2397) Raising Fees to be Paid to Boxing Officials
and Raising License Fees for Professional
Fighters 209

AUDITOR

34. (*SB635) Transferring Certain Powers and Duties of
Tax Commissioner to State Auditor 211

AUDITS OF LOCAL GOVERNMENT AGENCIES

35. (*HB2481) Relating to Audit and Review Procedures
Pertaining to Supervision of Public
Offices, County Boards of Education, Etc 214

BANKS AND BANKING

36. (SB663) Relating to Grand Jury Subpoenas Served
Upon Financial Institutions 223
37. (HB2478) Board of Banking and Financial
Institutions Continued 225
38. (*HB2281) Amending the Branch Banking Laws 227

BONDS

39. (SB211) Expanding Types of Collateral Security Given
by Depositories of Public Funds 240

BUILDINGS

40. (*SB117) Requiring Sloped Roofs on Public-funded
Buildings 245

CAMP DAWSON

41. (SB521) Establishing Morale, Welfare and Recrea-
tion Facilities at Camp Dawson 246

CAPITOL SECURITY

42. (*SB170) Establishing Division of Protective Services 249

TABLE OF CONTENTS

CEMETERIES

43. (*HB2004) Requiring Preneed Cemetery Contracts to
Itemize Charges on Contracts 254

CHILD WELFARE

44. (*SB600) Recognizing Inheritance Rights of Children
Born Out of Wedlock 259
45. (*SB678) Modifying Definition of Legal Guardianship
and Precluding Ability to Obtain Confiden-
tial Records of a Juvenile by Subpoena 261
46. (*SB479) Relating to Acceptance of Children by
Child Welfare Agencies 267

CIVIL SERVICE

47. (*HB2765) Removing County Road Supervisors from
Exempt Positions Under Classified Service 268
48. (*HB2262) Payment of Severance Pay to Public Employees . . . 271

CLAIMS

49. (*HB2682) Claims Against the State and its Agencies
and Directing Payment Thereof 277
50. (SB488) Finding and Declaring Certain Claims Against
the State 285

CODE REPEALED

51. (HB2699) Repealing the Section of the Code Relating to
Class M Nonresident Commercial Shooting
Preserve Licenses 287
52. (HB2307) Terminating the Apprenticeship Program for
State Employees 288

COMPUTERS

53. (*HB2996) Eliminating User Fees for the Use of
the Legislature's Computer Subscriber
System 288
54. (HB2919) Establishing the Computer Donation Program 290

CONSOLIDATED PUBLIC RETIREMENT BOARD

55. (HB2293) Changing the Number Which Constitutes a Quorum
for the Consolidated Retirement Board 292

CONSUMER PROTECTION

56. (HB2358) Relating to Prohibited Conduct of
Regulated Consumer Lenders 293

TABLE OF CONTENTS

XI

- 57. (*SB18) Establishing Transfers of Right to Receive
Future Payments 295
- 58. (HB2689) Civil Penalties for Violations of the
Chapter Involving Consumer Fraud 303

CORRECTIONS

- 59. (HB2347) Eliminating the Requirement of a
Formal Extradition to Return a Parolee,
Probationer or Bailer who has
Signed a Waiver of Extradition 305
- 60. (*HB2339) Authorizing the Commissioner of the Division
of Corrections to Lease the West
Virginia Penitentiary in Moundsville 308
- 61. (*SB552) Relating to Administration and Personnel
of Division of Corrections 309
- 62. (SB171) Authorizing Monitoring of Inmates' Telephone
Calls and Mail 313
- 63. (*SB466) Providing Criminal Penalties for Sub-
jecting Incarcerated or Supervised Inmate
to Certain Sexual Acts 318
- 64. (SB606) Relating to Operation of Centers for Housing
Young Adult Offenders 319
- 65. (*HB2703) Relating to the Home Incarceration Program 323
- 66. (*SB539) Relating to Incarceration and Care of Inmates
by Division of Corrections 324

COUNTY COMMISSIONS

- 67. (*HB2468) Allowing Regional and County Jails to
Collect a Twenty Dollar Processing Fee for
Each Person Sentenced to the Jail 325
- 68. (*HB2744) Authorizing Certain Ambulance Companies to
Transport Nonemergency Users 326
- 69. (HB2312) Changing the Size Designation of Legal
Paper to Eight and One-Half Inches
by Fourteen Inches for Documents of
the Clerk of the County Commission 329

COURT OF CLAIMS

- 70. (*SB155) Increasing Per Diem Compensation and Expenses
of Court of Claims Judges 336

COURTS AND THEIR OFFICERS

71. (SB483) Eliminating Time-Keeping Requirements of
Circuit Court Judges 337
72. (*HB2324) Realigning Certain Judicial Circuits,
Increasing the Number of Judges in
Certain Circuits and Making
Technical Revisions 338

CRIMES AND THEIR PUNISHMENT

73. (*SB507) Providing Penalties for Wanton Endangerment of
Public Conveyance Passengers 341
74. (*HB2348) Establishing Penalties for Holding a Person
Hostage 344
75. (*HB2475) Relating to Assault or Battery of a School
Employee and Including Certain Off Duty
Employees in the Definition of School
Employee 347
76. (*HB2364) Making it a Felony to Threaten or Attempt to
Blow Up a Government Building or to Threaten
Bodily Injury to a Teacher, Student or
Employee 349
77. (*HB2084) Creating a Felony for Committing a Violent
Crime While Wearing Body Armor 350
78. (*SB82) Prohibiting Female Genital Mutilation;
Penalties 351

CRIME VICTIMS COMPENSATION

79. (HB2758) Streamlining the Process Used to Pay
Awards to Crime Victims 353
80. (*HB2777) Home Incarceration Service Fund 360

CRIMINAL PROCEDURE

81. (*HB2263) Relating to Parole Revocation Hearings 361
82. (*SB178) Requiring Written Motion by Inmates for Contin-
uance Before Board of Probation and Parole 368

CRIMINAL RECORDS

83. (SB149) Expunging Criminal Records of Person
Receiving Pardon 369

CURRENCY TRANSPORTATION

84. (SB369) Providing Exemptions to Licensing Requirements
of Currency Transporters 371

DEAF AND HARD-OF-HEARING

- 85. (HB3021) Establishing Authority Over the Commission for the Deaf and Hard-of-Hearing to the Department of Health and Human Resources 376
- 86. (HB2477) Commission for the Deaf and Hard-of-Hearing Continued 377

DEPARTMENT OF ADMINISTRATION

- 87. (*HB2730) Providing that No State Contract May be Awarded or Renewed Where a Vendor has a Delinquency Regarding State Taxes, Workers' Compensation Premium or Other State Assessments 378
- 88. (SB677) Relating to Intrastate Air Transportation Services 381

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

- 89. (HB3030) Pay Equity Salary Adjustment for Employees of the Department of Health and Human Resources 383

DEPUTY SHERIFF RETIREMENT SYSTEM

- 90. (SB682) Including Deputy Sheriff Retirement System in Government Employees Retirement Plans 384
- 91. (*HB2615) Making Technical Corrections to the Deputy Sheriff Retirement Act 389

DESIGN-BUILD PROCUREMENT ACT

- 92. (*SB666) Creating Design-Build Procurement Act 407

DIVISION OF VOCATIONAL REHABILITATION

- 93. (SB138) Eliminating Certain Funds Transfer from Division of Vocational Rehabilitation 419

DOMESTIC VIOLENCE

- 94. (SB705) Relating to Providing Legal Assistance to Victims of Domestic Violence 421

EDUCATION

- 95. (*SB431) Establishing West Virginia Providing Real Opportunities for Maximizing In-State Student Excellence Scholarship Program 422
- 96. (HB2855) Repealing Provisions for the Development of an Electronic Portfolio, Establishing a

TABLE OF CONTENTS

		Procedure to Audit State Board Policies and Creating the Robert C. Beach Vocational Agriculture Credit	431
97.	(SB588)	Establishing Antihazing Rules for Public School-Sponsored Student Organizations	440
98.	(HB3024)	Establishing the Mathematic Achievement Through Help Program	442
99.	(HB3025)	Allowing County Boards of Education to Estab- lish Personal Leave Banks for Care Givers	446
100.	(*HB2402)	Increasing the Net Enrollment Cap for Service Personnel and the Monthly Pay for College or Comparable Credit	450
101.	(SB589)	Requiring Moneys Appropriated for Alternative Education Programs Distributed With Net Enrollment	463
102.	(*HB2401)	Relating to the Testing for Radon in Schools and Promulgating Rules Relating to Air Quality, Etc	467
103.	(*HB2438)	Ron Yost Personal Assistance Services Act	472
104.	(*HB2349)	Salary Bonus for Teachers who Hold a Certificate Issued by the National Board of Professional Teaching Standards	477
105.	(HB2612)	Personal Leave for School Teachers and Providing that a Surviving Spouse May Use the Personal Leave of His or Her Spouse Under Certain Circumstances	479
106.	(*SB391)	Equalizing Department of Education Staff Salaries With Board of Education	481
107.	(HB3019)	Establishing the Eastern West Virginia Community and Technical College	482
108.	(HB3009)	Establishing Community and Technical College Workforce Development Centers	490
109.	(HB2471)	Extending Law-Enforcement Powers to Security Officers and Campus Police Officers at Institutions of Higher Learning	497
110.	(SB669)	Providing Additional Allocation to Certain Community and Technical Colleges	510

TABLE OF CONTENTS

XV

111.	(*SB139)	Relating to Boards of Advisors of State Institutions of Higher Education	511
112.	(*SB161)	Relating to Application of Seniority Rights for Classified Personnel	514
113.	(*SB40)	Providing Resident Tuition Rates for National Guard Members	517
114.	(*HB2697)	Permitting Persons Sixty Years of Age or Older to Attend State Institutions of Higher Education on a Space Available Basis Without Payment of Tuition and Fees	518
115.	(HB2455)	Authorizing the Sale of a Parcel of Land in Huntington and Dedicating the Proceeds to Capital Development on the Marshall University Downtown Campus	520
116.	(*HB2482)	Establishing the Adult Part-Time Student Higher Education Grant Program	524
117.	(*HB2695)	Providing Scholarships for Engineering, Science and Technology Students Attending West Virginia Colleges and Universities	531

ELECTIONS

118.	(SB591)	Relating Generally to Election Law Reform	540
------	---------	---	-----

ELECTRONIC MAIL

119.	(*HB2627)	Electronic Mail Protection Act	582
------	-----------	--	-----

ENVIRONMENTAL PROTECTION

120.	(SB681)	Regulating Surface Mining Generally	586
121.	(*SB440)	Relating to Making Issuance of Cease and Desist Order Optional	638
122.	(*HB2684)	Relating to Application and Permit Fees Paid to the Division of Environmental Protection	643
123.	(*HB2746)	Incorporating Federal Updates to the Underground Storage Tank Act and Providing Subrogation Authority to the Director of the Division of Environmental Protection	646
124.	(*SB549)	Relating to Small Business Environmental Loan Program	653

TABLE OF CONTENTS

ESTATES AND TRUSTS

125. (HB2707) Barring Certain Convicted Felons from Obtaining the Victim's Share in Joint Property Through Joint Survivorship 657
126. (SB427) Reducing Time Creditor has to File Claim Against an Estate 658
127. (*SB597) Requiring Recorded Release of Estate Tax Liens Before Closing Under Short Form Settlement ... 667

FIREFIGHTING AND PREVENTION

128. (*SB555) Imposing Certain Mandatory Safety Procedures for Firefighters 673
129. (SB240) Relating to Information Regarding Carbon Monoxide Detectors 676

GAMBLING

130. (HB3029) Eliminating the Morris Square Property Repair Fund and Redirecting Moneys for Capitol Building Preservation and Restoration 679
131. (*SB380) Relating to Authorizing One Video Lottery and Table Gaming Facility at Historic Resort Hotel 704

GUARDIANSHIP

132. (*SB664) Providing Administrative Procedure to Close Guardian Files 740
133. (*HB2472) Standby Guardianship Act 741

HEALTH

134. (*HB2826) Relating to Permit Approval of Individual Sewage Systems With Surface Water Discharge Under Certain Conditions 751
135. (SB492) Relating to Certificate of Need 752
136. (SB550) Relating to Conversion of Rural Hospital Acute Care and Psychiatric Beds 795
137. (SB612) Clarifying Definition of Ambulance; Staffing and Personnel Requirements 797
138. (HB3040) Exempting Firefighters from Certain EMS Requirements 802

TABLE OF CONTENTS

XVII

139. (*HB2269) Limitation on Liability for Certain Rendering
of Emergency Medical Care Involving the Use
of an Automatic External Defibrillator 803

140. (*SB90) Providing Free Copies of Medical Records to
Indigent Persons 807

HUMAN SERVICES

141. (SB455) Relating to Works Act; Supplemental Security
Income Exclusion 808

INSURANCE

142. (SB214) Relating to Reserve Requirements for Life
Insurance Policies and Annuities 813

143. (HB2836) Requirements and Procedures Relating to
Continuing Insurance Education 835

144. (*HB2043) Creation and Regulation of Prepaid Limited
Health Service Organizations 841

145. (HB2757) Relating to Insurance Excess Line Brokers 894

146. (*SB653) Providing Limited Insurance Agent Licenses
for Car Rental Companies 897

INVESTMENT MANAGEMENT BOARD

147. (HB2292) Relating to the Investment Management Board
and Adding References to the Deputy
Sheriff Retirement System 902

148. (SB564) Authorizing Certain Performance Audits by
Investment Management Board 909

“JAMES ‘TIGER’ MORTON” CATASTROPHIC ILLNESS FUND

149. (HB2841) Establishing the “James ‘Tiger’ Morton” Cata-
strophic Illness Fund and Commission 911

LABOR

150. (*HB2985) Limiting the Use of Electronic Surveillance
Devices by Employers 913

151. (*SB166) Establishing Fees for Inspection of Amusement
Rides and Attractions 914

152. (HB2774) Excluding Pest Control Operators from Con-
tractor Licensing Requirements 920

153. (SB406) Authorizing Contractor Licensing Board to
Provide Certain Training 924

TABLE OF CONTENTS

LANDLORDS

154. (*SB198) Authorizing Landlords to Dispose of
Abandoned Personal Property 925

LAW ENFORCEMENT

155. (HB2170) Awarding a Deputy His or Her Service Pistol
Upon Retirement 931

156. (HB2854) Relating to the Appointments of State Police
Officers and Other Members 932

157. (SB704) Requiring Immediate Investigation of Missing
Persons With Significant Mental Impairment 933

158. (*HB2392) Payment of Funeral Expenses of
Certain Law-Enforcement, Safety and
Emergency Workers Killed While Performing
Their Duties 938

LEGISLATIVE AUDITOR

159. (HB2759) Changing the Frequency that the Legislative
Auditor is Required to Audit Certain
Agencies 941

LEGISLATIVE RESEARCH FUND

160. (HB3033) Establishing an Education Employees Insurance
Reserve Fund 945

LEGISLATIVE RULES

161. (HB2637) Relating to Severability of Legislative Rules 946

162. (*SB272) Authorizing Department of Administration
to Promulgate Legislative Rules 947

163. (*HB2533) Authorization for the Bureau of Environment
to Promulgate Legislative Rules 950

164. (*SB284) Authorizing Division of Culture and History
to Promulgate Legislative Rules 956

165. (*SB305) Authorizing Division of Health to
Promulgate Legislative Rules 968

166. (*HB2565) Authorization for the Department of Military
Affairs and Public Safety to Promulgate
Legislative Rules 969

167. (*HB2570) Authorizing the Department of Tax and Revenue
to Promulgate Legislative Rules 970

TABLE OF CONTENTS

XIX

168. (*SB269) Authorizing Miscellaneous Agencies and Boards
to Promulgate Legislative Rules 979

169. (*HB2535) Authorization for Bureau of Commerce to
Promulgate Legislative Rules 994

LIENS

170. (HB2424) Exempting Funds in Individual Retirement
Accounts from Levy and Attachment by
Creditors 997

171. (*SB608) Creating Fraudulent Common Law Liens 1001

MAGISTRATE COURTS

172. (SB374) Clarifying Costs Assessed by Magistrate in
Cases of Criminal Conviction 1028

MARRIAGE LICENSES

173. (HB2731) Eliminating Three-Day Waiting Period for
Issuance of a Marriage License and
Eliminating the Requirement that Applicants
Submit to a Blood Test 1029

MILITARY SELECTIVE SERVICE

174. (SB524) Requiring Compliance With Military Selective
Service Act 1033

MINES AND MINING

175. (HB2617) Restoring Certain Spending Authority to the
Director of the Office of Miners' Health,
Safety and Training 1035

MOTORBOATS

176. (*SB123) Relating to Operation of Motorboats 1040

MOTOR CARRIERS

177. (SB244) Changing Certain Provisions of Motor Carrier
Road Tax Statute 1046

MOTOR VEHICLES

178. (HB2258) Relating Generally to Testing for Driver's
Licenses 1052

179. (SB225) Authorizing Reciprocal Driver's License
Agreements With Other Nations 1062

180. (*HB2295) Removing the Jail Penalty for Certain Motor
Vehicle Misdemeanor Offenses 1063

TABLE OF CONTENTS

181.	(*SB355)	Eliminating Two Special Revenue Accounts Maintained by Division of Motor Vehicles	1108
182.	(SB357)	Authorizing Electronic Transmission of Vehicle Registration, Title and Lien Information	1112
183.	(SB384)	Imposing Daily Tax on Automobile Rental Businesses	1128
184.	(SB366)	Relating to Special Registration Plates for Nonprofit, Charitable and Educational Organizations	1134
185.	(SB223)	Providing Notification of New Address to Division of Motor Vehicles	1146
186.	(HB2448)	Creation and Perfection of a Lien Against a Vehicle Held as Inventory for Lease by a Person in the Business of Leasing Vehicles	1148
187.	(*HB2143)	Criteria for Issuance of a Motor Vehicle Dealer License and Use of Dealer Plates	1153
188.	(SB540)	Relating to Retail Installment Contracts of Certain Motor Vehicle Trade-Ins	1170
189.	(*HB2880)	Making Second and Third Offense Joyriding a Felony	1171
190.	(*HB2425)	Raising the Maximum Weight Limit for Farm Trucks	1172
191.	(HB2274)	Optional Classification on Drivers' License for Diabetics	1177
192.	(*SB497)	Changing Expiration Date on Driver's License to Driver's Birthday	1181
193.	(*HB2311)	Exempting Certain Railroad Employees from the Duty of Producing a Driver's License and Citation Reports to the Department of Motor Vehicles	1187
194.	(HB2022)	Penalties for Driving a Motor Vehicle When the Privilege to Do So Has Been Lawfully Suspended or Revoked	1188
195.	(SB703)	Establishing Safety Standards for Certain Passenger Vans and Buses	1190
196.	(*HB2253)	Revising Motor Vehicle Accident Reporting Requirements	1192

TABLE OF CONTENTS

XXI

197. (SB474) Authorizing Use of Certain Warning Lights on Public Transit Vehicles 1194

198. (*HB2743) Issuance of Special Overweight Permits for Vehicles Hauling Containerized Freight Bound to or from a Seaport 1198

199. (SB150) Relating to Proof of Insurance at the Time of a Traffic Stop 1200

200. (*SB222) Providing Penalties for Certain Operation of Commercial Motor Vehicles 1201

MUNICIPALITIES

201. (*HB2474) Municipal and County Authority to Adopt Addressing Systems to be Used in Connection With the Local Emergency Telephone System 1214

202. (SB241) Authorizing Municipal Authority to Compel Sewer Connections Outside Corporate Limits . . 1223

203. (SB188) Including Members of Banking Industry on Regional Planning and Development Councils . 1224

NATURAL RESOURCES

204. (*SB356) Relating to Division of Natural Resources' Building Construction 1226

205. (SB525) Prohibiting Certain Sales Relating to Legally Killed Black Bear 1229

206. (SB79) Providing Electronic Purchase of Certain Hunting, Trapping and Fishing Licenses 1230

207. (*SB74) Relating to Lifetime Hunting, Fishing and Trapping Licenses 1232

OPEN GOVERNMENTAL PROCEEDINGS

208. (HB2005) Revision and Clarification of the Open Governmental Proceedings Law 1233

PROFESSIONS AND OCCUPATIONS

209. (HB3006) Requiring the State Auditor to Provide Orientation for Members of State Boards 1251

210. (HB2082) Amending the Medical Practice Act 1253

211. (*HB2961) Establishing a Special Volunteer Medical License 1277

212. (HB2796) Licensing and Permit Fees for Mail-Order Pharmacies 1282

TABLE OF CONTENTS

213.	(*SB36)	Exempting Certain Funeral Directors and Embalmers from Continuing Education Requirements	1290
214.	(*HB2867)	Changing the Qualifications for Licensing and Registration of Foresters	1291
215.	(*HB2802)	Relating Generally to the Practice of Physical Therapy	1292
216.	(HB2672)	Exempting Certified Densitometry Technologists from Obtaining Radiologic Technologist Licenses	1308
217.	(*HB2726)	Changing Definitions Used With Regard to Respiratory Therapists	1311
218.	(*SB601)	Expanding Funding Sources for Prosecuting Attorneys Special Revenue Fund	1317
PROSECUTING ATTORNEYS INSTITUTE			
219.	(SB643)	Relating to Prosecuting Attorneys Institute; Forensic Medical Examinations	1321
PUBLIC EMPLOYEES INSURANCE			
220.	(SB702)	Relating to Public Employees Insurance Act	1332
221.	(HB3032)	Authorizing the Establishment of a Reserve Fund for Public Employees Insurance Agency Programs	1340
PUBLIC EMPLOYEES RETIREMENT SYSTEM			
222.	(SB516)	Providing Certain Interest Credited on Calendar Year Within Public Employees Retirement System	1342
PUBLIC MONEYS			
223.	(*SB137)	Permitting Installation and Operation of Customer Bank Communication Terminals	1343
PUBLIC SERVICE COMMISSION			
224.	(*HB2453)	Regulation of Cable Television	1354
225.	(HB2251)	Relating to Scholarships for Training Programs for Division of Highways Personnel	1389
ROADS AND HIGHWAYS			
226.	(*HB2254)	Use of Toll Moneys by the Commissioner of Highways	1391
227.	(HB2257)	Clarifying that Property Acquired for Use as a Highway Must be Offered to Abutting	

TABLE OF CONTENTS

XXIII

Landowners Prior to Sale by the Division of
Highways 1400

228. (HB2359) Providing Additional Means of Funding Construc-
tion of Industrial Access Roads 1403

229. (HB2140) Abolishing the Requirement of Filing Certain
Plans With Municipalities or County Commis-
sions by the Commissioner of Highways 1406

230. (*SB420) Establishing Separate Offense Involving Leaving
Scene of Motor Vehicle Accident Involving
Injury or Death 1408

231. (*SB412) Establishing Right-Of-Way for Funeral
Processions 1409

SEX OFFENDER REGISTRY

232. (*HB2871) Making Changes to the Sex Offender Registration
Act 1412

STATE ARMORY BOARD

233. (HB2719) Allowing the Governor to Designate a Person
to Serve on the State Armory Board and
Transferring Certain Functions of the Board
to the Adjutant General 1429

STATE BUILDING CODE

234. (*HB2136) Exempting Renovations Made on Historic
Buildings from the State Building Code 1431

235. (SB242) Relating to Transfer of Unexpended Funds by
State Building Commission 1433

STATE RAIL AUTHORITY

236. (HB2141) Changing Purchasing Requirements and
Procedures for the State Rail Authority 1435

237. (HB2791) Authority and Organization of the State
Rail Authority 1446

SUNSET

238. (SB360) Continuing Capitol Building Commission 1449

239. (HB3035) Omnibus Sunset Bill 1450

240. (SB439) Continuing State Building Commission 1454

241. (SB363) Continuing Governor's Cabinet on
Children and Families 1456

242. (HB2673) Continuing the Purchasing Division Within
the Department of Administration 1457

243.	(SB185)	Continuing Tourism Commission	1458
244.	(SB514)	Continuing Department of Health and Human Resources	1459
245.	(HB2636)	Continuing the West Virginia Investment Management Board	1460
246.	(HB2713)	Continuing the West Virginia State Police	1461
247.	(SB361)	Continuing Emergency Medical Services Advisory Council	1462
248.	(SB515)	Continuing Health Care Authority	1465
249.	(SB184)	Continuing Parkways, Economic Development and Tourism Authority	1466
250.	(HB2480)	Terminating the Tree Fruit Industry Self- Improvement Assessment Board	1469
251.	(SB186)	Continuing Soil Conservation Committee	1469
252.	(SB438)	Continuing Racing Commission	1473
253.	(HB2610)	Relating to Continuing the Parks Section and the Parks Functions of the Division of Natural Resources	1474
254.	(HB2733)	Making Technical Corrections to the Section Relating to Continuing Unemployment Compensation	1475
255.	(SB513)	Continuing Office of Water Resources	1476
256.	(HB2675)	Continuing the Office of the Environmental Advocate of the Division of Environmental Protection	1477
257.	(HB2674)	Continuing the Office of Judges of the Workers' Compensation System	1478
258.	(SB359)	Continuing Public Service Commission	1481
259.	(HB2676)	Continuing the Women's Commission	1484
260.	(SB437)	Continuing Public Defender Services	1486
261.	(HB2479)	Board of Social Work Examiners Continued	1487
262.	(SB362)	Continuing Board of Examiners in Speech-Language Pathology and Audiology . . .	1491
263.	(HB2712)	Continuing the West Virginia Lending and Credit Rate Board	1492

TAXATION

264. (HB2034) Assessment of a Motor Vehicle Awarded to a Spouse in a Final Divorce Order 1496

265. (*HB2670) Relating Generally to the Assessment of Property Tax on Interstate Motor Vehicles 1498

266. (SB510) Allowing Taxes and Fees Due Tax Commissioner Paid by Credit, Charge or Debit Card 1509

267. (HB2884) Providing that Electricity by a Partnership or Limited Liability Company be Considered to be Generated Pro Rata by its Partners or Members 1515

268. (*HB2749) Exempting Certain Natural Gas and Oil Production from Severance Tax 1522

269. (*HB2999) Tax Credit for Investment in Aerospace Industrial Facilities 1523

270. (SB165) Extending Expiration of Colin Anderson Employee Tax Credit 1534

271. (*SB650) Reauthorizing Neighborhood Investment Program Act 1535

272. (SB623) Providing Tax Credit for Preservation of Historic Houses and Neighborhoods 1550

273. (SB143) Updating Certain Terms Used in Personal Income Tax Act 1553

274. (*HB2693) Long-term Care Insurance Act 1555

275. (SB358) Providing Certain Exemption from Real Estate Transfer Taxes 1556

276. (SB144) Updating Certain Terms Used in Corporation Net Income Tax Act 1559

277. (SB522) Continuing Tax Credit for Qualified Historic Rehabilitated Buildings Investment . . . 1560

TECHNOLOGY

278. (*SB503) Defining EPSCoR, Experimental Program to Stimulate Competitive Research 1561

TELEPHONE PUBLIC UTILITIES

279. (*HB2924) Verification of Consumer Approval of Transfers of Long Distance Phone Service 1563

TIMBER

280. (HB3034) Making Wrongful Injury to Timber a Misdemeanor
In All Cases 1566

TOBACCO SETTLEMENT

281. (HB3031) Creating a Tobacco Settlement Fund 1568
282. (SB372) Implementing Tobacco Master Settlement
Agreement. 1571
283. (SB697) Establishing State Tobacco Growers' Settlement
Board 1578

TOURISM

284. (*HB2277) Expanding the Number of Members on the
Tourism Commission 1581

TRAFFIC REGULATIONS

285. (HB2294) Eliminating the Jail Penalty for Certain
Speeding Violations and Providing a Jail
Penalty for Speeding in a School Zone 1583

TREASURER

286. (*SB428) Exempting Information and Records of
Treasurer Regarding Checks from
Freedom of Information Act 1587

TUBERCULOSIS

287. (SB534) Decreasing Time Limit Doctors Have to
Report Diagnosed Cases of Tuberculosis 1589

UNEMPLOYMENT COMPENSATION

288. (*HB2278) Appropriating Federal Funds for Unemploy-
ment Insurance and Jobs Service Activities 1590

WATER POLLUTION CONTROL ACT

289. (*HB2685) Relating to the Addition of a Provision for
Felony Sanctions Under the Water Pollution
Control Act 1593

WEAPONS AND AMMUNITION

290. (SB148) Limiting Power of Cities and Counties to Restrict
Use of Certain Weapons and Ammunition 1595

WEST VIRGINIA COMMODITIES ACT

291. (*SB638) Creating Commodities Act 1598

WHITEWATER RAFTING

292. (SB572) Relating to Providing One Additional
Whitewater Rafting License on Gauley River .. 1624

WORKERS' COMPENSATION

293. (HB2732) Continuing Workers' Compensation 1636

294. (*SB579) Relating Generally to Workers' Compensation
Reform 1638

295. (*SB351) Permitting State Employees to Accrue Incre-
ment Pay During Absence Due to
Work-Related Injuries 1692

LOCAL LAWS

BERKELEY COUNTY

296. (*HB2742) Creating the Berkeley County Roundhouse
Authority 1693

HARRISON COUNTY

297. (*SB456) Authorizing Certain Memorials Erected in Honor
of Purple Heart Medal Recipients 1702

KANAWHA COUNTY

298. (SB673) Authorizing State Building Commission to Sell
Land Known as Morris Square Building 1703

KING COAL HIGHWAY AUTHORITY

299. (HB2856) Establishing the King Coal Highway
Authority 1704

MERCER COUNTY

300. (HB2691) Expanding the Authority of the Mercer
County Governmental Council 1707

UPSHUR COUNTY

301. (HB2793) Extending the Time For the Board of Education
of Upshur County to Meet as a Levying Body
for an Election to Consider an Excess Levy 1710

RESOLUTIONS

House Joint

H.J.R. 30 Unified Family Court Amendment 1711

ACTS AND RESOLUTIONS

First Extraordinary Session, 1999

Chapter	Bill No.	Page
APPROPRIATIONS		
Supplemental		
1.	(HB102)	Reducing and Increasing Existing Appropriations of the West Virginia Development Office 1713
2.	(HB104)	General Revenue for Community College Pupil Support and for the Children's Health Fund 1715
3.	(HB103)	Expiring Funds from the Abandoned Property Claims Trust and Making Supplemental Appropriations 1717
4.	(HB101)	Department of Education and the Arts for Shepherd College Capital Improvements 1722
CHILD WELFARE		
5.	(SB1002)	Relating to Child Welfare and Juvenile Justice System 1723
GAMBLING		
6.	(HB106)	Authorizing the Tax Commissioner to Impose Sanctions and Penalties Upon Bingo and Raffle Licensees 1742
INVESTMENT		
7.	(SB1000)	Reducing Tax Credits Allowed for Investment in Qualified Capital Companies 1748
SALARIES		
8.	(HB105)	Salary Adjustments for Certain Public Officials 1751
9.	(SB1001)	Increasing Salaries of State Police 1761

ACTS AND RESOLUTIONS

Second and Third Extraordinary Sessions, 1999

Chapter	Bill No.	Page
APPROPRIATIONS		
Supplemental		
1.	(HB205)	Governor's Office 1767
2.	(HB206)	Governor's Office, Civil Contingent Fund 1769
3.	(SB2001)	Department of Education and the Arts 1770
4.	(HB203)	DHHR, Division of Human Services 1772
5.	(SB2002)	Supplementing and Reducing Items of Existing Appropriations to Department of Military Affairs and Public Safety 1775
6.	(HB204)	Tiger Morton Catastrophic Illness Fund 1777
7.	(HB210)	Family Protection Services Board, Domestic Violence Legal Services Fund 1778
8.	(HB211)	Supplementing, Amending, Reducing and Increasing Existing Appropriations to the West Virginia Schools for the Deaf and the Blind 1781
9.	(HB212)	Supplemental Reappropriations to the Department of Tax and Revenue, Tax Division 1783
FAMILY LAW		
10.	(*SB2003)	Relating to Revising Law of Domestic Relations Generally 1784
STATE SUPERINTENDENT OF SCHOOLS		
11.	(HB202)	Compensation of the State Superintendent of Schools 1905
APPROPRIATIONS		
Supplemental		
1.	(HB301)	Governor's Office, Civil Contingent Fund 1907

MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1999

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	Legislative Service
First	Jeff Davis (D)	New Cumberland	73rd-74th
	Tamara Pettit (D)	New Cumberland	Appt. 11/18/89, 69th; 70th-74th
Second	Timothy R. Ennis (D)	Wellsburg	72nd-74th
	Roy E. Givens (D)	Wellsburg	64th-69th; 72nd-74th
Third	Tal Hutchins (D)	Wheeling	72nd-74th
	L. Gil White (R)	Wheeling	70th-71st; 73rd-74th
Fourth	Kenneth D. Tucker (D)	Moundsville	73rd-74th
	Scott G. Varner (D)	Moundsville	71st-74th
Fifth	Dave Pethel (D)	Hundred	69th-71st; 74th
Sixth	James E. Willison (R)	Sistersville	69th-74th
Seventh	Otis A. Leggett (R)	St. Marys	68th-74th
Eighth	Everette W. Anderson, Jr. (R)	Williamstown	71st-74th
Ninth	Larry W. Border (R)	Davisville	70th-74th
	Tom Azinger (R)	Vienna	72nd-74th
Tenth	J. D. Beane (D)	Parkersburg	70th-74th
	Rick Modesitt (R)	Parkersburg	74th
	F. Oscar Hines (D)	Spencer	74th
Eleventh	Karen L. Facemyer (R)	Ripley	71st-74th
Thirteenth	Jerry K. Kelley (D)	Red House	72nd-74th
	Gary Otho Tillis (D)	Eleanor	72nd-74th
Fourteenth	Mike Hall (R)	Hurricane	72nd-74th
	Lisa D. Smith (R)	Scott Depot	74th
Fifteenth	Arley Johnson (D)	Huntington	72nd-74th
	Margarette R. Leach (D)	Huntington	71st-74th
	Charles E. Romine, Jr. (R)	Huntington	60th-62nd; 74th
Sixteenth	Susan Hubbard (D)	Huntington	72nd-74th
	Evan H. Jenkins (D)	Huntington	72nd-74th
Seventeenth	Jody G. Smirl (R)	Huntington	58th-61st; 67th; 72nd-74th
	Jerry Mike Damron (D)	Wayne	73rd-74th
Eighteenth	Don C. Perdue (D)	Prichard	74th
	K. Steven Kominar (D)	Kermit	72nd-74th
Nineteenth	Harry Keith White (D)	Gilbert	Appt. 9/11/92, 70th; 71st; 73rd-74th
	Greg Butcher (D)	Chapmanville	73rd-74th
Twentieth	Sammy D. Dalton (D)	Harts	62nd-67th; 69th; (Senate 70th-71st); 73rd-74th
	Tracy Dempsey (D)	Harts	70th-74th
	Joe C. Ferrell (D)	Logan	66th; 68th-70th; 74th
Twenty-first	Earnest H. Kuhn (D)	Van	72nd-74th
Twenty-second	Lacy Wright, Jr. (D)	Welch	62nd-64th; (Senate 65th-66th); 73rd-74th
	Emily W. Yeager (D)	Welch	Appt. 3/10/93, 71st; 72nd-74th
Twenty-third	Joe Sparks (D)	Pineville	73rd-74th
	Rick Staton (D)	Mullens	69th-74th
Twenty-fourth	Eustace Frederick (D)	Bluefield	Appt. 10/17/93, 71st; 72nd-74th
Twenty-fifth	Richard D. Flanigan (D)	Princeton	66th-71st; 73rd-74th
	Mark E. Wills (D)	Princeton	74th
Twenty-sixth	Mary Pearl Compton (D)	Union	69th-74th
Twenty-seventh	Robert S. Kiss (D)	Beckley	69th-74th
	Virginia Mahan (D)	Green Sulphur Springs	73rd-74th
	Warren R. McGraw II (D)	Prosperity	71st-74th
	Sally Matz Susman (D)	Beckley	74th
	Ron Thompson (D)	Beckley	72nd-74th

MEMBERS OF THE HOUSE OF DELEGATES - Continued

District	Name	Address	Legislative Service
Twenty-eighth ...	Thomas W. Campbell (D)	Lewisburg	73rd-74th
	Carroll Willis (D)	Alderson	73rd-74th
Twenty-ninth	William R. Laird IV (D)	Fayetteville	73rd-74th
	Tom Louisos (D)	Oak Hill	67th-68th; 70th-74th
	John Pino (D)	Oak Hill	67th-68th; 72nd-74th
Thirtieth	Jon Amores (D)	Charleston	72nd-74th
	Shelley Moore Capito (R)	Charleston	73rd-74th
	Barbara Burruss Hatfield (D) ..	South Charleston	68th-70th; 74th
	Margaret Peggy Miller (R)	South Charleston	69th-74th
	Larry L. Rowe (D)	Malden	73rd-74th
	Joe F. Smith (D)	Charleston	71st; 73rd-74th
	Sharon Spencer (D)	Charleston	66th; 68th-71st; 73rd-74th
Thirty-first	Mark A. Hunt (D)	Charleston	72nd-74th
Thirty-second	Tim Armstead (R)	Elkview	Appt. 9/5/98, 73rd; 74th
	Art Ashley (D)	Nitro	74th
	Steve Harrison (R)	Cross Lanes	71st-74th
	Charles Rusty Webb (R)	Cross Lanes	73rd-74th
Thirty-third	William F. Stemple (D)	Arnoldsburg	73rd-74th
Thirty-fourth	Brent Boggs (D)	Gassaway	73rd-74th
Thirty-fifth	John W. Shelton (D)	Summersville	73rd-74th
Thirty-sixth	C. Randy White (D)	Webster Springs	73rd-74th
Thirty-seventh ...	Joe Martin (D)	Elkins	Appt. 6/15/78, 63rd; 64th-74th
	Bill Proudfoot (D)	Elkins	70th-74th
Thirty-eighth	Doug Stalnakar (R)	Weston	72nd-74th
Thirty-ninth	Dale F. Riggs (R)	Buckhannon	69th-74th
Fortieth	Richard H. Everson (D)	Philippi	71st-74th
Forty-first	Frank T. Angotti, Jr. (D)	Clarksburg	74th
	Samuel J. Cann (D)	Jane Lew	72nd-74th
	Larry A. Linch (D)	Clarksburg	71st-74th
	Barbara A. Warner (D)	Bridgeport	69th-74th
Forty-second	Tom Coleman (D)	Bridgeport	73rd-74th
Forty-third	Michael Caputo (D)	Fairmont	73rd-74th
	A. James Manchin (D)	Farmington	50th; 74th
	Paul Edward Prunty (D)	Fairmont	61st; 63rd-65th; 67th-68th; 70th; 72nd-74th
Forty-fourth	Barbara Evans Fleischauer (D) ...	Morgantown	72nd-74th
	Sheirl L. Fletcher (R)	Morgantown	74th
	Nancy Houston (D)	Morgantown	74th
	Charlene J. Marshall (D)	Morgantown	74th
Forty-fifth	Larry A. Williams (D)	Tunnelton	Appt. 10/08/93, 71st; 72nd-74th
Forty-sixth	David Collins (D)	Davis	70th-74th
Forty-seventh	Harold K. Michael (D)	Moorefield	69th-74th
Forty-eighth	Allen V. Evans (R)	Dorcas	70th-74th
Forty-ninth	Robert A. Schadler (R)	Keyser	69th-71st; 74th
Fiftieth	Jerry L. Mezzatesta (D)	Romney	68th-74th
Fifty-first	Charles S. Trump IV (R)	Berkeley Springs	71st-74th
Fifty-second	Vicki V. Douglas (D)	Martinsburg	70th-74th
Fifty-third	Larry V. Faircloth (R)	Inwood	65th-74th
Fifty-fourth	John Overington (R)	Martinsburg	67th-74th
Fifty-fifth	John Doyle (D)	Shepherdstown	66th; 71st-74th
Fifty-sixth	Dale Manuel (D)	Charles Town	69th-74th

(D) Democrats	75
(R) Republicans	25

TOTAL 100

MEMBERS OF THE SENATE

REGULAR SESSION, 1999

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	Legislative Service
First	Edwin J. Bowman (D)	Weirton	72nd-74th
	Andy McKenzie (R)	Wheeling	73rd-74th
Second	Larry J. Edgell (D)	New Martinsville	74th
	Jeffrey V. Kessler (D)	Glen Dale	Appt. 11/97, 73rd; 74th
Third	Donna J. Boley (R)	St. Marys	Appt. 5/14/85, 67th; 68th-74th
	J. Frank Deem (R)	Vienna	(House 52nd-56th); 57th-62nd; 64th-65th; (House 69th); 72nd-74th
Fourth	Oshel B. Craig (D)	Winfield	(House 65th); 66th-74th
	Robert L. Dittmar (D)	Ravenswood	69th-74th
Fifth	Robert H. Plymale (D)	Ceredo	71st-74th
	Marie E. Redd (D)	Huntington	74th
Sixth	H. Truman Chafin (D)	Williamson	66th-74th
	John Pat Fanning (D)	Iaeger	58th-64th; 67th-68th; 73rd-74th
Seventh	Lloyd G. Jackson II (D)	Hamlin	68th-69th; 72nd-74th
	Earl Ray Tomblin (D)	Chapmanville	(House 62nd-64th); 65th-74th
Eighth	John R. Mitchell, Jr. (D)	Charleston	74th
	Vic Sprouse (R)	South Charleston	(House 72nd); 73rd-74th
Ninth	Billy Wayne Bailey, Jr. (D)	Covel	Appt. 1/9/91, 70th; 71st-74th
	William R. Wooton (D)	Beckley	(House 63rd-67th; 69th); 70th-74th
Tenth	Leonard W. Anderson (D)	Hinton	70th-74th
	Homer K. Ball (D)	Athens	(House 72nd); 73rd-74th
Eleventh	Shirley Love (D)	Oak Hill	72nd-74th
	Randy Schoonover (D)	Lewisburg	(House 69th-70th); Appt. 9/27/93, 71st; 72nd-74th
Twelfth	Joseph M. Minard (D)	Clarksburg	(House Appt. 1/10/83, 66th; 67th-69th); 70th-71st; 74th
	William R. Sharpe, Jr. (D)	Weston	55th-64th; 67th-74th
Thirteenth	Michael A. Oliverio II (D)	Morgantown	(House 71st); 72nd-74th
	Roman W. Prezioso, Jr. (D)	Fairmont	(House 69th-72nd); 73rd-74th
Fourteenth	Jon Blair Hunter (D)	Morgantown	73rd-74th
	Sarah M. Minear (R)	Parsons	72nd-74th
Fifteenth	Walt Helmick (D)	Marlinton	(House 1 yr., 69th); Appt. 9/13/89, 69th; 70th-74th
	Mike Ross (D)	Coalton	71st-74th
Sixteenth	Herbert S. Snyder (D)	Shenandoah Junction	73rd-74th
	John R. Unger II (D)	Marinsburg	74th
Seventeenth	Brooks F. McCabe, Jr. (D)	Charleston	74th
	Martha Yeager Walker (D)	Charleston	(House 70th); 71st-74th
	(D) Democrats		29
	(R) Republicans		5
	TOTAL		34

COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 1999

STANDING

AGRICULTURE AND NATURAL RESOURCES

Kelley (*Chair of Agriculture*), Boggs (*Vice Chair of Agriculture*), Yeager (*Chair of Natural Resources*), Tillis (*Vice Chair of Natural Resources*), Angotti, Butcher, Damron, Davis, Dempsey, Ennis, Ferrell, Flanigan, McGraw, Perdue, Pethtel, Prunty, Stemple, Williams, Willis, Anderson, Border, Evans, Leggett, Overington and Riggs.

BANKING AND INSURANCE

Thompson (*Chair of Banking*), Cann (*Vice Chair of Banking*), Beane (*Chair of Insurance*), Johnson (*Vice Chair of Insurance*), Amores, Angotti, Davis, Flanigan, Hatfield, Hutchins, Jenkins, Laird, Perdue, Spencer, J. Smith, Tillis, H. White, Wright, Azinger, Capito, Facemyer, Faircloth, Harrison, Romine and L. White.

CONSTITUTIONAL REVISION

Fleischauer (*Chair*), Kominar (*Vice Chair*), Collins, Dalton, Frederick, Givens, Hines, Houston, Laird, Leach, Linch, McGraw, Pethtel, Pino, Rowe, Varner, H. White, Wills, Wright, Anderson, Armstead, Harrison, Overington, Riggs and Webb.

EDUCATION

Mezzatesta (*Chair*), Manuel (*Vice Chair*), Boggs, Damron, Davis, Dempsey, Ennis, Houston, Hubbard, Martin, Pethtel, Shelton, Sparks, Stemple, Susman, C. White, Williams, Willis, Yeager, Anderson, Armstead, Fletcher, Harrison, Romine and Stalnaker.

FINANCE

Michael (*Chair*), Doyle (*Vice Chair*), Ashley, Beane, Campbell, Cann, Compton, Fleischauer, Frederick, Jenkins, Kelley, Kominar, Laird, Leach, Mezzatesta, Pettit, Proudfoot, Thompson, Warner, Border, Evans, Facemyer, Hall, Leggett and Miller.

GOVERNMENT ORGANIZATION

Douglas (*Chair*), Collins (*Vice Chair*), Angotti, Butcher, Caputo, Everson, Flanigan, Hatfield, Kuhn, Louisos, Manchin, Marshall, McGraw, Perdue, Prunty, J. Smith, Tucker, Varner, H. White, Azinger, Modesitt, Overington, L. Smith, Stalnaker and Willison.

HEALTH AND HUMAN RESOURCES

Compton (*Chair*), Hutchins (*Vice Chair*), Caputo, Fleischauer, Hatfield, Houston, Hubbard, Kelley, Leach, Louisos, Mahan, Marshall, Perdue, Rowe, J. Smith, Spencer, Stemple, Susman, C. White, Capito, Fletcher, Harrison, Miller, Romine and L. Smith.

INDUSTRY AND LABOR

Pettit (*Chair*), Kuhn (*Vice Chair*), Butcher, Cann, Caputo, Coleman, Dalton, Doyle, Frederick, Houston, Louisos, Mahan, Manchin, Prunty, Sparks, Tillis, Tucker, Williams, Armstead, Evans, Modesitt, Overington, Schadler, L. Smith and Webb.

JUDICIARY

Staton (*Chair*), Amores (*Vice Chair*), Coleman, Dalton, Ferrell, Givens, Hines, Hunt, Hutchins, Johnson, Linch, Mahan, Pino, Rowe, Spencer, Stemple, Tillis, Wills, Capito, Faircloth, Riggs, Schadler, Smirl, Webb and L. White.

POLITICAL SUBDIVISIONS

Proudfoot (*Chair*), Campbell (*Vice Chair*), Ashley, Damron, Davis, Everson, Flanigan, Givens, Hines, Johnson, Kuhn, Linch, Marshall, Pettit, C. White, Willis, Wills, Yeager, Facemyer, Schadler, Smirl, Stalnaker, Trump, L. White and Willison.

ROADS AND TRANSPORTATION

Warner (*Chair*), Everson (*Vice Chair*), Ashley, Boggs, Butcher, Coleman, Damron, Ennis, Hubbard, Kominar, Manchin, Manuel, Marshall, Pethtel, Shelton, Susman, Thompson, C. White, Yeager, Anderson, Border, Hall, Leggett, Miller and Stalnaker.

RULES

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

VETERANS AFFAIRS

Givens (*Chair*), Frederick (*Vice Chair*), Coleman, Collins, Doyle, Everson, Ferrell, Kelley, Kuhn, Linch, Manchin, Manuel, Shelton, Sparks, Thompson, Tucker, H. White, Wright, Yeager, Azinger, Evans, Fletcher, Modesitt, Smirl and Willison.

JOINT

ENROLLED BILLS

J. Smith (*Chair*), Dempsey (*Vice Chair*), Wright and Overington.

GOVERNMENT AND FINANCE

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

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, J. Smith, Williams, Hall and Harrison.

RULES

Kiss (*Chair*), Martin and Trump.

STATUTORY LEGISLATIVE COMMISSIONS

FOREST MANAGEMENT REVIEW

Williams (*Chair*), Mahan (*Vice Chair*), Angotti, Martin, Proudfoot and Willison.

INTERSTATE COOPERATION

Shelton (*Chair*), Amores, Doyle, Jenkins, Yeager, Overington and Stalnaker.

**OVERSIGHT COMMISSION ON EDUCATION
ACCOUNTABILITY**

Mezzatesta (*Chair*), Doyle, Manuel, Williams and Anderson.

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

Compton (*Chair*), Douglas, Leach, Martin, Michael, Facemyer and Hall.

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

Manuel (*Chair*), Leach, Michael, Pino, Warner and Faircloth.

SPECIAL INVESTIGATIONS

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

COMMITTEES OF THE SENATE
Regular Session, 1999

STANDING

AGRICULTURE

Anderson (*Chair*), Love (*Vice Chair*), Ball, Dittmar, Helmick, Mitchell, Ross, Unger, Deem and Minear.

BANKING AND INSURANCE

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

CONFIRMATIONS

Love (*Chair*), Chafin (*Vice Chair*), Bailey, Bowman, Jackson, Minard, Mitchell, Wooton and McKenzie.

EDUCATION

Jackson (*Chair*), Plymale (*Vice Chair*), Bailey, Ball, Edgell, Helmick, Hunter, Mitchell, Oliverio, Redd, Schoonover, Unger, Boley and Minear.

ENERGY, INDUSTRY AND MINING

Sharpe (*Chair*), McCabe (*Vice Chair*), Anderson, Chafin, Fanning, Helmick, Hunter, Jackson, Kessler, Oliverio, Ross, Snyder, Deem and McKenzie.

FINANCE

Craigo (*Chair*), Sharpe (*Vice Chair*), Anderson, Bailey, Bowman, Chafin, Edgell, Helmick, Jackson, Love, Plymale, Prezioso, Unger, Walker, Boley, Minear and Sprouse.

GOVERNMENT ORGANIZATION

Bowman (*Chair*), Bailey (*Vice Chair*), Ball, Jackson, Kessler, McCabe, Minard, Plymale, Redd, Schoonover, Snyder, Walker, Wooton, Boley and Minear.

HEALTH AND HUMAN RESOURCES

Walker (*Chair*), Prezioso (*Vice Chair*), Craigo, Hunter, McCabe, Plymale, Redd, Ross, Sharpe, Snyder, Unger, Wooton, Boley and Sprouse.

INTERSTATE COOPERATION

Minard (*Chair*), Redd (*Vice Chair*), Anderson, Bowman, Schoonover, Unger and Minear.

JUDICIARY

Wooton (*Chair*), Snyder (*Vice Chair*), Ball, Dittmar, Fanning, Hunter, Kessler, McCabe, Minard, Mitchell, Oliverio, Redd, Ross, Schoonover, Deem and McKenzie.

LABOR

Fanning (*Chair*), Hunter (*Vice Chair*), Ball, Edgell, Love, Mitchell, Prezioso, Schoonover, Deem and McKenzie.

MILITARY

Prezioso (*Chair*), Edgell (*Vice Chair*), Bailey, Dittmar, Helmick, Hunter, Minard, Oliverio and Boley.

NATURAL RESOURCES

Dittmar (*Chair*), Mitchell (*Vice Chair*), Anderson, Ball, Bowman, Craigo, Love, Minard, Prezioso, Ross, Schoonover, Snyder, Deem and Minear.

PENSIONS

Plymale (*Chair*), Fanning (*Vice Chair*), Edgell, Jackson, McCabe, Walker and Sprouse.

RULES

Tomblin (*Chair*), Anderson, Chafin, Craigo, Jackson, Sharpe, Walker, Wooton, Minear and Sprouse.

SMALL BUSINESS

Oliverio (*Chair*), Unger (*Vice Chair*), Anderson, Bowman, Craigo, Fanning, Kessler, McCabe, Ross, Sharpe, Boley and Sprouse.

TRANSPORTATION

Ross (*Chair*), Ball (*Vice Chair*), Dittmar, Kessler, Love, Oliverio, Plymale, Redd and McKenzie.

JOINT

ENROLLED BILLS

Schoonover (*Chair*), Bailey, Edgell, Walker and McKenzie.

GOVERNMENT AND FINANCE

Tomblin (*Chair*), Chafin, Craig, Jackson, Sharpe, Wooton and Sprouse.

GOVERNMENT OPERATIONS

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

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Ross (*Chair*), Anderson (*Vice Chair*), Schoonover, Snyder, Unger and Minear.

PENSIONS AND RETIREMENT

Plymale (*Chair*), Fanning (*Vice Chair*), Edgell, Jackson, McCabe, Walker and Sprouse.

RULES

Tomblin (*Chair*), Chafin and Sprouse.

STATUTORY LEGISLATIVE COMMISSIONS

FOREST MANAGEMENT REVIEW COMMISSION

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

INTERSTATE COOPERATION

Minard (*Chair*), Redd (*Vice Chair*), Anderson, Bowman, Schoonover, Unger and Minear.

OVERSIGHT COMMISSION ON EDUCATION

ACCOUNTABILITY

Jackson (*Chair*), Bailey, Craig, Plymale, Prezioso and Minear.

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

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

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

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

SPECIAL INVESTIGATIONS

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

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST REGULAR SESSION, 1999

CHAPTER 1

(Com. Sub. for H. B. 2805 — By Delegates Kelley, Boggs and Yeager)

[Passed March 4, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-c, relating to the department of agriculture; creating a special revenue account for deposit of certain moneys and explicitly excluding certain accounts.

Be it enacted by the Legislature of West Virginia:

That article one, chapter nineteen 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-c, to read as follows:

ARTICLE 1. DEPARTMENT OF AGRICULTURE.**§19-1-4c. Agriculture fees fund.**

1 There is hereby created a special revenue account within
 2 the state treasury to be known as "Agricultural Fees Fund".
 3 Expenditures from the fund shall be used exclusively by the
 4 commissioner of agriculture for the purpose of enforcement and
 5 administration of this chapter. Moneys paid into the account
 6 shall be from all moneys collected under this chapter, except
 7 those designated in article one-a; article two-g; article twenty-
 8 one; article twenty-one-a; article twenty-one-b; article twenty-
 9 three; article twenty-five; article twenty-six; article twenty-
 10 seven; and section twenty-three, article sixteen-a.

CHAPTER 2

(Com. Sub. for H. B. 2206 – By Delegate Doyle)

[Passed February 24, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article two-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibiting the sale of or offering for sale any meat or poultry product on which the processor's expiration date has expired; and prohibiting alteration of expiration dates.

Be it enacted by the Legislature of West Virginia:

That section ten, article two-b, 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 2B. INSPECTION OF MEAT AND POULTRY.**§19-2B-10. Additional prohibitions.**

1 In addition to any other prohibitions contained in this
 2 article, it shall be unlawful:

- 3 (a) For any person to operate any establishment under state
4 inspection which is not clean and sanitary;
- 5 (b) To slaughter any adulterated animal or poultry intended
6 to be sold or offered for sale through a commercial outlet or
7 distributor;
- 8 (c) To sell or offer for sale through a commercial outlet or
9 distributor any carcass, meat product or poultry product for
10 human consumption which is adulterated;
- 11 (d) To slaughter for human consumption any animal or
12 poultry tagged or permanently identified as "W.Va. con-
13 demned," or abbreviation thereof;
- 14 (e) To process, sell or offer for sale for human consumption
15 any carcass, meat product or poultry product which is misla-
16 beled with intent to deceive or which is marked "W.Va.
17 inspected and condemned," or abbreviation thereof;
- 18 (f) To process in an establishment under state inspection for
19 sale through any commercial outlet or distributor any carcass,
20 meat product or poultry product intended for human consump-
21 tion and derived, in whole or in part, from any calf, pig, kid,
22 lamb, chicken or turkey which is so immature as to be lacking
23 in nutritional value;
- 24 (g) To knowingly or intentionally expose any carcass, meat
25 product and poultry product in any establishment under state
26 inspection to insects, live animals or any contamination;
- 27 (h) To add kangaroo meat, horse meat, mule meat or other
28 equine meat to any animal meat, meat product or poultry
29 product to be sold or offered for sale through commercial
30 outlets or distributors for human consumption;
- 31 (i) To remove any hide, skin or any other part of an unborn
32 or stillborn animal in the confines of a room in an establishment
33 where any animals or poultry, carcasses, meat products or
34 poultry products are slaughtered or processed, as the case may
35 be, or to be sold or offered for sale through a commercial outlet
36 or distributor;

37 (j) To process for human consumption in any establishment
38 subject to state inspection any carcass, meat product and poultry
39 product derived from any animal or poultry which died other
40 than by slaughter;

41 (k) To transport to any commercial outlet or distributor for
42 the purpose of being sold or offered for sale therein, any
43 carcass, meat product or poultry product which is not marked,
44 branded or stamped as having been inspected and passed by the
45 commissioner or by the United States department of agricul-
46 ture;

47 (l) For any commercial outlet or distributor to receive, for
48 the purpose of being sold or offered for sale therein, any
49 carcass, meat product or poultry product which is not marked,
50 branded or stamped as having been inspected and passed by the
51 commissioner or by the United States department of agricul-
52 ture;

53 (m) To slaughter any horse, mule or other equine in any
54 establishment under state inspection in which animals or
55 poultry are slaughtered for human consumption for the purpose
56 of being sold or offered for sale through commercial outlets;

57 (n) To bring any kangaroo meat, horse meat, mule meat or
58 other equine meat into any establishment under state inspection
59 where animal or poultry carcasses, meat products or poultry
60 products are processed for human consumption for the purpose
61 of being sold or offered for sale through commercial outlets;

62 (o) To transport, process, sell or offer for sale any kangaroo
63 meat, horse meat, mule meat or other equine meat within this
64 state for human consumption unless it is conspicuously and
65 plainly identified or stamped as such;

66 (p) For any person to use an establishment number not
67 assigned to him or her or to use an establishment number in
68 connection with operations concerning which a different
69 establishment number was assigned by the commissioner;

70 (q) To remove from any article any retained tag affixed by
71 the commissioner, unless such removal is authorized by him or
72 her;

73 (r) To remove from any room, compartment, equipment or
74 utensil any rejection tag or rejection notice affixed by the
75 commissioner, unless such removal is authorized by him or her;

76 (s) For a licensee to use any container bearing an official
77 inspection mark unless it contains the exact carcass, meat
78 product or poultry product which was in the container at the
79 time such contents were inspected and passed: *Provided*, That
80 such a container may be otherwise used if such official inspec-
81 tion mark thereon is removed, obliterated or destroyed, and
82 such other use is authorized by reasonable rules promulgated by
83 the commissioner;

84 (t) For any person, other than the commissioner, to possess,
85 keep or use, except as authorized by the commissioner, any
86 label or device for the affixing of a mark, brand or stamp
87 prescribed for inspection purposes hereunder;

88 (u) For any person, with intent to deceive, to possess, keep
89 or use any label, mark, brand or stamp similar in character or
90 import to an official label, mark, brand or stamp prescribed by
91 the commissioner hereunder or to an official label, mark, brand
92 or stamp used by the United States department of agriculture;

93 (v) To falsely make, falsely issue, falsely publish, alter,
94 forge, simulate or counterfeit any inspection certificate,
95 memorandum, label, mark, brand, or stamp, or device for
96 making an inspection mark, brand or stamp, or to possess, keep
97 or use the same, with intent to deceive;

98 (w) For any person to refuse to permit the commissioner to
99 enter and inspect at any time, upon presentation of appropriate
100 credentials, an establishment under state inspection, or to
101 interfere with any such lawful entry or inspection;

102 (x) For any person to refuse to permit the commissioner,
103 upon presentation of appropriate credentials, to examine and
104 copy the records described in section five of this article;

105 (y) For a person to prevent or fail to decharacterize or
106 denature carcasses, meat products or poultry products as
107 prescribed by reasonable rules promulgated by the commis-
108 sioner;

109 (z) For a person to transport offal, blood, or inedible and
110 condemned parts of animal and poultry carcasses from slaugh-
111 terhouses, processing plants or other related industries: *Pro-*
112 *vided*, That such products may be transported if placed in
113 suitable containers with tight covers, or watertight tanks so as
114 not to contaminate the public highways or private roadways
115 while going to or from the points of pickup;

116 (aa) For a person to store offal, blood, or inedible and
117 condemned parts of animal and poultry carcasses from slaugh-
118 terhouses, processing plants or other related industries during
119 interim transit movement in refrigerated warehouses, food
120 lockers or other related industries: *Provided*, That such products
121 may be otherwise stored if properly marked "NOT FOR
122 HUMAN FOOD" "FOR ANIMAL FOOD ONLY" and identi-
123 fied as approved products to be used for animal food;

124 (bb) For a person knowingly to deliver a dead or dying
125 animal or poultry to an establishment in this state;

126 (cc) For any person to transport carcasses, meat products
127 and poultry products that are intended for human consumption
128 in a manner which would permit the products to become
129 adulterated;

130 (dd) For any person to forcibly assault, resist, oppose,
131 impede, intimidate or interfere with the commissioner or his or
132 her representative while engaged in or on account of the
133 performances of his or her official duties;

134 (ee) For any person to deliver, with intent to deceive, any
135 graded meat product, poultry product or any other agricultural
136 commodity to a state institution that does not meet the grade
137 specifications for that grade when a specified grade is required
138 in a contract;

139 (ff) To sell any meat product or poultry product for which
140 the processor's expiration date has expired;

141 (gg) To alter, change or cover-up the expiration date of any
142 meat product or poultry product established by the processor.

143 In addition to any other powers conveyed in this article, the
144 commissioner may inspect any meat product, poultry product
145 or any other agricultural commodity sold to a state institution
146 to enforce the provisions of this subdivision.

CHAPTER 3

(Com. Sub. for S. B. 219 — By Senators Anderson, Ross,
Sharpe, Bailey, Schoonover, Love, Dittmar, Kessler and Ball)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article two-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the inspection of meat and poultry; authorizing the commissioner of agriculture to assess civil penalties against slaughterers, processors and distributors for violations of this article; providing for recording of liens; permitting commissioner to settle cases; and limiting recovery of damages against the state.

Be it enacted by the Legislature of West Virginia:

That section eleven, article two-b, 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 2B. INSPECTION OF MEAT AND POULTRY.

§19-2B-11. Criminal penalties; civil penalties.

1 (a) Criminal penalties.

2 (1) Any person who violates any of the provisions of this
3 article is guilty of a misdemeanor and, upon conviction thereof,
4 shall for the first offense be fined not less than two hundred nor
5 more than one thousand dollars and upon conviction of each
6 subsequent offense shall be fined not less than four hundred nor
7 more than two thousand dollars.

8 (2) If a person knowingly sells, offers for sale or distribu-
9 tion, or attempts to sell, offers for sale or distribution of a
10 carcass, meat product or poultry product that is contaminated
11 with pathogenic microorganisms or otherwise adulterated, the
12 person is guilty of a misdemeanor and, upon conviction thereof,
13 shall be fined not less than five thousand dollars nor more than
14 ten thousand dollars upon conviction of each offense.

15 (b) Civil penalties.

16 (1) Any slaughterer, processor or distributor who violates
17 any of the provisions of this article or regulations adopted
18 hereunder may be assessed a civil penalty by the commissioner.
19 In determining the amount of any civil penalty, the commis-
20 sioner shall give due consideration to the history of previous
21 violations; the seriousness of the violation, including any
22 hazards to the health and safety of the public; and the demon-
23 strated good faith efforts by the charged party to ensure that
24 similar violations do not recur.

25 (2) The commissioner may assess a penalty of not more
26 than five hundred dollars for a first violation and not more than
27 one thousand dollars for each subsequent violation.

28 (3) The civil penalty is payable to the state of West Virginia
29 and may be collected in any manner for collection of debt to the
30 state. If a person assessed a civil penalty pursuant to this
31 subsection neglects or refuses to pay, the amount of that
32 penalty, together with interest calculated at ten percent per
33 annum, may be filed as a lien in favor of the state upon any and
34 all property of the person, both real and personal. The lien shall
35 be recorded in the records kept in the office of the county clerk
36 in the county wherein the violation occurred. The county clerk
37 in the recording county shall enter the same to record without
38 requiring payment of recording fees as a condition precedent to
39 the recording. A notice of the lien shall be mailed or delivered
40 to the person against whose property the lien has been placed.
41 All penalties, together with any interest, collected by the state,
42 pursuant to this subsection, shall be deposited in the general
43 revenue fund.

44 (4) Notwithstanding any other provision of the law to the
45 contrary, the commissioner may enter into consent agreements
46 or negotiated settlement agreements for the civil penalties
47 assessed pursuant to this subsection.

48 (5) No state court may allow the recovery of damages for
49 administrative action taken by the commissioner if the court
50 finds, as a matter of law, that there was probable cause for such
51 action.

CHAPTER 4

(Com. Sub. for H. B. 2972 — By Mr. Speaker, Mr. Kiss, and
Delegates Martin, Proudfoot, Michael, Staton and Trump)

[Passed March 12, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-d, relating to the regulation of traditional milk and cheese production methods; establishing legislative findings; prohibiting the division of health and local health departments from regulating certain cheese manufacturing and distribution; and authorizing rules by the commissioner of agriculture to regulate manufacture of certain cheese production.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11D. TRADITIONAL CHEESE PRODUCTION.

§19-11D-1. Legislative findings.

§19-11D-2. Applications of article.

§19-11D-3. Exemption from regulatory control; authorizing rules by the commissioner of agriculture.

§19-11D-1. Legislative findings.

1 The Legislature finds that local production and sale of
2 locally manufactured cheese products is a culturally significant
3 tradition and that the preservation of historic methods of cheese
4 production is in the public interest; that local cheese production
5 is an important part of the economic livelihood of many
6 families and small businesses in this state; and that the unique
7 quality of home and farm-based cheese products cannot be
8 duplicated using manufacturing and food production require-
9 ments enforced by local boards of health. Therefore, the
10 Legislature finds that it is in the public interest to exempt
11 certain local cheese production and local cheese products from
12 regulations of the division of health related to food sanitation
13 enforced by local boards of health, and to place the production
14 of certain home and farm-based cheese products under the
15 jurisdiction of the department of agriculture.

§19-11D-2. Application of article.

1 (a) In order for cheese production to fall within the exemp-
2 tion created in section two of this article, all of the following
3 criteria must apply:

4 (1) The cheese must be manufactured at a home or farm-
5 based site using either raw milk from West Virginia cows,
6 production of which is regulated by the department of agricul-
7 ture, or commercially pasteurized cow's milk;

8 (2) The cheese products must be aged at least sixty days;

9 (3) The cheese products must be sold directly to the
10 consumer at the production site or marketed in local restaurants
11 or local small businesses not engaged in interstate commerce:
12 *Provided*, That for the purposes of this article, acceptance of a
13 national credit card shall not be construed as engaging in
14 interstate commerce.

15 (b) The exemptions contained in this article are not applica-
16 ble to:

17 (1) Persons and businesses manufacturing more than five
18 thousand pounds of cheese products per year;

19 (2) Cheese products sold to the ultimate consumer outside
20 the borders of the state;

21 (3) Cheese products marketed by mail or on the internet; or

22 (4) Cheese products the sale or manufacture of which is
23 governed by applicable federal law.

**§19-11D-3. Exemption from regulatory control; authorizing rules
by the commissioner of agriculture.**

1 The manufacture of cheese products described in section
2 two of this article is exempt from: (a) Pasteurization, packag-
3 ing, labeling and all other health related requirements estab-
4 lished in this code or rules promulgated by the division of
5 health, and (b) regulatory control by the division of health and
6 county or local health departments or sanitarians. Powers of the
7 commissioner of agriculture set forth in section ten, article
8 eleven-a of this chapter are applicable to the manufacturing of
9 home and farm-based cheese products described in section two
10 of this article. The commissioner of agriculture is authorized to
11 promulgate rules pursuant to article three, chapter twenty-nine-
12 a of this code, considering and promoting traditional methods
13 of cheese production, while providing minimum health and
14 sanitation standards necessary for the protection of the public,
15 including standards for cleanliness, handling, and protection
16 from contamination. Emergency rules for this purpose are
17 authorized.

CHAPTER 5

(H. B. 3023 — By Delegates Doyle, Michael,
Thompson, Pettit, Laird and Facemyer)

[Passed March 13, 1999; in effect from passage. Approved by the Governor.]

AN ACT to repeal section thirty, article three-a, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three, four, five, six,

seven, eight, ten, ten-a, twelve, seventeen and twenty-nine of said article; to further amend said article by adding thereto four new sections, designated sections two-a, ten-b, ten-c and twenty-seven-a; and to amend and reenact section eleven, article seven of said chapter, all relating generally to the sale of liquor at retail; further legislative findings, declaration and purpose; operation of state store by commissioner in certain circumstances; revising definitions; appointments to retail liquor licensing board; powers and duties of commissioner; modification of market zones; increasing number of Class B licenses in a market zone in limited circumstances; limitation on number of licenses held; principal officers, partners and members of applicants for licenses; requirement that applicant for license hold federal license to sell liquor at wholesale; bidding procedures; preference for resident bidders; bids for licenses issued for a ten-year period beginning the first day of July, two thousand and for every ten-year period thereafter; determination of minimum bids; rejection of bids; notice to current licensee of highest bid in certain circumstances; issuance of license to current licensee in certain circumstances; bid preference for current licensee; new bids for licenses in certain circumstances; unlawful inducement of another to refrain from bidding for a license or from operating an outlet; criminal and civil penalties; expiration of licenses for the period ending on the thirtieth day of June, two thousand and for every ten-year period thereafter; the annual license fees; the imposition of municipal licenses and fees on retail licensees; providing for payment by electronic funds transfer by retail licensees; surety bonds guaranteeing payment for liquor; establishing minimum prices for sale of liquor by retail licensees; revocation of license for failure to operate outlet; reduction of authorized outlets for failure to operate; issuance of Class B license in the stead of an unoperated Class A license outlet; restriction on bids; legislative rules governing determination of failure to operate; review of revocation or reduction; purchases of liquor from licensee where license revoked, expired or surrendered; and contracts for delivery of liquor by retail licensee.

Be it enacted by the Legislature of West Virginia:

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

Article

3A. Sales by Retail Liquor Licensees.

7. Licenses to Private Clubs.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

- §60-3A-2a. Further legislative findings, declarations and purpose.
- §60-3A-3. Sale of liquor by retail licensees permitted; cessation of retail sale of liquor by state.
- §60-3A-4. Definitions.
- §60-3A-5. Creation of retail liquor licensing board; members, terms, meetings and officers; general provisions.
- §60-3A-6. General powers and duties of board and commissioner.
- §60-3A-7. Market zones; Class A and Class B retail licenses.
- §60-3A-8. Retail license application requirements; retail licensee qualifications.
- §60-3A-10. Bidding procedure.
- §60-3A-10a. Preference for resident bidders.
- §60-3A-10b. Bidding procedure for licenses issued for the ten-year period beginning July 1, 2000, and licenses issued for each ten-year period thereafter.
- §60-3A-10c. Criminal penalties for unlawful inducement.
- §60-3A-12. Annual retail license fee; expiration and renewal of retail licenses.
- §60-3A-17. Wholesale prices set by commissioner; retail licensees to purchase liquor from state; transportation and storage; method of payment.
- §60-3A-27a. Revocation of license or reduction of authority to operate retail outlet for failure to operate retail outlet.
- §60-3A-29. Disposition of inventory upon revocation or surrender of retail license.

§60-3A-2a. Further legislative findings, declarations and purpose.

1 (a) In addition to the findings and declarations set forth in
 2 subsection (a), section two of this article, the Legislature hereby
 3 finds and declares that:

4 (1) The provisions of this article as enacted during the
 5 regular session of the Legislature in the year one thousand nine
 6 hundred ninety were intended to require that all licenses issued
 7 for the retail sale of liquor expire as of the first day of July, two

8 thousand, and that the issuance of retail licenses for the ten-year
9 period beginning the first day of July, two thousand, and for
10 each ten-year period thereafter, be based on sealed competitive
11 bids;

12 (2) It is the intention of the Legislature to provide that all
13 retail licenses issued beginning the first day of July, two
14 thousand, expire ten-years from the date of issuance and that
15 every ten-years the issuance of retail licenses be based on
16 competitive bids;

17 (3) The purposes set forth in subsection (b), section two of
18 this article remain the purposes of the Legislature;

19 (4) Many of those persons who currently hold retail licenses
20 have not only provided the services to the public contemplated
21 by this article, but in many instances have provided employ-
22 ment and otherwise made substantial contributions to the
23 economic and civic development of the communities in which
24 they conduct business, and therefore, current licensees should
25 be afforded special consideration if their bids for the licenses
26 issued for the ten-year period beginning the first day of July,
27 two thousand, be unsuccessful;

28 (5) Those persons who are issued a retail license for the ten-
29 year period beginning on the first day of July, two thousand,
30 and for any ten-year period thereafter should also be afforded
31 special consideration if their bids for a retail license are
32 unsuccessful; and

33 (6) Further statutory changes are desirable to effect the
34 purposes set forth in subsection (b), section two of this article.

35 (b) It is, therefore, the further purposes of the Legislature in
36 providing for the retail sale of liquor to:

37 (1) Require that all licenses issued for the ten-year period
38 beginning the first day of July, two thousand, and for each ten-
39 year period thereafter be based on sealed competitive bids;

40 (2) Provide current licensees who, having bid in the manner
41 required by the provisions of this article, fail to submit the
42 highest bid for licenses issued for the ten-year period beginning

43 the first day of July, two thousand, and for each ten-year period
44 thereafter an additional opportunity to obtain the license; and

45 (3) Effect statutory changes to further the purposes pro-
46 vided in this section and section two of this article.

**§60-3A-3. Sale of liquor by retail licensees permitted; cessation of
retail sale of liquor by state.**

1 (a) Notwithstanding any provision of this code to the
2 contrary, the sale of liquor by retail licensees in accordance
3 with the provisions of this article is lawful.

4 (b) Upon the opening of a retail outlet in any market zone,
5 the state shall, as soon as practicable, discontinue operating any
6 and all state liquor stores and agency stores within the market
7 zone so long as a retail outlet is in operation in the market zone.

8 (c) No provision of this section shall prevent the commis-
9 sioner, with the consent of the board, from operating a state
10 liquor store in a market zone pursuant to the provisions of
11 article three of this chapter where there are no retail outlets in
12 operation, and the operation of any retail outlet in the market
13 zone is prevented by a matter in controversy pending judicial
14 adjudication or the licensee is unable or unwilling to open a
15 retail outlet: *Provided*, That, the board determines that the
16 resolution of the controversy will continue for such duration
17 that the opening of a state liquor store is necessary to meet
18 reasonable consumer concerns of availability of liquor.

§60-3A-4. Definitions.

1 (a) "Applicant" means any person who bids for a retail
2 license, or who seeks the commissioner's approval to purchase
3 or otherwise acquire a retail license from a retail licensee, in
4 accordance with the provisions of this article.

5 (b) "Application" means the form prescribed by the
6 commissioner which must be filed with the commissioner by
7 any person bidding for a retail license.

8 (c) "Board" means the retail liquor licensing board created
9 by this article.

10 (d) "Class A retail license" means a retail license permitting
11 the retail sale of liquor at more than one retail outlet.

12 (e) "Class B retail license" means a retail license permitting
13 the sale of liquor at only one retail outlet.

14 (f) "Current licensee" means a person who holds a retail
15 license at the time of the reenactment of this section in the year
16 one thousand nine hundred ninety-nine or that person's succes-
17 sor or any person who holds a retail license when it expires at
18 the end of a ten-year period.

19 (g) "Designated areas" means one or more geographic areas
20 within a market zone designated as such by the board.

21 (h) "Executive officer" means the president or other
22 principal officer, partner or member of an applicant or retail
23 licensee, any vice president or other principal officer, partner or
24 member of an applicant or retail licensee in charge of a princi-
25 pal business unit or division, or any other officer, partner or
26 member of an applicant or retail licensee who performs a
27 policy-making function.

28 (i) "Liquor" means alcoholic liquor as defined in section
29 five, article one of this chapter, and also includes both wine and
30 fortified wines as those terms are defined in section two, article
31 eight of this chapter.

32 (j) "Market zone" means a geographic area designated as
33 such by the board for the purpose of issuing retail licenses.

34 (k) "Person" means an individual, firm, corporation,
35 association, partnership, limited partnership, limited liability
36 company or other entity, regardless of its form, structure or
37 nature.

38 (l) "Retail license" means a license issued under the
39 provisions of this article permitting the sale of liquor at retail.

40 (m) "Retail licensee" means the holder of a retail license.

41 (n) "Retail outlet" means a specific location where liquor
42 may be lawfully sold by a retail licensee under the provisions
43 of this article.

§60-3A-5. Creation of retail liquor licensing board; members, terms, meetings and officers; general provisions.

1 (a) There is hereby continued the state retail liquor licens-
2 ing board which shall be composed of five members, three of
3 whom shall be appointed by the governor by and with the
4 advice and consent of the Senate, one of whom shall be the
5 secretary of tax and revenue, and one of whom shall be the
6 commissioner. The secretary of tax and revenue and the
7 commissioner shall serve as the chairman and secretary,
8 respectively, of the board. No more than two of the three
9 members appointed by the governor shall be of the same
10 political party. No member of the board may hold a retail
11 license or have any financial interest, directly or indirectly, in
12 any retail licensee.

13 (b) The provisions of this subsection apply to the three
14 members appointed by the governor. They shall be appointed
15 for overlapping terms of three years each and until their
16 respective successors have been appointed and have qualified.
17 Members may be reappointed for any number of terms. Before
18 entering upon the performance of his or her duties, each
19 member shall take and subscribe to the oath required by Section
20 5, Article IV of the constitution of this state. Vacancies shall be
21 filled by appointment by the governor for the unexpired term of
22 the member whose office is vacant and the appointment shall be
23 made within sixty days of the occurrence of the vacancy. Any
24 member may be removed by the governor in case of incompe-
25 tency, neglect of duty, gross immorality or malfeasance in
26 office. Members shall receive compensation of one hundred
27 dollars per day for each day actually engaged in the perfor-
28 mance of their duties as board members, and in addition shall
29 be reimbursed for all reasonable and necessary expenses
30 actually incurred in the performance of their duties. Appoint-
31 ments to fill vacancies made after the amendment to this section
32 made in one thousand nine hundred ninety-nine shall be made
33 to provide that after the next two appointments, and thereafter,
34 there is a member from each of the congressional districts of
35 this state as delineated in accordance with section three, article
36 two, chapter one of this code.

37 (c) A majority of the members of the board constitutes a
38 quorum and meetings shall be held at the call of the chairman.

39 (d) Staff, office facilities and costs of operation of the board
40 shall be provided by the commissioner.

§60-3A-6. General powers and duties of board and commissioner.

1 (a) The board shall create, based on economic and demo-
2 graphic factors, market zones within the state for the issuance
3 of Class A and Class B retail licenses, and, if deemed necessary
4 or desirable by the board, to create one or more designated
5 areas within such market zones for the issuance of Class B
6 retail licenses.

7 (b) The commissioner shall:

8 (1) Prescribe application forms for persons desiring to
9 acquire retail licenses and adopt an orderly procedure and
10 timetable for investigating, processing and approving applica-
11 tions;

12 (2) Develop a form of retail license to be issued to each
13 retail licensee under the provisions of this article;

14 (3) Disseminate to the public information relating to the
15 issuance of retail licenses;

16 (4) Promulgate standards for advertising the sale, availabil-
17 ity, price and selection of liquor;

18 (5) Set minimum standards for retail outlets regarding the
19 amount and variety of alcoholic liquors which they must offer
20 for sale at each retail outlet;

21 (6) Enforce the provisions of this article;

22 (7) Impose civil penalties upon retail licensees;

23 (8) Enter the retail outlet of any retail licensee at reasonable
24 times for the purpose of inspecting the same, and determining
25 the compliance of such retail licensee with the provisions of
26 this article and any rules promulgated by the board or the
27 commissioner pursuant to the provisions of this article; and

28 (9) Issue subpoenas and subpoenas duces tecum for the
29 purpose of conducting hearings under the provisions of section
30 twenty-six or section twenty-eight of this article, which
31 subpoenas and subpoenas duces tecum shall be issued in the
32 time, for the fees, and shall be enforced in the manner specified
33 in section one, article five, chapter twenty-nine-a of this code
34 with like effect as if such section was set forth in extenso
35 herein.

36 (c) The board and the commissioner shall each:

37 (1) Engage accounting, legal and other necessary profes-
38 sional consultants to assist them in carrying out their respective
39 duties under this article; and

40 (2) Adopt, amend, or repeal such procedural, interpretive
41 and legislative rules, consistent with the policy and objectives
42 of this article, as they may deem necessary or desirable for the
43 public interest in carrying out the provisions of this article.
44 Such rules shall be adopted, amended and repealed in accor-
45 dance with the provisions of chapter twenty-nine-a of this code.

§60-3A-7. Market zones; Class A and Class B retail licenses.

1 (a) The market zones established by the board for the retail
2 sale of liquor within this state under the enactment of this
3 section in one thousand nine hundred ninety may not be
4 modified by the board unless authorized by the Legislature. For
5 each market zone established, the commissioner may issue one
6 Class A retail license and one or more Class B retail licenses.
7 Each Class A retail license shall permit the holder of the license
8 to operate the number of retail outlets the board authorized for
9 that market zone. The number of Class B retail licenses to be
10 issued by the commissioner within each market zone shall not
11 exceed fifty percent of the number of retail outlets authorized
12 for the Class A retail license for that market zone, except as
13 otherwise authorized by subsection (e) of this section or section
14 twenty-seven-a of this article: *Provided, That, except as*
15 *authorized by subsection (e) of this section or section twenty-*
16 *seven-a of this article, in a market zone where the number of*
17 *retail outlets authorized under the Class A retail license is an*

18 odd number, the number of Class B retail licenses which may
19 be issued in that market zone shall be rounded up to the next
20 highest whole number following that number which is equal to
21 fifty percent of the number of retail outlets authorized under the
22 Class A retail license.

23 (b) If the board determines that a market zone is not suited
24 for the issuance of a Class A retail license, then only Class B
25 retail licenses may be authorized for that market zone and the
26 board shall determine the maximum number of Class B retail
27 licenses which may be issued for that market zone.

28 (c) When authorizing Class B retail licenses for a market
29 zone, the board may create one or more designated areas within
30 the market zone and authorize one Class B retail license for
31 each designated area. For each market zone, the commissioner
32 may issue additional Class B retail licenses for retail outlets to
33 be located outside any designated area, but the number of
34 additional Class B retail licenses, when added to the total
35 number of Class B retail licenses issued for all designated areas
36 within the market zone, shall not exceed the maximum number
37 of Class B retail licenses permitted under subsection (a) of this
38 section for that market zone, except as authorized by subsection
39 (e) of this section or section twenty-seven-a of this article.

40 (d) A person may hold one or more Class A retail licenses
41 and one or more Class B retail licenses, but for the same market
42 zone no person shall hold a Class A retail license and a Class B
43 retail license or more than one Class B retail license.

44 (e) Notwithstanding any provision of subsection (a) or (c)
45 of this section, no later than sixty days prior to the receipt of the
46 bids described in section ten-b of this article, the board may
47 authorize the commissioner to issue an additional Class B
48 license in a market zone for the ten-year period which begins
49 next following first day of July, where the board determines
50 that:

51 (1) Each outlet authorized to operate in the market zone has
52 been open and in operation for not less than one year;

53 (2) Changes in economic and demographic factors, includ-
54 ing substantial population increases within the market zone,
55 clearly demonstrate the need for an additional retail outlet or
56 outlets within the market area to meet an increase in consumer
57 demand; and

58 (3) The issuance of an additional Class B license in the
59 market zone will not significantly impair the efforts to procure
60 the revenues described in subsection (b), section ten-b of this
61 article.

62 (f) The board shall establish the minimum bid for any
63 additional Class B licenses authorized under subsection (e) of
64 this section.

65 (g) No person may hold a combination of licenses that, in
66 the aggregate, authorizes the operation of more than twenty-five
67 percent of the total number of retail outlets authorized under the
68 provisions of this article to operate in this state.

**§60-3A-8. Retail license application requirements; retail licensee
qualifications.**

1 (a) Prior to or simultaneously with the submission of a bid
2 for a retail license, each applicant shall file an application with
3 the commissioner, stating under oath the following:

4 (1) If the applicant is an individual, his or her name and
5 residence address;

6 (2) If the applicant is other than an individual, the name and
7 business address of the applicant; the state of its incorporation
8 or organization; the names and residence addresses of each
9 executive officer and other principal officer, partner or member
10 of the entity; a copy of the entity's charter or other agreement
11 under which the entity operates; and the names and residence
12 addresses of any person owning, directly or indirectly, at least
13 twenty percent of the outstanding stock, partnership, or other
14 interests in the applicant; and

15 (3) That the applicant has never been convicted in this state
16 or any other state of any felony or other crime involving moral
17 turpitude or convicted of any felony in this or any other state

18 court or any federal court for a violation of any state or federal
19 liquor law, and if the applicant is other than an individual, that
20 none of its executive officers, other principal officers, partners
21 or members, or any person owning, directly or indirectly, at
22 least twenty percent of the outstanding stock, partnership, or
23 other interests in the applicant, has been convicted.

24 (b) An applicant shall provide the commissioner any
25 additional information requested by the commissioner.

26 (c) Whenever a change occurs in any information provided
27 to the commissioner, the change shall immediately be reported
28 to the commissioner in the same manner as originally provided.

29 (d) The commissioner shall disqualify each bid submitted
30 by an applicant under section ten of this article, and no appli-
31 cant shall be issued or eligible to hold a retail license under this
32 article, if:

33 (1) The applicant has been convicted in this state of any
34 felony or other crime involving moral turpitude or convicted of
35 any felony in this or any other state court or any federal court
36 for a violation of any state or federal liquor law; or

37 (2) Any executive officer or other principal officer, partner
38 or member of the applicant, or any person owning, directly or
39 indirectly, at least twenty percent of the outstanding stock,
40 partnership, or other interests in the applicant, has been
41 convicted in this state of any felony or other crime involving
42 moral turpitude or convicted of any felony in this or any other
43 state court or any federal court for a violation of any state or
44 federal liquor law.

45 (e) The commissioner shall not issue a retail license to an
46 applicant which does not hold a license issued pursuant to
47 federal law to sell liquor at wholesale.

§60-3A-10. Bidding procedure.

1 (a) Except as provided in section ten-b of this article, bids
2 for licenses shall be governed by the provisions of this section.

3 (b) The issuance of retail licenses shall be based on sealed
4 competitive bids in accordance with the provisions of this

5 section. Bids for the issuance of retail licenses shall be obtained
6 by public notice published as a Class II-0 legal advertisement
7 in compliance with the provisions of article three, chapter
8 fifty-nine of this code, and the publication area for the publica-
9 tion shall be each market zone within which a retail outlet shall
10 be located. The second publication of the notice shall appear
11 more than sixty days next preceding the final day for submitting
12 bids.

13 (c) Each bid shall indicate the market zone for which the
14 retail license is sought, whether the bid is for a Class A retail
15 license or Class B retail license, and, if the board has created
16 one or more designated areas for the market zone, whether the
17 bid is for the Class B retail license to be issued for any desig-
18 nated area. No bid shall be altered or withdrawn after the
19 appointed hour for the opening of the bids. Subject to the
20 provisions of section ten-b of this article, each retail license
21 shall be awarded to the highest bidder. In market zones where
22 two or more Class B retail licenses are authorized (other than
23 for a designated area or areas), the licenses shall be awarded to
24 those persons submitting the highest bids. No bid shall be
25 considered unless the bond required under section eleven of this
26 article is submitted to the commissioner. All bids for a retail
27 license may be rejected by the board if the board determines
28 that the highest bid is inadequate, in which event the commis-
29 sioner shall begin anew the bidding process for that retail
30 license.

31 (d) Each person desiring to submit a bid shall file the bid
32 with the commissioner prior to the specified date and hour for
33 the bid openings. The failure to deliver or the nonreceipt of a
34 bid prior to the appointed date and hour constitutes sufficient
35 reason for the rejection of a bid. After the award of the retail
36 license, the commissioner shall indicate upon the successful bid
37 that it was the successful bid. Thereafter, a copy of the bid and
38 the bidder's application shall be maintained as a public record,
39 shall be open to public inspection in the commissioner's office
40 and shall not be destroyed without the written consent of the
41 legislative auditor.

42 (e) Prior to the issuance of the retail license to the success-
43 ful bidder, the bid price and the annual retail license fee, as
44 specified in section twelve of this article, shall be paid to the
45 commissioner by money order, certified check or cashier's
46 check. All retail licenses shall be signed by the commissioner
47 in the name of the state.

48 (f) If the successful bidder fails to pay to the commissioner
49 the bid price and the annual retail license fee, at the time
50 specified by the commissioner, the bond provided for in section
51 eleven of this article shall be forfeited and the bidder shall not
52 be issued the retail license. The commissioner shall then issue
53 the retail license to the next highest bidder for the retail license
54 or reject all bids and start anew the bidding procedure for the
55 retail license.

§60-3A-10a. Preference for resident bidders.

1 In determining the highest bidder for purposes of section
2 ten of this article, the board shall afford a five percent prefer-
3 ence for West Virginia resident bidders, which shall be com-
4 puted by adding five percent of the bid price to the bid price
5 submitted by each resident bidder. For purposes of this section
6 a bidder shall be considered to be a West Virginia resident if the
7 bidder: (1) Has resided in this state for at least four years
8 immediately prior to the date on which the bid is opened; or, if
9 the bidder is an applicant other than an individual, has had its
10 headquarters or principal place of business in this state for at
11 least four years immediately prior to that date; and (2) meets the
12 requirements set forth in section forty-four, article three,
13 chapter five-a of this code relating to a residency of vendors,
14 except for the requirement of having paid business and occupa-
15 tion taxes.

**§60-3A-10b. Bidding procedure for licenses issued for the ten-
year period beginning July 1, 2000, and licenses
issued for each ten-year period thereafter.**

1 (a) The issuance of Class A licenses and Class B licenses
2 for the ten-year period beginning the first day of July, two
3 thousand, and for each ten-year period thereafter, shall be based

4 upon sealed competitive bid in accordance with the provisions
5 of section ten of this article except as provided in this section.

6 (b) Prior to accepting bids for Class A licenses and Class B
7 licenses to be issued for the ten-year period beginning the first
8 day of July, two thousand, the board shall determine the
9 minimum bid for each license based upon a review of the sales
10 at each retail outlet permitted to operate under the license and
11 such other factors as the board may determine to generate the
12 revenues from liquor license renewal projected by the gover-
13 nor's official revenue estimates for fiscal year two thousand as
14 presented to the regular session of the Legislature in the year
15 one thousand nine hundred ninety-nine.

16 (c) Prior to accepting bids for Class A licenses and Class B
17 licenses to be issued for the ten-year periods beginning the first
18 day of July, two thousand ten, and the first day of July every
19 ten-years thereafter, the board shall determine the minimum bid
20 for each license based upon a review of the sales at each retail
21 outlet permitted to operate under the license and such other
22 factors as the board may determine to generate the revenues
23 from liquor license renewal projected by the governor's official
24 revenue estimates for the fiscal year preceding the expiration of
25 the retail licenses.

26 (d) All bids for a retail license for the ten-year period
27 beginning the first day of July, two thousand, or for any ten-
28 year period thereafter may be rejected by the board if the board
29 determines that the highest bid fails to meet the minimum bid.
30 The board may also reject any or all bids for a market zone
31 where, in the aggregate, the bids for all of the retail licenses in
32 the market zone fail to meet the minimum aggregate bid for that
33 market zone. Where the board determines the highest bid meets
34 or exceeds the minimum bid, the board shall determine
35 whether, at the time of the bid, the same retail license was held
36 for the period ending the thirtieth day of June, two thousand, or
37 for any ten-year period thereafter, on the thirtieth day of June
38 preceding the expiration of the license. If the current licensee
39 holding the same retail license at the time of submission of the
40 bid for the period ending the thirtieth day of June, two thou-
41 sand, or for any ten-year period thereafter, on the thirtieth day

42 of June preceding the expiration of the retail license, submitted
43 a bid that was not less than the minimum bid and is, after
44 considering any preference applicable under the provisions of
45 section ten-a of this article, an unsuccessful bidder for the
46 license for the period beginning the first day of July, two
47 thousand, or for any ten-year period thereafter, on the first day
48 of July when the retail license expires, the commissioner shall
49 notify the person that upon paying the amount of the highest
50 bid, subject to the provisions of subsection (e) of this section,
51 and upon compliance with all other requirements imposed by
52 the provisions of this article for the issuance of the license, the
53 retail license for the ten-year period beginning the first day of
54 July, two thousand, or for any ten-year period thereafter, shall
55 be issued to the current licensee. If, within the time determined
56 by the commissioner, the current licensee pays the amount to
57 the commissioner and complies with all other requirements
58 imposed by the provisions of this article for the issuance of the
59 license, the retail license for the ten-year period beginning the
60 first day of July, two thousand, or for any ten-year period
61 thereafter, shall be issued to the current licensee.

62 (e) The board shall, in determining the amount a current
63 licensee who is an unsuccessful bidder shall pay as described in
64 subsection (d) of this section, afford the unsuccessful bidder a
65 preference. If the unsuccessful bidder is a West Virginia
66 resident as defined in section ten-a of this article, the board
67 shall afford the unsuccessful bidder a five percent preference in
68 addition to the five percent preference afforded under section
69 ten-a of this article. If the unsuccessful bidder is not a West
70 Virginia resident, the board shall afford the unsuccessful bidder
71 a five percent preference. The preference shall be computed by
72 subtracting the preference percentage of the highest bid price
73 from the highest bid price: *Provided*, That under no circum-
74 stances may the preference bring the price of the bid below the
75 minimum bid established by the board: *Provided, however*,
76 That a current licensee who is not operating any of the retail
77 outlets for which he or she is authorized under the license is not
78 eligible for the preference provided for under this section.

79 (f) In the event all bids submitted for a license fail to meet
80 the minimum bid amount for the license as determined by the

81 board, the board may offer the license for bid again after it
82 determines a new minimum bid amount for the license.

§60-3A-10c. Criminal penalties for unlawful inducement.

1 (a) Any person who gives another person any thing of value
2 to induce the other to refrain from bidding for a retail license is
3 guilty of a misdemeanor and, upon conviction, shall be fined
4 not more than ten thousand dollars, and, in addition, shall be
5 subject to a civil penalty payable to the commissioner of not
6 more than one million dollars.

7 (b) Any person who gives a person any thing of value to
8 induce the other to refrain from operating an outlet authorized
9 under a retail license is guilty of a misdemeanor and, upon
10 conviction, shall be fined not more than ten thousand dollars,
11 and, in addition, shall be subject to a civil penalty payable to the
12 commissioner of not more than one million dollars.

**§60-3A-12. Annual retail license fee; expiration and renewal of
retail licenses.**

1 (a) The annual retail license period is from the first day of
2 July to the thirtieth day of June of the following year. The
3 annual retail license fee for a Class A retail license is the sum
4 obtained by multiplying the number of retail outlets operated by
5 the retail licensee in the market zone to which the Class A retail
6 license applies by one thousand dollars. The annual retail
7 license fee for a Class B retail license is one thousand dollars.
8 The annual retail license fee for the initial year of issuance shall
9 be prorated based on the number of days remaining between the
10 date of issuance and the following thirtieth day of June.

11 (b) All retail licenses expire on the thirtieth day of June of
12 each year and may be renewed only upon the submission to the
13 commissioner of the same information required for the issuance
14 of the license and any additional information requested by the
15 commissioner on the forms and by the date prescribed by the
16 commissioner, together with the payment to the commissioner
17 of the applicable annual retail license fee required under this
18 section.

19 (c) No person may sell liquor at any retail outlet if the retail
20 license applicable to the outlet has been suspended or revoked,
21 or has expired.

22 (d) All retail licenses issued or renewed under the provi-
23 sions of this article for the period ending the thirtieth day of
24 June, two thousand, or on the thirtieth day of June for any ten-
25 year period thereafter, expire and are of no further force or
26 effect as of the first day of July, in the year two thousand, or as
27 of the first day of July every ten years thereafter.

28 (e) Notwithstanding any provision of section eighteen,
29 article four of this chapter to the contrary, a municipality may
30 invoke the authority granted by section four, article thirteen,
31 chapter eight of this code to require an annual license from each
32 retail licensee and require payment for the license in amounts
33 not to exceed the amounts provided in subsection (a) of this
34 section.

**§60-3A-17. Wholesale prices set by commissioner; retail licensees
to purchase liquor from state; transportation and
storage; method of payment.**

1 (a) The commissioner shall fix wholesale prices for the sale
2 of liquor, other than wine, to retail licensees. The commissioner
3 shall sell liquor, other than wine, to retail licensees according
4 to a uniform pricing schedule. The commissioner shall obtain
5 if possible, upon request, any liquor requested by a retail
6 licensee.

7 (b) Wholesale prices shall be established in order to yield
8 a net profit for the general fund of not less than six million five
9 hundred thousand dollars annually on an annual volume of
10 business equal to the average for the past three years. The net
11 revenue derived from the sale of alcoholic liquors shall be
12 deposited into the general revenue fund in the manner provided
13 in section seventeen, article three of this chapter.

14 (c) The commissioner shall specify the maximum wholesale
15 markup percentage which may be applied to the prices paid by
16 the commissioner for all liquor, other than wine, in order to
17 determine the prices at which all liquor, other than wine, will be

18 sold to retail licensees. A retail licensee shall purchase all
19 liquor, other than wine, for resale in this state only from the
20 commissioner, and the provisions of sections twelve and
21 thirteen, article six of this chapter shall not apply to the
22 transportation of the liquor: *Provided*, That a retail licensee
23 shall purchase wine from a wine distributor who is duly
24 licensed under article eight of this chapter. All liquor, other
25 than wine, purchased by retail licensees shall be stored in the
26 state at the retail outlet or outlets operated by the retail licensee:
27 *Provided, however*, That the commissioner, in his or her
28 discretion, may upon written request permit a retail licensee to
29 store liquor at a site other than the retail outlet or outlets.

30 (d) The sale of liquor by the commissioner to retail licens-
31 ees shall be paid by electronic funds transfer which shall be
32 initiated by the commissioner on the business day following the
33 retail licensees order or by money order, certified check or
34 cashier's check which shall be received by the commissioner at
35 least twenty-four hours prior to the shipping of the alcoholic
36 liquors: *Provided*, That if a retail licensee posts with the
37 commissioner an irrevocable letter of credit or bond with surety
38 acceptable to the commissioner from a financial institution
39 acceptable to the commissioner guaranteeing payment of
40 checks, then the commissioner may accept the retail licensee's
41 checks in an amount up to the amount of the letter of credit.

42 (e)(1) A retail licensee may not sell liquor to persons
43 licensed under the provisions of article seven of this chapter at
44 less than one hundred ten percent of the retail licensee's cost as
45 defined in section six, article eleven-a, chapter forty-seven of
46 this code.

47 (2) A retail licensee may not sell liquor to the general
48 public at less than one hundred ten percent of the retail
49 licensee's cost as defined in section six, article eleven-a,
50 chapter forty-seven of this code.

**§60-3A-27a. Revocation of license or reduction of authority to
operate retail outlet for failure to operate retail
outlet.**

1 (a)(1) The commissioner may revoke a Class A retail
2 license if the licensee fails to operate at least one of the retail
3 outlets authorized under the license. The commissioner may
4 revoke a Class B retail license if the licensee fails to operate the
5 retail outlet authorized under the license.

6 (2) The commissioner may not accept the bid of a person
7 who has had a license revoked pursuant to subdivision (1) of
8 this subsection when the license is offered for bid following the
9 revocation.

10 (b)(1) Where a person operates at least one of the retail
11 outlets authorized under a Class A license, but fails to operate
12 the full number of retail outlets authorized under the license, the
13 commissioner may reduce the number of retail outlets the
14 person is authorized to operate under the license by the number
15 that is not being operated.

16 (2) Notwithstanding any provision of section seven of this
17 article to the contrary, the board may authorize the commis-
18 sioner to issue, subject to the bid requirements of section ten of
19 this article, a Class B license in the stead of each retail outlet
20 for which authority to operate under a Class A license has been
21 reduced under subdivision (1) of this subsection.

22 (3) The commissioner may not accept the bid of a person
23 who has had the number of retail outlets authorized under a
24 license reduced pursuant to subdivision (1) of this subsection
25 for any Class B license issued in the stead of a retail outlet
26 previously authorized under the reduced license.

27 (c) The board shall propose legislative rules for promulga-
28 tion pursuant to the provisions of article three, chapter twenty-
29 nine-a of this code prescribing the criteria under which the
30 commissioner is to determine whether a retail licensee has
31 failed to operate an outlet.

32 (d) A revocation or reduction under this section is subject
33 to the provisions for notice, hearing and review prescribed in
34 section twenty-eight of this article.

**§60-3A-29. Disposition of inventory upon revocation or surrender
of retail license.**

1 In the event of the revocation, expiration or surrender of
2 any retail license in accordance with the provisions of this
3 article, the commissioner may, in his or her discretion, pur-
4 chase, or authorize another person to purchase, all or any
5 portion of the liquor inventory of the retail licensee. If the
6 commissioner elects to purchase, or authorizes another person
7 to purchase, the inventory or any portion of the inventory, the
8 retail licensee shall sell the inventory as directed by, and upon
9 terms determined by, the commissioner.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

**§60-7-11. Licensee must purchase alcoholic liquors from or
through commissioner or retail licensee; excep-
tions.**

1 (a)(1) All licensees shall purchase all alcoholic liquors sold
2 by them from the West Virginia alcohol beverage control
3 commissioner at prices established by the commissioner for
4 sales of the alcoholic liquors to the public generally or from any
5 retail licensee licensed under the provisions of article three-a of
6 this chapter, except that the licensees may purchase those wines
7 permitted to be sold at retail pursuant to article eight of this
8 chapter from those distributors licensed pursuant to said article
9 at the same prices the distributors sell the wines to retailers
10 licensed pursuant to said article.

11 (2) A licensee may by contract approved by the commis-
12 sioner receive deliveries of alcoholic liquor from a retail liquor
13 store, and the provisions of sections twelve and thirteen, article
14 six of this chapter shall not apply to the transportation of that
15 alcoholic liquor.

16 (b) In all reports filed under section sixteen, article fifteen,
17 chapter eleven of this code, retail licensees licensed under the
18 provisions of article three-a of this chapter shall separately
19 identify the amount of sales tax on sales of liquor to licensees
20 in the manner required by the tax commissioner.

21 (c) Notwithstanding the provisions of section thirty, article
22 fifteen, chapter eleven of this code to the contrary, the amount
23 of the sales taxes collected by the tax commissioner shall be

24 deposited in a revolving fund account in the state treasurer's
 25 office, designated the "drunk driving prevention fund", and
 26 administered by the commission on drunk driving prevention,
 27 subject to appropriations by the Legislature.

CHAPTER 6

(Com. Sub. for H. B. 2790 — By Delegates Kelley,
 Boggs, Yeager, Williams and Willis)

[Passed March 13, 1999; in effect ninety days from passage.]

AN ACT to amend and reenact section nine-a, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring confinement and vaccination or revaccination of any domestic animal bitten by a rabid animal; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That section nine-a, 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.

§19-20-9a. Dogs, cats, etc.; rabies observation.

- 1 (a) Any person who owns or harbors any dog, cat or other
 2 domesticated animal, whether licensed or unlicensed, which
 3 bites any person, shall forthwith confine and quarantine the
 4 animal for a period of ten days for rabies observation.
- 5 (b) If any unvaccinated domesticated animal is bitten by a
 6 rabid animal, the owner shall confine the bitten animal for a
 7 period of six months. The animal shall be vaccinated or
 8 revaccinated after five months.
- 9 (c) If the animal is not confined and quarantined as directed
 10 in subsections (a) and (b) of this section, the humane officer,

11 dog warden or sheriff may cause the animal to be placed in the
 12 custody and care of a licensed veterinarian for that purpose at
 13 the owner's expense. The penalty for any violation of this
 14 section is a fine of fifty dollars or confinement in the county or
 15 regional jail for a period of no less than two nor more than three
 16 days.

CHAPTER 7

(Com. Sub. for H. B. 2200 — By Mr. Speaker, Mr. Kliss, and Delegate Trump)
 [By Request of the Executive]

[Passed March 21, 1999; 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 constitu-
 tion.

Be it enacted by the Legislature of West Virginia:

Title

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

TITLE I—GENERAL PROVISIONS.

TITLE I—GENERAL PROVISIONS.

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

1 **Sec. 1. General policy.**—The purpose of this bill is to
 2 appropriate money necessary for the economical and efficient
 3 discharge of the duties and responsibilities of the state and its
 4 agencies during the fiscal year two thousand.

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

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

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

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

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

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

16 “Special revenue funds” shall mean specific revenue
17 sources which by legislative enactments are not required to be
18 accounted for as general revenue, including federal funds.

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

1 **Sec. 3. Classification of appropriations.**—An appropria-
2 tion 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 or
6 contractual payments paid to consultants or to independent
7 contractors engaged by the spending unit.

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

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

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

16 “Employee benefits” shall mean social security matching,
17 workers’ compensation, unemployment compensation, pension
18 and retirement contributions, public employees insurance
19 matching, personnel fees or any other benefit normally paid by
20 the employer as a direct cost of employment. Should the
21 appropriation be insufficient to cover such costs, the remainder
22 of such cost shall be transferred by each spending unit from its
23 “personal services” line item or its “unclassified” line item to
24 its “employee benefits” line item. If there is no appropriation
25 for “employee benefits,” such costs shall be paid by each
26 spending unit from its “personal services” line item, its
27 “unclassified” line item or other appropriate line item. Each
28 spending unit is hereby authorized and required to make such
29 payments in accordance with the provisions of article two,
30 chapter five-a of the code.

31 Each spending unit shall be responsible for all contribu-
32 tions, payments or other costs related to coverage and claims of
33 its employees for unemployment compensation. Such expendi-
34 tures shall be considered an employee benefit.

35 “Current expenses” shall mean operating costs other than
36 personal services and shall not include equipment, repairs and
37 alterations, buildings or lands.

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

42 “Equipment” shall mean equipment items which have an
43 appreciable and calculable period of usefulness in excess of one
44 year.

45 “Repairs and alterations” shall mean routine maintenance
46 and repairs to structures and minor improvements to property
47 which do not increase the capital assets.

48 “Buildings” shall include new construction and major
49 alteration of existing structures and the improvement of lands
50 and shall include shelter, support, storage, protection or the
51 improvement of a natural condition.

52 “Lands” shall mean the purchase of real property or interest
53 in real property.

54 “Capital outlay” shall mean and include buildings, lands or
55 buildings and lands, with such category or item of appropriation
56 to remain in effect as provided by section twelve, article three,
57 chapter twelve of the code.

58 From appropriations made to the spending units of state
59 government, upon approval of the governor there may be
60 transferred to a special account an amount sufficient to match
61 federal funds under any federal act.

62 Appropriations classified in any of the above categories
63 shall be expended only for the purposes as defined above and
64 only for the spending units herein designated: *Provided*, That
65 the secretary of each department shall have the authority to
66 transfer within the department those general revenue funds
67 appropriated to the various agencies of the department: *Pro-*
68 *vided, however*, That no more than five percent of the general
69 revenue funds appropriated to any one agency or board may be
70 transferred to other agencies or boards within the department:
71 *Provided further*, That the secretary of each department and the
72 director, commissioner, executive secretary, superintendent,
73 chairman or any other agency head not governed by a depart-
74 mental secretary as established by chapter five-f of the code
75 shall have the authority to transfer funds appropriated to
76 “personal services” and “employee benefits” to other lines

77 within the same account and no funds from other lines shall be
78 transferred to the "personal services" line: *And provided*
79 *further*, That upon written request of the speaker of the house
80 of delegates, the auditor shall transfer within the general
81 revenue fund amounts from the total appropriations of the
82 house of delegates to other agencies, boards or departments:
83 *And provided further*, That if the Legislature by subsequent
84 enactment consolidates agencies, boards or functions, the
85 secretary may transfer the funds formerly appropriated to such
86 agency, board or function in order to implement such consolida-
87 tion. No funds may be transferred from a special revenue
88 account, dedicated account, capital expenditure account or any
89 other account or fund specifically exempted by the Legislature
90 from transfer, except that the use of the appropriations from the
91 state road fund for the office of the secretary of the department
92 of transportation is not a use other than the purpose for which
93 such funds were dedicated and is permitted.

94 Appropriations otherwise classified shall be expended only
95 where the distribution of expenditures for different purposes
96 cannot well be determined in advance or it is necessary or
97 desirable to permit the spending unit the freedom to spend an
98 appropriation for more than one of the above classifications.

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

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

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

TITLE II—APPROPRIATIONS.

§1. Appropriations from general revenue.

BUREAU OF COMMERCE

Board of Coal Mine Health and Safety—Fund No. 0280	101
Coal Mine Safety and Technical Review Committee—Fund No. 0285	102
Division of Forestry—Fund No. 0250	97
Division of Labor—Fund No. 0260	100
Division of Miners' Health, Safety and Training—Fund No. 0277	101
Division of Natural Resources—Fund No. 0265	100
Geological and Economic Survey—Fund No. 0253	97
West Virginia Development Office—Fund No. 0256	98

BUREAU OF EMPLOYMENT PROGRAMS

Bureau of Employment Programs—Fund No. 0572	104
Claims Against the General Revenue Fund	104

BUREAU OF ENVIRONMENT

Air Quality Board—Fund No. 0550	103
Division of Environmental Protection—Fund No. 0273	102
Environmental Quality Board—Fund No. 0270	102
Interstate Commission on Potomac River Basin—Fund No. 0263	102
Ohio River Valley Water Sanitation Commission—Fund No. 0264	102

BUREAU OF SENIOR SERVICES

Bureau of Senior Services—Fund No. 0420	103
---	-----

DEPARTMENT OF ADMINISTRATION

Board of Risk and Insurance Management— Fund No. 0217	65
Commission on Uniform State Laws—Fund No. 0214	65
Committee for the Purchase of Commodities and Services from the Handicapped—Fund No. 0233	67
Consolidated Public Retirement Board—Fund No. 0195	62
Department of Administration—Office of the Secretary—Fund No. 0186	62
Division of Finance—Fund No. 0203	63
Division of General Services—Fund No. 0230	63
Division of Information Services and Communications— Fund No. 0583	63
Division of Purchasing—Fund No. 0210	64
Education and State Employees Grievance Board—Fund No. 0220	65
Ethics Commission—Fund No. 0223	66
Public Defender Services—Fund No. 0226	66

Public Employees Insurance Agency—Fund No. 0200	67
West Virginia Prosecuting Attorneys' Institute— Fund No. 0557	67
DEPARTMENT OF EDUCATION	
State Board of Education—Division of Educational Performance Audits—Fund No. 0573	72
State Board of Education—Vocational Division—Fund No. 0390	71
State Department of Education—Aid for Exceptional Children—Fund No. 0314	70
State Department of Education—Fund No. 0313	68
State Department of Education—School Lunch Program—Fund No. 0303	67
State Department of Education—State Aid to Schools—Fund No. 0317	71
State FFA-FHA Camp and Conference Center— Fund No. 0306	68
West Virginia Schools for the Deaf and the Blind—Fund No. 0320	72
DEPARTMENT OF EDUCATION AND THE ARTS	
Board of Directors of the State College System Control Account—Fund No. 0330	80
Board of Trustees of the University System of West Virginia and Board of Directors of the State College System Central Office—Fund No. 0333	76
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—Fund No. 0578	77
Board of Trustees of the University System of West Virginia Control Account—Fund No. 0327	77
Board of Trustees of the University System of West Virginia—University of West Virginia Health Sciences Account—Fund No. 0323	78
Department of Education and the Arts—Office of the Secretary—Fund No. 0294	73
Division of Culture and History—Fund No. 0293	74
Educational Broadcasting Authority—Fund No. 0300	76
Library Commission—Fund No. 0296	75
State Board of Rehabilitation—Division of Rehabilitation Services—Fund No. 0310	80
DEPARTMENT OF HEALTH AND HUMAN RESOURCES	
Consolidated Medical Service Fund—Fund No. 0525	83
Department of Health and Human Resources— Office of the Secretary—Fund No. 0400	81
Division of Health—Central Office—Fund No. 0407	81

Division of Health—West Virginia Drinking Water Treatment—Fund No. 0561	85
Division of Human Services—Fund No. 0403	85
Human Rights Commission—Fund No. 0416	85
DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY	
Adjutant General—State Militia—Fund No. 0433	87
Department of Military Affairs and Public Safety—Office of the Secretary—Fund No. 0430	87
Division of Corrections—Central Office—Fund No. 0446	89
Division of Corrections—Correctional Units—Fund No. 0450	89
Division of Criminal Justice Services—Fund No. 0546	93
Division of Juvenile Services—Fund No. 0570	93
Division of Protective Services	94
Division of Veterans Affairs—Fund No. 0456	91
Division of Veterans Affairs—Veterans Home—Fund No. 0460	92
Fire Commission—Fund No. 0436	93
Office of Emergency Services—Fund No. 0443	88
State Facilities Protection Division—Fund No. 0580	94
West Virginia Parole Board—Fund No. 0440	88
West Virginia State Police—Fund No. 0453	90
DEPARTMENT OF TAX AND REVENUE	
Department of Tax and Revenue—Office of the Secretary—Fund No. 0465	94
Division of Professional and Occupational Licenses—State Athletic Commission—Fund No. 0523	95
Tax Division—Fund No. 0470	94
DEPARTMENT OF TRANSPORTATION	
Aeronautics Commission—Fund No. 0582	97
Department of Transportation—Office of the Secretary—Fund No. 0500	95
Division of Public Transit—Fund No. 0510	96
Public Port Authority—Fund No. 0581	96
State Rail Authority—Fund No. 0506	96
EXECUTIVE	
Attorney General—Fund No. 0150	61
Auditor's Office—Family Law Masters Administration Fund—Fund No. 0117	57
Auditor's Office—General Administration—Fund No. 0116	57
Department of Agriculture—Fund No. 0131	58
Department of Agriculture—Agricultural Awards—Fund No. 0136	60
Department of Agriculture—Meat Inspection—Fund No. 0135	60
Department of Agriculture—State Soil Conservation Committee—Fund No. 0132	59
Governor's Office—Fund No. 0101	54

Governor's Office—Civil Contingent Fund— Fund No. 0105	56
Governor's Office—Custodial Fund—Fund No. 0102	55
Governor's Office—Governor's Cabinet on Children and Families—Fund No. 0104	55
Secretary of State—Fund No. 0155	61
State Election Commission—Fund No. 0160	62
Treasurer's Office—Fund No. 0126	57
JUDICIAL	
Supreme Court—General Judicial—Fund No. 0180	53
LEGISLATIVE	
House of Delegates—Fund No. 0170	51
Joint Expenses—Fund No. 0175	52
Senate—Fund No. 0165	49
§2. Appropriations from state road fund.	
DEPARTMENT OF TRANSPORTATION	
Claims Against the State Road Fund	106
Division of Highways—Fund No. 9017	105
Division of Highways—Federal Aid Highway Matching Fund—Fund No. 9018	106
Division of Motor Vehicles—Fund No. 9007	104
§3. Appropriations from other funds.	
BUREAU OF COMMERCE	
Division of Forestry—Fund No. 3081	134
Division of Forestry—Severance Tax Operations—Fund No. 3084	135
Division of Forestry—Timberland Enforcement Operations—Fund No. 3082	135
Division of Labor—Amusement Rides/Amusement Attraction Safety Fund—Fund No. 3192	137
Division of Labor—Contractor Licensing Board Fund—Fund No. 3187	136
Division of Labor—Crane Operator Certification Fund—Fund No. 3191	136
Division of Labor—Elevator Safety Act— Fund No. 3188	136
Division of Natural Resources—Fund No. 3200	137
Division of Natural Resources—Game, Fish and Aquatic Life Fund—Fund No. 3202	137
Division of Natural Resources—Nongame Fund— Fund No. 3203	138
Division of Natural Resources—Planning and Development Division—Fund No. 3205	138
Division of Natural Resources—Recycling Assistance Fund—Fund No. 3254	138
Division of Natural Resources—Whitewater Advertising and Promotion Fund—Fund No. 3256	141
Division of Natural Resources—Whitewater Study and Improvement Fund—Fund No. 3253	138

Geological and Economic Survey—Fund No. 3100	135
West Virginia Development Office—Energy Assistance— Fund No. 3144	135
BUREAU OF EMPLOYMENT PROGRAMS	
Bureau of Employment Programs—Workers' Compensation Fund—Fund No. 3440	139
BUREAU OF ENVIRONMENT	
Division of Environmental Protection—Environmental Laboratory Certification Fund—Fund No. 3340	143
Division of Environmental Protection—Fees and Operating Expenses—Fund No. 3336	143
Division of Environmental Protection— Hazardous Waste Emergency and Response Fund—Fund No. 3331	142
Division of Environmental Protection—Mines and Minerals Operations Fund—Fund No. 3324	141
Division of Environmental Protection—Mountaintop Removal Fund—Fund No. 3490	144
Division of Environmental Protection—Oil and Gas Operating Permits—Fund No. 3323	141
Division of Environmental Protection—Oil and Gas Reclamation Trust—Fund No. 3322	140
Division of Environmental Protection—Solid Waste Enforcement Fund—Fund No. 3333	142
Division of Environmental Protection—Solid Waste Reclamation and Environmental Response Fund—Fund No. 3332	142
Division of Environmental Protection—Special Reclamation Fund—Fund No. 3321	140
Division of Environmental Protection—Stream Restoration Fund—Fund No. 3349	143
Division of Environmental Protection— Underground Storage Tanks Administrative Fund—Fund No. 3325	141
Oil and Gas Conservation Commission—Fund No. 3371	144
Solid Waste Management Board—Fund No. 3288	140
DEPARTMENT OF ADMINISTRATION	
Division of Information Services and Communications—Fund No. 2220	112
Division of Personnel—Fund No. 2440	113
Division of Purchasing—Revolving Fund— Fund No. 2320	112
Office of the Secretary—Natural Gas Contract Refund Fund—Fund No. 2040	111
WV Prosecuting Attorneys' Institute—Fund No. 2521	114
DEPARTMENT OF EDUCATION	
State Board of Education—Strategic Staff Development— Fund No. 3937	114
State Department of Education—FFA-FHA Conference Center—Fund No. 3960	115
State Department of Education—School Building Authority—Fund No. 3959	114

DEPARTMENT OF EDUCATION AND THE ARTS

State College and University Systems—State System Registration Fee—Revenue Bond Construction Fund—Fund No. 4033	115
State College and University Systems—State Systems Tuition Fee—Revenue Bond Construction Fund—Fund No. 4041	115
State College System—State System Registration Fee—Special Capital Improvement Fund (Capital Improvement and Bond Retirement Fund) Control Account—Fund No. 4289	118
State College System—State System Tuition Fee—Special Capital Improvement Fund (Capital Improvement and Bond Retirement Fund) Control Account—Fund No. 4290	119
State University System—State System Registration Fee—Special Capital Improvement Fund (Capital Improvement and Bond Retirement Fund) Control Account—Fund No. 4007	116
State University System—State System Tuition Fee—Special Capital Improvement Fund (Capital Improvement and Bond Retirement Fund)—Control Account—Fund No. 4008	117
State University System—West Virginia University Health Sciences Center Spending Authority—Fund No. 4179	118
State Board of Rehabilitation—Division of Rehabilitation Services—West Virginia Rehabilitation Center—Special Account—Fund No. 8664	120

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Board of Barbers and Cosmetologists—Fund No. 5425	120
Division of Health—Health Facility Licensing—Fund No. 5172	122
Division of Health—Hepatitis B Vaccine—Fund No. 5183	123
Division of Health—Hospital Services Revenue Account (Special Fund) (Capital Improvement, Renovation and Operations)—Fund No. 5156	121
Division of Health—Laboratory Services—Fund No. 5163	122
Division of Health—Lead Abatement Fund—Fund No. 5204	123
Division of Health—Vital Statistics—Fund No. 5144	121
Division of Human Services—Child Support Enforcement—Fund No. 5094	124
Division of Human Services—Health Care Provider Tax—Fund No. 5090	124
Division of Human Services—Medical Services Trust Fund—Fund No. 5185	124
West Virginia Health Care Authority—Fund No. 5375	123

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

Criminal Justice Services—Court Security Fund—Fund No. 6804	128
Division of Veterans Affairs—Veterans Home—Fund No. 6754	127
Fire Commission—Fire Marshal Fees—Fund No. 6152	128
Regional Jail and Correctional Facility Authority—Fund No. 6675	127
State Armory Board—General Armory Fund— Fund No. 6102	125
West Virginia Division of Corrections—Parolee Supervision Fees—Fund No. 6362	125
West Virginia State Police—Central Abuse Registry Fund—Fund No. 6527	127
West Virginia State Police—Drunk Driving Prevention Fund—Fund No. 6513	126
West Virginia State Police—Motor Vehicle Inspection Fund—Fund No. 6501	126
West Virginia State Police—Surplus Real Property Proceeds Fund—Fund No. 6516	126
West Virginia State Police—Surplus Transfer Account— Fund No. 6519	127

DEPARTMENT OF TAX AND REVENUE

Alcohol Beverage Control Administration— Fund No. 7352	133
Alcohol Beverage Control Administration— Wine License Special Fund—Fund No. 7351	132
Division of Banking—Fund No. 3041	129
Division of Banking—Lending and Credit Rate Board—Fund No. 3040	128
Insurance Commissioner—Fund No. 7152	131
Insurance Commissioner—Consumer Advocate— Fund No. 7151	130
Insurance Commissioner—Examination Revolving Fund—Fund No. 7150	130
Racing Commission—Administration and Promotion—Fund No. 7304	131
Racing Commission—Administration, Promotion and Education Fund—Fund No. 7307	132
Racing Commission—General Administration— Fund No. 7305	132
Racing Commission—Relief Fund—Fund No. 7300	131
Tax Division—Cemetery Company Account— Fund No. 7071	129
Tax Division—Office of Chief Inspector— Fund No. 7067	129
Tax Division—Special Audit and Investigative Unit—Fund No. 7073	130

DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles—Driver Rehabilitation—Fund No. 8214	133
Division of Motor Vehicles—Driver's License Reinstatement Fund—Fund No. 8213	133

Division of Motor Vehicles—Insurance	
Certificate Fees—Fund No. 8215	134
Division of Motor Vehicles—Motorboat	
Licenses—Fund No. 8216	134
Division of Motor Vehicles—Returned Check	
Fees—Fund No. 8217	134
EXECUTIVE	
Attorney General—Anti-Trust Enforcement—	
Fund No. 1507	110
Attorney General—Preneed Funeral Guarantee Fund—	
Fund No. 1514	111
Attorney General—Preneed Funeral Regulation Fund—	
Fund No. 1513	111
Auditor's Office—Land Operating Fund—	
Fund No. 1206	108
Auditor's Office—Office of the Chief Inspector—	
Fund No. 1235	109
Auditor's Office—Purchasing Card Administration Fund—	
Fund No. 1234	109
Auditor's Office—Securities Regulation Fund—	
Fund No. 1225	108
Auditor's Office—Technology Support and Acquisition—	
Fund No. 1233	108
Chief Technology Officer Administration Fund—	
Fund No. 1028	107
Department of Agriculture—Fund No. 1401	109
Department of Agriculture—Farm Operating	
Fund—Fund No. 1412	110
Department of Agriculture—General John McCausland	
Memorial Farm—Fund No. 1409	110
Department of Agriculture—West Virginia Rural	
Rehabilitation Program—Fund No. 1408	110
Secretary of State—Trademark Registration—Fund	
No. 1610	111
Treasurer's Office—Technology Support and Acquisition—	
Fund No. 1329	109
LEGISLATIVE	
Crime Victims Compensation Fund—Fund	
No. 1731	107
MISCELLANEOUS BOARDS AND COMMISSIONS	
Claims Against Other Funds	148
Hospital Finance Authority—Fund No. 5475	144
Massage Therapy Licensure—Fund No. 8671	148
Municipal Bond Commission—Fund No. 7253	145
Public Service Commission—Fund No. 8623	145
Public Service Commission—Consumer Advocate—	
Fund No. 8627	147
Public Service Commission—Gas Pipeline	
Division—Fund No. 8624	146
Public Service Commission—Motor Carrier	
Division—Fund No. 8625	146
Real Estate Commission—Fund No. 8635	147
West Virginia Board of Examiners for Speech-	
Language Pathology and Audiology—Fund	
No. 8646	148

WV Board of Examiners for Registered Professional Nurses—Fund No. 8520	145
WV Board of Licensed Dietitians—Fund No. 8680	148
WV Board of Respiratory Care—Fund No. 8676	148
WV State Board of Examiners for Licensed Practical Nurses—Fund No. 8517	145

§4. Appropriations from lottery net profits.

Bureau of Senior Services—Fund No. 5405	154
Department of Education and the Arts—Board of Trustees of the University System of West Virginia and Board of Directors of the State College Systems—Central Office Control Account—Lottery Education Fund—Fund No. 4057	154
Department of Education and the Arts—Office of the Secretary—Fund No. 3505	151
Department of Education and the Arts—Office of the Secretary—Lottery Education Fund—Fund No. 3507	151
Department of Education and the Arts—Office of the Secretary—Control Account—Lottery Education Fund—Fund No. 3508	152
Division of Culture and History—Lottery Education Fund—Fund No. 3534	152
Division of Natural Resources—Fund No. 3267	150
Educational Broadcasting Authority—Lottery Education Fund—Fund No. 3587	153
Education, Arts, Sciences and Tourism Debt Service Fund—Fund No. 2252	149
Library Commission—Lottery Education Fund—Fund No. 3559	153
State Department of Education—Fund No. 3951	150
State Department of Education—School Building Authority—Debt Service Fund—Fund No. 3963	151
West Virginia Development Office—Division of Tourism—Fund No. 3067	149

§5. Appropriations of federal funds.

BUREAU OF COMMERCE	
Division of Forestry—Fund No. 8703	161
Division of Labor—Fund No. 8706	162
Division of Miners' Health, Safety and Training—Fund No. 8709	162
Division of Natural Resources—Fund No. 8707	162
Geological and Economic Survey—Fund No. 8704	162
West Virginia Development Office—Fund No. 8705	162
BUREAU OF EMPLOYMENT PROGRAMS	
Bureau of Employment Programs—Fund No. 8835	163
BUREAU OF ENVIRONMENT	
Division of Environmental Protection—Fund No. 8708	162

BUREAU OF SENIOR SERVICES	
Bureau of Senior Services—Fund No. 8724	163
DEPARTMENT OF ADMINISTRATION	
West Virginia Prosecuting Attorney's Institute— Fund No. 8834	157
DEPARTMENT OF EDUCATION	
State Board of Education—Vocational Division— Fund No. 8714	158
State Department of Education—Fund No. 8712	157
State Department of Education—Aid for Exceptional Children—Fund No. 8715	158
State Department of Education—School Lunch Program—Fund No. 8713	157
DEPARTMENT OF EDUCATION AND THE ARTS	
Division of Culture and History—Fund No. 8718	158
Educational Broadcasting Authority— Fund No. 8721	158
Library Commission—Fund No. 8720	158
State Board of Rehabilitation—Division of Rehabilitation Services—Fund No. 8734	158
DEPARTMENT OF HEALTH AND HUMAN RESOURCES	
Consolidated Medical Service Fund—Fund No. 8723	159
Division of Health—Central Office—Fund No. 8802	159
Division of Health—West Virginia Safe Drinking Water Treatment—Fund No. 8824	159
Division of Human Services—Fund No. 8722	159
Human Rights Commission—Fund No. 8725	159
DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY	
Adjutant General—State Militia—Fund No. 8726	160
Division of Criminal Justice Services—Fund No. 8803	160
Division of Veterans Affairs—Veterans Home—Fund No. 8728	160
Office of Emergency Services—Fund No. 8727	160
West Virginia State Police—Fund No. 8741	160
DEPARTMENT OF TAX AND REVENUE	
Tax Division—Fund No. 7069	160
DEPARTMENT OF TRANSPORTATION	
Aeronautics Commission—Fund No. 8831	161
Division of Motor Vehicles—Fund No. 8787	161
Division of Public Transit—Fund No. 8745	161
Public Port Authority—Fund No. 8830	161
State Rail Authority—Fund No. 8733	161
EXECUTIVE	
Auditor's Office—Fund No. 8807	157
Department of Agriculture—Fund No. 8736	157
Department of Agriculture—Meat Inspection— Fund No. 8737	157

Governor's Office—Governor's Cabinet on Children and Families—Fund No. 8792	156
Governor's Office—Office of Economic Opportunity—Fund No. 8797	156
Governor's Office—Commission for National and Community Service—Fund No. 8800	156
JUDICIAL	
Supreme Court—General Judicial—Fund No. 8805	156
LEGISLATIVE	
Crime Victims Compensation Fund—Fund No. 8738	153
MISCELLANEOUS BOARDS AND COMMISSIONS	
Public Service Commission—Gas Pipeline Division—Fund No. 8744	164
Public Service Commission—Motor Carrier Division—Fund No. 8743	163
§6. Appropriations from federal block grants.	
Bureau of Employment Programs—Job Training Partnership Act—Fund No. 8749	163
Division of Criminal Justice Services—Juvenile Accountability Incentive—Fund No. 8829	166
Division of Criminal Justice Services—Local Law Enforcement—Fund No. 8833	167
Division of Criminal Justice Services—Local Law Enforcement Training and Education Assistance—Fund No. 8832	166
Division of Health—Abstinence Education Program—Fund No. 8825	165
Division of Health—Community Mental Health Services—Fund No. 8794	165
Division of Health—Maternal and Child Health—Fund No. 8750	165
Division of Health—Preventive Health— Fund No. 8753	165
Division of Health—Substance Abuse Prevention and Treatment—Fund No. 8793	165
Division of Human Services—Child Care and Development—Fund No. 8756	165
Division of Human Services—Child Care and Development—Fund No. 8817	166
Division of Human Services—Empowerment Zone and Enterprise Community Program—Fund No. 8806	166
Division of Human Services—Energy Assistance—Fund No. 8755	165
Division of Human Services—Social Services— Fund No. 8757	166
Division of Human Services—Temporary Assistance Needy Families—Fund No. 8816	166
Governor's Office—Office of Economic Opportunity—Fund No. 8799	164
State Department of Education—Education Grant—Fund No. 8748	164
West Virginia Development Office—Community Development—Fund No. 8746	164

- §7. Awards for claims against the state.
- §8. Special revenue appropriations.
- §9. State improvement fund appropriations.
- §10. Specific funds and collection accounts.
- §11. Appropriations for refunding erroneous payment.
- §12. Sinking fund deficiencies.
- §13. Appropriations for local governments.
- §14. Total appropriations.
- §15. General school fund.

TITLE III—ADMINISTRATION.

- §1. Appropriations conditional.
- §2. Constitutionality.

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

LEGISLATIVE*1—Senate*Fund 0165 FY 2000 Org 2100

	Activity	General Revenue Fund
1 Compensation of Members (R)	003	\$ 816,200
2 Compensation and Per Diem of Officers		
3 and Employees (R)	005	2,724,000
4 Employee Benefits (R)	010	517,500
5 Current Expenses and Contingent		
6 Fund (R)	021	700,000
7 Repairs and Alterations (R)	064	250,000
8 Computer Supplies (R)	101	40,000
9 Computer Systems (R)	102	250,000
10 Printing Blue Book (R)	103	150,000

11	Expenses of Members (R)	399	<u>445,000</u>
12	Total		\$ 5,892,700

13 The appropriations for the senate for the fiscal year 1999
 14 are to remain in full force and effect and are hereby
 15 reappropriated to June 30, 2000. Any balances so
 16 reappropriated may be transferred and credited to the fiscal year
 17 2000 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 of
 21 the service.

22 The clerk of the senate, with the approval of the president,
 23 is authorized to draw his or her requisitions upon the auditor,
 24 payable out of the Current Expenses and Contingent Fund of
 25 the senate, for any bills for supplies and services that may have
 26 been incurred by the senate and not included in the appropria-
 27 tion bill, for supplies and services incurred in preparation for
 28 the opening, the conduct of the business and after adjournment
 29 of any regular or extraordinary session, and for the necessary
 30 operation of the senate offices, the requisitions for which are to
 31 be accompanied by bills to be filed with the auditor.

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

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

54 The distribution of the blue book shall be by the office of
 55 the clerk of the senate and shall include seventy-five copies for
 56 each member of the Legislature and two copies for each
 57 classified and approved high school and junior high school and
 58 one copy for each elementary school within the state.

2—House of Delegates

Fund 0170 FY 2000 Org 2200

1	Compensation of Members (R)	003	\$ 2,200,000
2	Compensation and Per Diem of Officers		
3	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 fiscal
 9 year 1999 are to remain in full force and effect and are hereby
 10 reappropriated to June 30, 2000. Any balances so
 11 reappropriated may be transferred and credited to the fiscal year
 12 2000 accounts.

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

17 The clerk of the house of delegates, with the approval of the
 18 speaker, is authorized to draw his or her requisitions upon the
 19 auditor, payable out of the Current Expenses and Contingent
 20 Fund of the house of delegates, for any bills for supplies and

21 services that may have been incurred by the house of delegates
 22 and not included in the appropriation bill, for bills for services
 23 and supplies incurred in preparation for the opening of the
 24 session and after adjournment, and for the necessary operation
 25 of the house of delegates' offices, the requisitions for which are
 26 to be accompanied by bills to be filed with the auditor.

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

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

3—Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2000 Org 2300

1	Joint Committee on Government and		
2	Finance (R)	104	\$ 5,858,327
3	Legislative Printing (R)	105	940,000
4	Legislative Rule-Making Review		
5	Committee (R)	106	205,500

6	Legislative Computer System (R)	107	1,071,530
7	Joint Standing Committee on		
8	Education (R)	108	63,755
9	Tax Reduction and Federal Funding		
10	Increased Compliance		
11	(TRAFFIC) (R)	642	<u>0</u>
12	Total		\$ 8,139,112

13 The appropriations for the joint expenses for the fiscal year
14 1999 are to remain in full force and effect and are hereby
15 reappropriated to June 30, 2000. Any balances so
16 reappropriated may be transferred and credited to the fiscal year
17 2000 accounts.

18 Upon the written request of the clerk of the senate, with the
19 approval of the president of the senate, and the clerk of the
20 house of delegates, with the approval of the speaker of the
21 house of delegates, and a copy to the legislative auditor, the
22 auditor shall transfer amounts between items of the total
23 appropriation in order to protect or increase the efficiency of
24 the service.

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

JUDICIAL

4—Supreme Court—

General Judicial

Fund 0180 FY 2000 Org 2400

1	Personal Services (R)	001	\$ 32,064,174
2	Annual Increment (R)	004	487,600
3	Social Security Matching (R)	011	2,469,519

4	Public Employees' Insurance		
5	Matching (R)	012	3,747,176
6	Public Employees' Retirement		
7	Matching (R)	016	2,892,718
8	Other Expenses (R)	029	4,341,050
9	Judges' Retirement System (R)	110	5,416,036
10	Other Court Costs (R)	111	2,600,000
11	Judicial Training Program (R)	112	300,000
12	Mental Hygiene Fund (R)	113	975,000
13	Family Law Master Program (R)	190	1,449,474
14	Guardianship Attorney Fees (R)	588	<u>150,000</u>
15	Total		\$ 56,892,747

16 The appropriations to the supreme court of appeals for the
 17 fiscal years 1997, 1998 and 1999 are to remain in full force and
 18 effect and are hereby reappropriated to June 30, 2000. Any
 19 balances so reappropriated may be transferred and credited to
 20 the fiscal year 2000 accounts.

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

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

EXECUTIVE

5—Governor's Office

(WV Code Chapter 5)

Fund 0101 FY 2000 Org 0100

1 Personal Services

001	\$	1,731,859
-----	----	-----------

2	Salary of Governor	002	90,000
3	Annual Increment	004	17,250
4	Employee Benefits	010	444,904
5	Unclassified	099	1,000,118
6	National Governors' Association	123	66,200
7	Southern States Energy Board	124	28,732
8	WV Human Resource Investment		
9	Council	294	262,438
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 for		
14	State Budget Officers	315	<u>11,500</u>
15	Total		\$ 3,693,080

16 Any unexpended balance remaining in the appropriation for
 17 Publication of Papers and Transition Expenses (fund 0101,
 18 activity 465) at the close of the fiscal year 1999 is hereby
 19 reappropriated for expenditure during the fiscal year 2000.

6—Governor's Office—

Custodial Fund

(WV Code Chapter 5)

Fund 0102 FY 2000 Org 0100

1	Unclassified—Total	096	\$ 533,691
---	------------------------------	-----	------------

2 To be used for current general expenses, including compen-
 3 sation of employees, household maintenance, cost of official
 4 functions and additional household expenses occasioned by
 5 such official functions.

7—Governor's Office—

Governor's Cabinet on Children and Families

(WV Code Chapter 5)

Fund 0104 FY 2000 Org 0100

1	Unclassified (R)	099	\$	309,152
2	Family Resource Networks	274		1,505,000
3	Starting Points Centers and Parent			
4	Education Services (R)	316		<u>1,244,500</u>
5	Total		\$	3,058,652

6 Any unexpended balances remaining in the appropriations
7 for Unclassified (fund 0104, activity 099) and Starting Points
8 Centers and Parent Education Services (fund 0104, activity 316)
9 at the close of the fiscal year 1999 are hereby reappropriated for
10 expenditure during the fiscal year 2000.

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

(WV Code Chapter 5)

Fund 0105 FY 2000 Org 0100

1 Civil Contingent Fund—Total (R) 114 \$ 3,650,000

2 Any unexpended balances remaining in the appropriations
3 for Civil Contingent Fund—Total (fund 0105, activity 114),
4 Civil Contingent Fund—Surplus (fund 0105, activity 263) and
5 Unclassified—Surplus—Total (fund 0105, activity 098) at the
6 close of the fiscal year 1999 are hereby reappropriated for
7 expenditure during the fiscal year 2000.

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

12 The above appropriation is intended to provide contingency
13 funding for accidental, unanticipated, emergency or unplanned
14 events which may occur during the fiscal year and is not to be
15 expended for the normal day-to-day operations of the gover-
16 nor's office.

9—Auditor’s Office—

General Administration

(WV Code Chapter 12)

Fund 0116 FY 2000 Org 1200

1	Personal Services	001	\$ 2,010,067
2	Salary of Auditor	002	70,000
3	Annual Increment	004	50,523
4	Employee Benefits	010	709,289
5	Unclassified (R)	099	606,775
6	Office Automation (R)	117	<u>790,000</u>
7	Total		\$ 4,236,654

8 Any unexpended balances remaining in the appropriations
 9 for Unclassified (fund 0116, activity 099), Office Automation
 10 (fund 0116, activity 117) and Payroll System Acquisition (fund
 11 0116, activity 594) at the close of the fiscal year 1999 are
 12 hereby reappropriated for expenditure during the fiscal year
 13 2000.

10—Auditor’s Office—

Family Law Masters

Administration Fund

(WV Code Chapter 48A)

Fund 0117 FY 2000 Org 1200

1	Unclassified—Total	096	\$ 500,000
---	--------------------------	-----	------------

2 The above appropriation shall be expended for the adminis-
 3 trative expenses of the family law masters program, excluding
 4 personal services and employee benefits.

11—Treasurer’s Office

(WV Code Chapter 12)

Fund 0126 FY 2000 Org 1300

1	Personal Services	001	\$ 1,699,796
2	Salary of Treasurer	002	70,000
3	Annual Increment	004	34,856
4	Employee Benefits	010	564,407
5	Unclassified (R)	099	1,710,610
6	Abandoned Property Program	118	285,725
7	Debt Payment on Morris Street—Workers		
8	Compensation Building	290	1,366,483
9	Tuition Trust Fund (R)	692	155,051
10	School Building Sinking Fund Debt		
11	Service (R)	770	<u>7,029,000</u>
12	Total		\$ 12,915,928

13 Any unexpended balances remaining in the appropriations
 14 for Unclassified (fund 0126, activity 099), Imaging System
 15 (fund 0126, activity 006), School Building Sinking Fund Debt
 16 Service (fund 0126, activity 770), Tuition Trust Fund (fund
 17 0126, activity 692) and Tuition Trust Fund—Surplus (fund
 18 0126, activity 837) at the close of the fiscal year 1999 are
 19 hereby reappropriated for expenditure during the fiscal year
 20 2000.

12—Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2000 Org 1400

1	Personal Services	001	\$ 3,412,811
2	Salary of Commissioner	002	70,000
3	Annual Increment	004	70,600
4	Employee Benefits	010	1,281,495
5	Unclassified (R)	099	1,160,825

6	Gypsy Moth Program (R).	119	876,429
7	Mingo County Surface Mine Project (R)	296	150,000
8	Predator Control	470	90,000
9	Charleston Farmers Market (R)	476	152,480
10	Bee Research	691	70,000
11	Moorefield Agriculture Center (R)	786	344,892
12	Microbiology Program	785	150,000
13	Tri-County Fair Association	343	<u>100,000</u>
14	Total		\$ 7,929,532

15 Any unexpended balances remaining in the appropriations
 16 for Unclassified (fund 0131, activity 099), Gypsy Moth
 17 Program (fund 0131, activity 119), Mingo County Surface Mine
 18 Project (fund 0131, activity 296), Charleston Farmers Market
 19 (fund 0131, activity 476), Moorefield Agriculture Center (fund
 20 0131, activity 786) and Capital Improvements—Total—Surplus
 21 (fund 0131, activity 672) at the close of the fiscal year 1999 are
 22 hereby reappropriated for expenditure during the fiscal year
 23 2000.

24 A portion of the Unclassified appropriation may be trans-
 25 ferred to a special revenue fund for the purpose of matching
 26 federal funds for marketing and development activities.

13—Department of Agriculture—

State Soil Conservation Committee

(WV Code Chapter 19)

Fund 0132 FY 2000 Org 1400

1	Personal Services	001	\$ 429,184
2	Annual Increment	004	8,400
3	Employee Benefits	010	149,427
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>1,993,480</u>
8	Total		\$ 5,362,946

9 Any unexpended balances remaining in the appropriations
 10 for Unclassified (fund 0132, activity 099), Maintenance of
 11 Flood Control Projects (fund 0132, activity 522), Soil Conser-
 12 vation Projects (fund 0132, activity 120) and Soil Conservation
 13 Projects—Surplus (fund 0132, activity 269) at the close of the
 14 fiscal year 1999 are hereby reappropriated for expenditure
 15 during the fiscal year 2000.

14—Department of Agriculture—

Meat Inspection

(WV Code Chapter 19)

Fund 0135 FY 2000 Org 1400

1	Personal Services	001	\$ 370,773
2	Annual Increment	004	8,085
3	Employee Benefits	010	139,342
4	Unclassified	099	<u>76,928</u>
5	Total		\$ 595,128

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

15—Department of Agriculture—

Agricultural Awards

(WV Code Chapter 19)

Fund 0136 FY 2000 Org 1400

1	Agricultural Awards	121	\$ 0
2	Fairs and Festivals	122	425,000

3	Commissioner's Awards and Programs .	737	<u>90,000</u>
4	Total		\$ 515,000

16—Attorney General

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

Fund 0150 FY 2000 Org 1500

1	Personal Services (R)	001	\$ 2,248,692
2	Salary of Attorney General	002	75,000
3	Annual Increment (R)	004	34,900
4	Employee Benefits (R)	010	665,332
5	Unclassified (R)	099	608,598
6	Better Government Bureau (R)	740	<u>249,463</u>
7	Total		\$ 3,881,985

8 Any unexpended balance remaining in the above appropria-
 9 tion at the close of the fiscal year 1999 is hereby reappropriated
 10 for expenditure during the fiscal year 2000.

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

17—Secretary of State

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2000 Org 1600

1	Personal Services	001	\$	585,557
2	Salary of Secretary of State	002		65,000
3	Annual Increment	004		13,170
4	Employee Benefits	010		226,931
5	Unclassified (R)	099		380,497
6	Administrative Law Division			
7	Improvements	344		<u>58,793</u>
8	Total		\$	1,329,948
9	Any unexpended balances remaining in the appropriations			
10	for Unclassified (fund 0155, activity 099) and Technology			
11	Improvements (fund 0155, activity 599) at the close of the			
12	fiscal year 1999 are hereby reappropriated for expenditure			
13	during the fiscal year 2000.			

18—State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 2000 Org 1601

1	Unclassified—Total	096	\$	12,000
---	--------------------------	-----	----	--------

DEPARTMENT OF ADMINISTRATION*19—Department of Administration—**Office of the Secretary*

(WV Code Chapter 5F)

Fund 0186 FY 2000 Org 0201

1	Unclassified—Total	096	\$	289,729
---	--------------------------	-----	----	---------

20—Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2000 Org 0205

- 1 The division of highways, division of motor vehicles,
2 bureau of employment programs, public service commission

3 and other departments, bureaus or divisions operating from
 4 special revenue funds and/or federal funds shall pay their
 5 proportionate share of the retirement costs for their respective
 6 divisions. When specific appropriations are not made, such
 7 payments may be made from the balances in the various special
 8 revenue funds in excess of specific appropriations.

21—Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2000 Org 0209

1	Personal Services	001	\$	495,801
2	Annual Increment	004		11,090
3	Employee Benefits	010		151,766
4	Unclassified	099		556,863
5	GAAP Project (R)	125		<u>1,275,164</u>
6	Total		\$	2,490,684

7 Any unexpended balance remaining in the appropriation for
 8 GAAP Project (fund 0203, activity 125) at the close of the
 9 fiscal year 1999 is hereby reappropriated for expenditure during
 10 the fiscal year 2000.

22—Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 0583 FY 2000 Org 0210

1	Asynchronous Transfer Mode (ATM)			
2	Program	199	\$	0

23—Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2000 Org 0211

1	Personal Services	001	\$	484,536
2	Annual Increment	004		20,300

APPROPRIATIONS

[Ch. 7

3	Employee Benefits	010	226,031
4	Unclassified	099	956,441
5	Fire Service Fee	126	13,440
6	Capital Complex—Capital Outlay (R) ..	417	<u>0</u>
7	Total		\$ 1,700,748

8 Any unexpended balances remaining in the appropriations
 9 for Capitol Building Preservation (fund 0230, activity 503),
 10 Capitol Building Preservation—Surplus (fund 0230, activity
 11 675), Capital Improvements—Capitol Complex—Surplus (fund
 12 0230, activity 676), Capitol Complex—Capital Outlay (fund
 13 0230, activity 417), Capitol Complex—Capital Outlay—
 14 Surplus (fund 0230, activity 526), Capitol Complex Master
 15 Plan—Total—Surplus (fund 0230, activity 606), Chilled Water
 16 Plant—Phase III (fund 0230, activity 291), Capitol Com-
 17 plex—Capital Outlay—Total—Surplus (fund 0230, activity
 18 777) and Capitol Building Roof—Total—Surplus (fund 0230,
 19 activity 820) at the close of the fiscal year 1999 are hereby
 20 reappropriated for expenditure during the fiscal year 2000.

24—Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2000 Org 0213

1	Personal Services	001	\$ 583,873
2	Annual Increment	004	15,690
3	Employee Benefits	010	197,940
4	Unclassified	099	134,840
5	Purchasing Card Program	711	<u>122,197</u>
6	Total		\$ 1,054,540

7 The division of highways shall reimburse the Unclassified
 8 appropriation (fund 2031, activity 099) within the division of
 9 purchasing for all actual expenses incurred pursuant to the

- 10 provisions of section thirteen, article two-a, chapter seventeen
11 of the code.

25—Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 2000 Org 0217

1	Unclassified—Total	096	\$	25,000
2	To pay expenses of members of the commission on uniform			
3	state laws.			

26—Board of Risk and Insurance Management

(WV Code Chapter 29)

Fund 0217 FY 2000 Org 0218

1	Unclassified—Total	096	\$	0
2	Unclassified	099		5,304,116
3	Premium Enhancement	346		<u>2,000,000</u>
4	Total		\$	7,304,116

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

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

27—Education and State Employees' Grievance Board

(WV Code Chapter 18)

Fund 0220 FY 2000 Org 0219

1	Personal Services	001	\$	673,122
2	Annual Increment	004		7,683
3	Employee Benefits	010		199,864
4	Unclassified	099		<u>169,678</u>
5	Total		\$	1,050,347

28—Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2000 Org 0220

1	Personal Services	001	\$	192,908
2	Annual Increment	004		1,850
3	Employee Benefits	010		58,980
4	Unclassified	099		<u>119,979</u>
5	Total		\$	373,717

29—Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2000 Org 0221

1	Personal Services	001	\$	257,331
2	Annual Increment	004		4,050
3	Employee Benefits	010		89,240
4	Unclassified (R)	099		95,540
5	Appointed Counsel Fees and Public Defender			
6	Corporations (R)	127		0
7	Appointed Counsel Fees (R)	788		14,337,469
8	Public Defender Corporations (R)	352		<u>12,773,436</u>
9	Total		\$	27,557,066

10 Any unexpended balances remaining in the above appropri-
 11 ations at the close of the fiscal year 1999 are hereby
 12 reappropriated for expenditure during the fiscal year 2000
 13 (except Personal Services (fund 0226, activity 001), Annual
 14 Increment (fund 0226, activity 004) and Employee Benefits
 15 (fund 0226, activity 010)).

16 Any balances so reappropriated (except Unclassified (fund
 17 0226, activity 099)) are hereby redesignated Appointed Counsel
 18 Fees and Public Defender Corporation (fund 0226, activity
 19 127).

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

Fund 0233 FY 2000 Org 0224

1 Unclassified—Total 096 \$ 4,656

31—Public Employees Insurance Agency
 (WV Code Chapter 5)

Fund 0200 FY 2000 Org 0225

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

32—West Virginia Prosecuting Attorneys' Institute
 Fund 0557 FY 2000 Org 0228

1	Forensic Medical Examinations	683	\$	253,659
2	Federal Funds/Grant Match	749		80,000
3	Total		\$	333,659

DEPARTMENT OF EDUCATION

33—State Department of Education—

School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2000 Org 0402

1	Personal Services	001	\$	171,163
2	Annual Increment	004		3,588
3	Employee Benefits	010		59,537
4	Unclassified	099		<u>1,781,447</u>
5	Total		\$	2,015,735

34—State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Fund 0306 FY 2000 Org 0402

1	Personal Services	001	\$	233,931
2	Annual Increment	004		3,379
3	Employee Benefits	010		87,403
4	Unclassified	099		<u>162,231</u>
5	Total		\$	486,944

35—State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2000 Org 0402

1	Personal Services	001	\$	2,471,554
2	Annual Increment	004		34,915
3	Employee Benefits	010		874,350
4	Unclassified	099		3,700,000
5	WV Education Information System			
6	(WVEIS)	138		3,816,130
7	34/1000 Waiver	139		200,000

8	Increased Enrollment	140	1,425,218
9	National Science Foundation Match ...	142	139,500
10	Safe Schools	143	2,000,000
11	Implementation of Norm Referenced		
12	Testing Program	297	1,489,883
13	Technology Repair and Modernization .	298	0
14	Curriculum Technology		
15	Resource Center	300	252,185
16	Employment Programs Rate Relief	401	747,575
17	Three Tier Funding	411	1,000,000
18	Governor's Honors Academy	478	190,000
19	Micro Computer Network	506	150,000
20	Technology and Telecommunications		
21	Initiative (R)	596	0
22	Adult Advisory Council	621	271,390
23	Foreign Student Education (R)	636	150,000
24	Technology Demonstration Project	639	0
25	State Teacher of the Year	640	35,043
26	Principals Mentorship	649	50,000
27	Educational Enhancements	695	2,427,000
28	Allowance for Work Based Learning ..	744	50,000
29	Pickens School Support	758	150,000
30	Marshall University Graduate College		
31	Writing Project	807	25,000
32	Webster County Board of Education/		
33	Hacker Valley	809	100,000
34	Tax Assessment Errors	353	452,992
35	HVAC Technicians	355	270,000

36	Pendleton County Allowance for		
37	Transfer	356	170,000
38	READS Program	365	300,000
39	MATH Program	368	300,000
40	End of Course Exams	369	250,000
41	Service Personnel College Hours	378	<u>164,239</u>
42	Total		\$ 23,656,974

43 The above appropriation includes the state board of
44 education and their executive office.

45 Any unexpended balances remaining in the appropriations
46 for Computer Basic Skills (fund 0313, activity 145), Increased
47 Enrollment (fund 0313, activity 140) Technology and Telecom-
48 munications Initiative (fund 0313, activity 596), and Foreign
49 Student Education (fund 0313, activity 636), at the close of the
50 fiscal year 1999 are hereby reappropriated for expenditure
51 during the fiscal year 2000.

36—State Department of Education—

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2000 Org 0402

1	Special Education—Counties	159	\$ 7,336,561
2	Special Education—Institutions	160	2,984,173
3	Education of Juveniles Held in		
4	Predispositional Juvenile		
5	Detention Centers	302	540,079
6	Education of Institutionalized Juveniles		
7	and Adults	472	4,994,378
8	Potomac Center	810	312,805
9	Educational Services/Upshur County,		
10	Potomac Highlands, and Lory Julian	382	<u>599,301</u>
11	Total		\$ 16,767,297

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

37—State Department of Education—

State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2000 Org 0402

1	Other Current Expenses	022	\$110,962,528
2	Professional Educators	151	710,087,853
3	Service Personnel	152	226,418,360
4	Fixed Charges	153	82,693,498
5	Transportation	154	32,986,482
6	Administration	155	7,719,048
7	Improve Instructional Programs	156	<u>33,000,000</u>
8	Basic Foundation Allowances		1,203,867,769
9	Less Local Share		<u>(261,439,074)</u>
10	Total Basic State Aid		942,428,695
11	Public Employees' Insurance Match . . .	012	139,884,303
12	Teachers' Retirement System	019	212,027,000
13	School Building Authority	453	<u>22,667,670</u>
14	Total		\$1,317,007,668

38—State Board of Education—

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2000 Org 0402

1	Personal Services	001	\$ 742,809
2	Annual Increment	004	12,335

APPROPRIATIONS.

[Ch. 7

3	Employee Benefits	010	307,473
4	Unclassified	099	878,952
5	Wood Products—		
6	Forestry Vocational Program (R) ..	146	63,024
7	Albert Yanni Vocational Program	147	139,300
8	Vocational Aid	148	12,555,507
9	Adult Basic Education	149	2,743,941
10	Equipment Replacement	150	1,019,750
11	Program Modernization (R)	305	600,000
12	Aquaculture Support	769	<u>203,548</u>
13	Total		\$ 19,266,639

14 Any unexpended balances remaining in the appropriations
 15 for Wood Products—Forestry Vocational Program (fund 0390,
 16 activity 146) and Program Modernization (fund 0390, activity
 17 305) at the close of the fiscal year 1999 are hereby
 18 reappropriated for expenditure during the fiscal year 2000.

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

(WV Code Chapters 18 and 18A)

Fund 0573 FY 2000 Org 0402

1	Personal Services	001	\$ 450,397
2	Annual Increment	004	2,500
3	Employee Benefits	010	150,009
4	Unclassified	099	<u>235,500</u>
5	Total		\$ 838,406

40—West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2000 Org 0403

1	Personal Services	001	\$ 5,792,587
2	Annual Increment	004	4,000
3	Employee Benefits	010	2,209,392
4	Unclassified	099	1,518,421
5	FM Auditory Equipment	395	<u>120,000</u>
6	Total		\$ 9,644,400
7	Any unexpended balances remaining in the appropriations		
8	for Fire and Smoke Alarm System—Surplus (fund 0320,		
9	activity 726) and Capital Outlay, Repairs and Equip-		
10	ment—Surplus (fund 0320, activity 677) at the close of the		
11	fiscal year 1999 are hereby reappropriated for expenditure		
12	during the fiscal year 2000.		

DEPARTMENT OF EDUCATION AND THE ARTS

41—Department of Education and the Arts—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0294 FY 2000 Org 0431

1	Underwood Youth Center	034	\$ 0
2	Unclassified (R)	099	1,813,666
3	Joint Commission on Vocational—Technical—		
4	Occupational Education	109	30,000
5	Center for Professional Development (R)	115	1,807,445
6	WVU—University Affiliated Center for		
7	Developmental Disabilities	157	0
8	WV Humanities Council	168	0
9	Center for Professional Development—		
10	Principals' Academy (R)	415	500,000
11	Technical Preparation Program (R)	440	932,397
12	Community Schools/Mini Grants (R) ..	530	200,971

13	Hospitality Training	600	550,000
14	Workforce Program Continuation	405	<u>400,000</u>
15	Total		\$ 6,234,479

16 Any unexpended balances remaining in the appropriations
 17 for Unclassified (fund 0294, activity 099), Center for Profes-
 18 sional Development (fund 0294, activity 115), Technical
 19 Preparation Program (fund 0294, activity 440) and Community
 20 Schools/Mini Grants (fund 0294, activity 530) at the close of
 21 the fiscal year 1999 are hereby reappropriated for expenditure
 22 during the fiscal year 2000.

42—Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2000 Org 0432

1	Personal Services	001	\$ 1,688,441
2	Annual Increment	004	33,700
3	Employee Benefits	010	589,645
4	Mountain Stage	024	0
5	Huntington Symphony	027	0
6	Martin Luther King, Jr. Holiday		
7	Celebration	031	10,000
8	Unclassified	099	648,569
9	Fairs and Festivals	122	0
10	Historical Preservation Grants	311	0
11	West Virginia Public Theater	312	0
12	Theater Arts of West Virginia	464	0
13	Capital Outlay, Repairs and		
14	Equipment (R)	589	0
15	Grants for Competitive Arts Programs .	624	1,000,000
16	Culture and History Programming	732	300,014

17	Contemporary American Theater Festival	811	0
18	Independence Hall	812	<u>0</u>
19	Total		\$ 4,270,369

20 Any unexpended balances remaining in the appropriations
 21 for Capital Outlay, Repairs and Equipment (fund 0293, activity
 22 589) and Capital Outlay, Repairs and Equipment—Surplus
 23 (fund 0293, activity 677) at the close of the fiscal year 1999 are
 24 hereby reappropriated for expenditure during the fiscal year
 25 2000.

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

32 All federal moneys received as reimbursement to the
 33 division of culture and history for moneys expended from the
 34 general revenue fund for the arts fund and historical preserva-
 35 tion are hereby reappropriated for the purposes as originally
 36 made, including personal services, current expenses and
 37 equipment.

43—Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2000 Org 0433

1	Personal Services	001	\$ 1,089,772
2	Annual Increment	004	31,950
3	Employee Benefits	010	410,296
4	Unclassified	099	284,171
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	0
9	Libraries—Special Projects	625	<u>1,500,000</u>
10	Total		\$ 3,665,228

44—Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2000 Org 0439

1	Personal Services	001	\$ 3,197,163
2	Annual Increment	004	68,700
3	Employee Benefits	010	1,037,814
4	Unclassified	099	1,226,902
5	Capital Improvements -		
6	600 Capitol Street	313	<u>0</u>
7	Total		\$ 5,530,579

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

*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 2000 Org 0452

1	Public Employees' Insurance		
2	Matching (R)	012	\$ 2,068,362
3	Unclassified	099	1,515,262
4	Higher Education Grant Program (R) ..	164	0
5	Tuition Contract Program (R)	165	703,552
6	Minority Doctoral Fellowship	166	0

7	Underwood-Smith Scholarship Program—		
8	Student Awards (R)	167	0
9	WVNET	169	<u>2,401,656</u>
10	Total		\$ 6,688,832

11 Any unexpended balances remaining in the appropriations
 12 for Higher Education Grant Program (fund 0333, activity 164),
 13 Tuition Contract Program (fund 0333, activity 165), Under-
 14 wood—Smith Scholarship Program—Student Awards (fund
 15 0333, activity 167) and Higher Education Technology
 16 Initiative—Surplus (fund 0333, activity 508) at the close of the
 17 fiscal year 1999 are hereby reappropriated for expenditure
 18 during the fiscal year 2000.

19 The appropriation for Minority Doctoral Fellowship (fund
 20 0333, activity 166) may be transferred to special revenue
 21 accounts for matching college, university, city, county, federal,
 22 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 0578 FY 2000 Org 0452

1	Strategic Planning and Compliance—		
2	Institutions—Total	772	\$ 10,945,308

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

Control Account

(WV Code Chapter 18B)

Fund 0327 FY 2000 Org 0461

1	Unclassified	099	\$178,871,848
---	--------------------	-----	---------------

2	Marshall University—Southern WV		
3	Community and Technical College		
4	2+2 Program (R)	170	350,000
5	Jackson’s Mill	461	500,000
6	Marshall University—		
7	Autism Training Center	548	575,000
8	Marshall and West Virginia University		
9	Faculty and Course Development		
10	International Study Project (R)	549	35,000
11	Marshall University—Forensic Lab (R)	572	450,000
12	WVU Law School—Skills Program . . .	745	200,000
13	WVU College of Engineering and		
14	Mineral Resources—Diesel Training—		
15	Transfer (R)	852	<u>20,000</u>
16	Total		\$181,001,848

17 Any unexpended balances remaining in the appropriations
18 for Marshall University—Southern WV Community and
19 Technical College 2+2 Program (fund 0327, activity 170),
20 Marshall University—Forensic Lab (fund 0327, activity 572),
21 WVU College of Engineering and Mineral Resources—Diesel
22 Training—Transfer (fund 0327, activity 852), Marshall and
23 West Virginia University Faculty and Course Development
24 International Study Project (fund 0327, activity 549), Higher
25 Education Technology Initiative (fund 0344, activity), Chestnut
26 Blight Research (fund 0344, activity 780), and Jackson’s Mill-
27 Surplus (fund 0344, activity 842) at the close of the fiscal year
28 1999 are hereby reappropriated for expenditure during the fiscal
29 year 2000.

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 2000 Org 0478

1	School of Osteopathic Medicine -		
2	Medical Education	129	\$ 0
3	Marshall School of Medicine -		
4	Medical Education	158	0
5	WVU-Health Sciences-		
6	Medical Education	178	0
7	School of Osteopathic Medicine	172	6,465,261
8	Marshall School of Medicine	173	11,628,195
9	WVU—Health Sciences	174	41,635,343
10	WVU—School of Health Sciences—		
11	Charleston Division	175	3,914,507
12	Health Sciences Scholarship Fund (R) .	176	0
13	Primary Health Education Program		
14	Support (R)	177	4,604,950
15	Medical Education	178	0
16	Vice Chancellor for Health Sciences ...	473	275,782
17	WVU Charleston Division—Poison		
18	Control Hot Line (R)	510	487,666
19	MA Public Health Program and		
20	Health Science Technology	623	0
21	WVU—Health Career Opportunities		
22	Program (R)	850	0
23	Rural Health Initiative Site Support		
24	Program (R)	853	2,980,000
25	Correctional Telemedicine Project	406	500,000
26	Capital Outlay and Equipment	542	<u>2,000,000</u>
27	Total		\$ 74,491,704

28 Any unexpended balances remaining in the appropriations
 29 for Primary Health Education Program Support (fund 0323,
 30 activity 177), Rural Health Initiative Site Support (fund 0323,
 31 activity 295), Health Sciences Scholarship Fund (fund 0323,
 32 activity 176), WVU—Health Career Opportunities Program
 33 (fund 0323, activity 850), WVU Charleston Division—Poison
 34 Control Hot Line (fund 0323, activity 510), Marshall University
 35 Medical School—Capital Improvements (fund 0323, activity
 36 814) and Rural Health Initiative Site Support Program (fund
 37 0323, activity 853) at the close of the fiscal year 1999 are
 38 hereby reappropriated for expenditure during the fiscal year
 39 2000.

49—Board of Directors of the State College System

Control Account

(WV Code Chapter 18B)

Fund 0330 FY 2000 Org 0481

1 Unclassified—Total 096 \$ 84,403,241

2 Any unexpended balance remaining in the appropriation for
 3 Workforce Development (fund 0330, activity 832) at the close
 4 of the fiscal year 1999 is hereby reappropriated for expenditure
 5 during the fiscal year 2000.

50—State Board of Rehabilitation—

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 0310 FY 2000 Org 0932

1	Personal Services	001	\$ 4,310,348
2	Annual Increment	004	124,961
3	Employee Benefits	010	1,597,016
4	Unclassified	099	150,000
5	Case Services	162	2,676,365

6	Workshop Development	163	1,799,000
7	Traumatic Brain and Spinal Cord Injury	813	250,000
8	Ron Yost Personal Assistance Fund ...	407	<u>150,000</u>
9	Total		\$ 11,057,690

10 Any unexpended balance remaining in the appropriation for
 11 Technology - Related Assistance Revolving Loan Fund for
 12 Individuals with Disabilities (fund 0310, activity 766) at the
 13 close of the fiscal year 1999 is hereby reappropriated for
 14 expenditure during the fiscal year 2000 and may be transferred
 15 to a special account for the purpose of disbursement or loan.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

51—Department of Health and Human Resources—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0400 FY 2000 Org 0501

1	Unclassified	099	\$ 132,856
2	Rural Health Care Providers Revolving		
3	Loan Fund	211	<u>500,000</u>
4	Total		\$ 632,856

52—Division of Health—

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2000 Org 0506

1	Personal Services	001	\$ 6,706,066
2	Annual Increment	004	131,907
3	Employee Benefits	010	2,817,828
4	Unclassified	099	4,324,964

5	Corporate Nonprofit Community Health		
6	Centers—F.M.H.A. Mortgage		
7	Finance	184	0
8	Primary Care Centers-Mortgage Finance	413	400,000
9	Appalachian State Low Level Radioactive		
10	Waste Commission	185	48,000
11	Safe Drinking Water Program	187	481,047
12	Transitional Funding for Local Health		
13	Departments	195	4,300,000
14	Women, Infants and Children	210	45,000
15	Early Intervention	223	2,018,357
16	Cancer Registry	225	211,288
17	Black Lung Clinics	467	200,000
18	Pediatric Dental Services	550	150,000
19	Vaccine for Children	551	431,480
20	Adult Influenza Vaccine	552	65,000
21	Tuberculosis Control	553	250,176
22	Regional EMS Entities	557	630,000
23	Maternal and Child Health Clinics,		
24	Clinicians and Medical Contracts		
25	and Fees (R)	575	4,673,043
26	Epidemiology Support	626	374,922
27	Rural EMS Equipment and Training . . .	627	560,664
28	Primary Care Support	628	6,736,909
29	State Aid to Local Health Departments .	702	8,900,684
30	Health Right Free Clinics	727	1,750,000
31	Osteoporosis Prevention Fund	729	300,756
32	State EMS Coordinator	738	762,889
33	EMS Training for Children	739	50,000

34	Emergency Response Entities—		
35	Special Projects	822	1,250,000
36	Pet Scan Equipment	431	<u>200,000</u>
37	Total		\$ 48,770,980

38 Any unexpended balances remaining in the appropriations
 39 for Unclassified (fund 0407, activity 099, fiscal year 1997) and
 40 Maternal and Child Health Clinics, Clinicians and Medical
 41 Contracts and Fees (fund 0407, activity 575) at the close of the
 42 fiscal year 1999 are hereby reappropriated for expenditure
 43 during the fiscal year 2000.

44 From the Maternal and Child Health Clinics, Clinicians,
 45 and Medical Contracts and Fees line item, \$400,000 shall be
 46 transferred to the Breast and Cervical Cancer Diagnostic
 47 Treatment Fund.

53—Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2000 Org 0506

1	Personal Services	001	\$ 531,371
2	Annual Increment	004	10,300
3	Employee Benefits	010	211,943
4	Special Olympics	208	26,074
5	Behavioral Health Program—		
6	Unclassified	219	22,449,313
7	Family Support Act	221	1,090,257
8	Institutional Facilities Operations	335	43,176,676
9	Colin Anderson Community Placement	803	3,433,963
10	Renaissance Program	804	<u>200,000</u>
11	Total		\$ 71,129,897

12 Any unexpended balances remaining in the appropriations
 13 for Behavioral Health Program-Unclassified (fund 0525,

14 activity 219) and Colin Anderson Community Placement (fund
15 0525, activity 803) at the close of the fiscal year 1999 are
16 hereby reappropriated for expenditure during the fiscal year
17 2000.

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

29 Additional funds have been appropriated in fund 5156,
30 fiscal year 2000, organization 0506, for the operation of the
31 institutional facilities. The secretary of the department of health
32 and human resources is authorized to utilize up to ten percent
33 of the funds from the Institutional Facilities Operations line
34 item to facilitate cost effective and cost saving services at the
35 community level.

36 From the above appropriation to Institutional Facilities
37 Operations, together with available funds from the division of
38 health—hospital services revenue account (fund 5156, activity
39 335), on July 1, 1999, the sum of one hundred fifty-thousand
40 dollars shall be transferred to the department of agricul-
41 ture—land division as advance payment for the purchase of
42 food products; actual payments for such purchases shall not be
43 required until such credits have been completely expended.

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

54—Division of Health—

West Virginia Drinking Water Treatment

(WV Code Chapter 16)

Fund 0561 FY 2000 Org 0506

- 1 West Virginia Drinking Water Treatment
- 2 Revolving Fund—Transfer 689 \$ 700,000
- 3 The above appropriation for Drinking Water Treatment
- 4 Revolving Fund—Transfer shall be transferred to the West
- 5 Virginia Drinking Water Treatment Revolving Fund or appro-
- 6 priate bank depository and the Drinking Water Treatment
- 7 Revolving—Administrative Expense Fund as provided by
- 8 Chapter 16, of the Code.

55—Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2000 Org 0510

- 1 Personal Services 001 \$ 578,315
- 2 Annual Increment 004 12,112
- 3 Employee Benefits 010 192,784
- 4 Unclassified 099 184,121
- 5 Anti-Hate Program and
- 6 Human Rights Summit 815 18,000
- 7 Total \$ 985,332
- 8 Any unexpended balance remaining in the appropriation for
- 9 Automated Management Information System (fund 0416,
- 10 activity 528) at the close of the fiscal year 1999 is hereby
- 11 reappropriated for expenditure during the fiscal year 2000.

56—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2000 Org 0511

1	Personal Services	001	\$ 19,692,117
2	Annual Increment	004	456,261
3	Employee Benefits	010	7,540,669
4	Unclassified	099	19,956,786
5	Child Care Development	144	1,437,213
6	Medical Services Contracts and Office of		
7	Managed Care	183	2,323,020
8	Medical Services	189	178,587,996
9	Women's Commission	191	131,104
10	Social Services	195	44,040,138
11	Family Preservation Program	196	1,565,000
12	Child Protective Services Case Workers	468	7,317,646
13	OSCAR and RAPIDS	515	3,373,242
14	Child Welfare System	603	2,500,449
15	Commission for the Deaf and		
16	Hard of Hearing	704	157,390
17	Child Support Enforcement	705	1,698,542
18	Medicaid Auditing	706	578,372
19	Temporary Assistance for Needy		
20	Families/Maintenance of Effort	707	29,689,373
21	Child Care—Maintenance of		
22	Effort and Match	708	4,409,643
23	WV Childrens' Health Fund—		
24	Transfer (R)	714	0
25	Grants for Licensed Domestic Violence		
26	Programs and Statewide Prevention	750	1,000,000
27	Indigent Burials (R)	851	680,000
28	Medical Services Trust Fund Transfer ..	452	10,000,000

29	James "Tiger" Morton Catastrophic		
30	Illness Fund	455	<u>1,000,000</u>
31	Total		\$338,134,961

32 Any unexpended balances remaining in the appropriations
 33 for Indigent Burials (fund 0403, activity 851) and West Virginia
 34 Childrens' Health Fund—Transfer (fund 0403, activity 714) at
 35 the close of fiscal year 1999 are hereby reappropriated for
 36 expenditure during fiscal year 2000.

37 Notwithstanding the provisions of Title I, section three of
 38 this bill, the secretary of the department of health and human
 39 resources shall have the authority to transfer funds within the
 40 above account: *Provided*, That no more than ten percent of the
 41 funds appropriated to one line item may be transferred to other
 42 line items: *Provided, however*, That no funds from other line
 43 items shall be transferred to the personal services line item.

44 The secretary shall have authority to expend funds for the
 45 educational costs of those children residing in out-of-state
 46 placements, excluding the costs of special education programs.

**DEPARTMENT OF MILITARY AFFAIRS
 AND PUBLIC SAFETY**

57—Department of Military Affairs and Public Safety—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0430 FY 2000 Org 0601

1	Unclassified—Total	096	\$	257,771
---	--------------------------	-----	----	---------

58—Adjutant General—

State Militia

(WV Code Chapter 15)

Fund 0433 FY 2000 Org 0603

1	Personal Services	001	\$	360,299
2	Annual Increment	004		7,600

3	Employee Benefits	010	121,842
4	Unclassified	099	8,779,121
5	College Education Fund	232	0
6	Armory Capital Improvements	325	0
7	Mountaineer Challenge Academy	709	<u>0</u>
8	Total		\$ 9,268,862

9 From the above appropriation an amount approved by the
 10 adjutant general and the secretary of military affairs and public
 11 safety may be transferred to the State Armory Board for
 12 operation and maintenance of National Guard Armories.

59—West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2000 Org 0605

1	Personal Services	001	\$ 112,115
2	Annual Increment	004	1,100
3	Employee Benefits	010	107,830
4	Unclassified	099	69,575
5	Salaries of Members of West Virginia		
6	Parole Board	227	<u>200,000</u>
7	Total		\$ 490,620

60—Office of Emergency Services

(WV Code Chapter 15)

Fund 0443 FY 2000 Org 0606

1	Personal Services	001	\$ 212,230
2	Annual Increment	004	5,300
3	Employee Benefits	010	76,934
4	Unclassified	099	31,751
5	Federal Emergency Management		
6	Agency Match	188	715,610

7	Early Warning Flood System		<u>325,000</u>
8	Total		\$ 1,366,825

*61—Division of Corrections—**Central Office*

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

Fund 0446 FY 2000 Org 0608

1	Personal Services	001	\$ 368,090
2	Annual Increment	004	8,260
3	Employee Benefits	010	119,663
4	Unclassified	099	<u>111,004</u>
5	Total		\$ 607,017

*62—Division of Corrections—**Correctional Units*

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

Fund 0450 FY 2000 Org 0608

1	Personal Services	001	\$ 0
2	Annual Increment	004	0
3	Employee Benefits	010	0
4	Unclassified	099	4,515,432
5	Payment to Counties and/		
6	or Regional Jails	229	0
7	St. Mary's Correctional Facility	230	7,984,087
8	Denmar Correctional Facility	448	3,545,542
9	Mt. Olive Correctional Facility	533	18,716,995
10	Northern Correctional Facility	534	5,484,267
11	Inmate Medical Expense	535	0
12	Ohio County Correctional Facility	784	1,218,325

90	APPROPRIATIONS	[Ch. 7
13	Charleston Work Release	456 744,875
14	Beckley Correctional Center	490 851,307
15	Huntington Work Release	495 631,023
16	Anthony Center	504 4,180,005
17	Huttonsville Correctional Center	514 12,804,798
18	Pruntytown Correctional Center	543 6,272,496
19	Corrections Academy	569 727,815
20	Parole Services	686 1,841,472
21	Special Services	687 <u>2,238,921</u>
22	Total	\$71,757,360

23 The commissioner of corrections shall within fifteen days
24 after the close of each six-month period of said fiscal year, file
25 with the legislative auditor and the department of administra-
26 tion an itemized report of expenditures made during the
27 preceding six-month period. Such report shall include the total
28 of expenditures made for personal services, annual increment,
29 current expenses (inmate medical expenses and other), repairs
30 and alterations and equipment. The commissioner of corrections
31 shall also have the authority to transfer between line items
32 appropriated to the individual correctional units above.

33 From the above appropriation to Unclassified, on July 1,
34 1999, the sum of two hundred thousand dollars shall be
35 transferred to the department of agriculture—land division as
36 advance payment for the purchase of food products; actual
37 payments for such purchases shall not be required until such
38 credits have been completely expended.

63—West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2000 Org 0612

1	Personal Services	001 \$ 25,571,046
2	Annual Increment	004 162,850

3	Employee Benefits	010	5,054,577
4	Unclassified	099	5,102,216
5	COPS Program—Federal Match	327	0
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	Trooper Retirement Fund	605	16,928,826
12	Trooper Class/Grant Match (R)	733	1,576,837
13	Handgun Administration Expense (R) ..	747	66,817
14	Debt Payment/Capital Outlay,		
15	Renovations, Repair to Barracks ...	751	2,000,000
16	COPS—Telecommunicators Match	816	<u>253,173</u>
17	Total		\$60,245,829

18 Any unexpended balances remaining in the appropriations
19` for Unclassified (fund 0453, activity 099), Barracks Maintenance and Construction (fund 0453, activity 494), Communications and Other Equipment (fund 0453, activity 558), Handgun
20 Administration Expense (fund 0453, activity 747) and Trooper
21 Class/Grant Match (fund 0453, activity 733) at the close of the
22 fiscal year 1999 are hereby reappropriated for expenditure
23 during the fiscal year 2000.
24
25

64—Division of Veterans Affairs

(WV Code Chapter 9A)

Fund 0456 FY 2000 Org 0613

1	Personal Services	001	\$ 723,775
2	Annual Increment	004	20,000
3	Employee Benefits	010	340,683

4	Unclassified	099	16,570
5	Veterans Field Offices	228	129,692
6	Veterans Toll Free Assistance Line	328	5,000
7	Veterans Reeducation Assistance (R) ..	329	270,000
8	Veterans Field Office		
9	Improvements (R)	331	56,159
10	Veterans Grant Program (R)	342	150,000
11	Veterans Monuments	817	0
12	Women Veterans Monuments	688	200,000
13	Veterans Memorial Fund	690	23,455
14	Memorial Day Patriotic Exercise	697	20,000
15	Huntington Veterans Memorial Arch ..		<u>30,000</u>
16	Total		\$ 1,985,334

17 Any unexpended balances remaining in the appropriations
 18 for Veterans Reeducation Assistance (fund 0456, activity 329),
 19 Barboursville Veterans Home Improvements (fund 0456,
 20 activity 466), Veterans Field Office Improvements (fund 0456,
 21 activity 331), and Veterans Monuments (fund 0456, activity
 22 817) at the close of the fiscal year 1999 are hereby
 23 reappropriated for expenditure during the fiscal year 2000.

65—Division of Veterans Affairs—

Veterans Home

(WV Code Chapter 9A)

Fund 0460 FY 2000 Org 0618

1	Personal Services	001	\$ 610,811
2	Annual Increment	004	14,650
3	Employee Benefits	010	350,917
4	Unclassified	099	<u>161,734</u>
5	Total		\$ 1,138,112

6 Any unexpended balance remaining in the appropriation for
 7 Barboursville Veterans Home Improvements (fund 0460,
 8 activity 466) at the close of the fiscal year 1999 is hereby
 9 reappropriated for expenditure during the fiscal year 2000.

66—Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2000 Org 0619

1	Personal Services	001	\$ 561,728
2	Annual Increment	004	11,800
3	Employee Benefits	010	180,948
4	Unclassified	099	<u>205,601</u>
5	Total		\$ 960,077

67—Division of Criminal Justice Services

(Executive Order)

Fund 0546 FY 2000 Org 0620

1	Personal Services	001	\$ 163,588
2	Annual Increment	004	2,985
3	Employee Benefits	010	61,017
4	Unclassified	099	152,673
5	Statistical Analysis Program	597	<u>51,085</u>
6	Total		\$ 431,348

68—Division of Juvenile Services

(WV Code Chapter 49)

Fund 0570 FY 2000 Org 0621

1	Central Office	701	\$ 763,172
2	Personal Services	001	4,068,688
3	Annual Increment	004	52,050

94		APPROPRIATIONS	[Ch. 7
4	Employee Benefits	010	1,731,245
5	Juvenile Gatekeeper System	055	0
6	Unclassified	099	2,669,954
7	Juvenile Transportation	730	<u>140,000</u>
8	Total		\$ 9,425,109

69—State Facilities Protection Division

(WV Code Chapter 15)

Fund 0580 FY 2000 Org 0622

1	Unclassified—Total	096	\$ 0
---	--------------------------	-----	------

70—Division of Protective Services

(WV Code Chapter 15)

Fund FY 2000 Org 0622

1	Unclassified—Total	096	\$ 0
2	Unclassified	099	400,000
3	Equipment	070	<u>600,000</u>
4	Total		\$ 1,000,000

DEPARTMENT OF TAX AND REVENUE

71—Department of Tax and Revenue—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0465 FY 2000 Org 0701

1	Unclassified—Total	096	\$ 429,582
---	--------------------------	-----	------------

72—Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2000 Org 0702

1	Personal Services	001	\$ 9,730,830
---	-------------------------	-----	--------------

2	Annual Increment	004	225,900
3	Employee Benefits	010	3,587,747
4	Unclassified	099	6,203,354
5	Remittance Processor	570	<u>297,800</u>
6	Total		\$20,045,631
7	Any unexpended balances remaining in the appropriations		
8	for Automation Project (fund 0470, activity 442), Automation		
9	Project—Total—Surplus (fund 0470, activity 673), Property		
10	Tax Electronic Data Processing System Network Project (fund		
11	0470, activity 684), Administrative Hearing Examiner Program		
12	(fund 0470, activity 713) and Property Tax and Coal Reserve		
13	Valuation Automation Project (fund 0470, activity 831) at the		
14	close of the fiscal year 1999 are hereby reappropriated for		
15	expenditure during the fiscal year 2000.		

73—Division of Professional and Occupational Licenses—

State Athletic Commission

(WV Code Chapter 29)

Fund 0523 FY 2000 Org 0933

1	Unclassified—Total	096	\$	4,719
---	------------------------------	-----	----	-------

DEPARTMENT OF TRANSPORTATION

74—Department of Transportation—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0500 FY 2000 Org 0801

1	Unclassified (R)	099	\$	171,586
2	Civil Air Patrol	234		86,952
3	Potomac Highlands Airport Authority . .	444		<u>30,000</u>
4	Total		\$	288,538

5 Any unexpended balance remaining in the appropriation for
 6 Unclassified (fund 0500, activity 099) at the close of the fiscal
 7 year 1999 is hereby reappropriated for expenditure during the
 8 fiscal year 2000.

9 Any unexpended balance remaining in the appropriation for
 10 Port Authority (fund 0500, activity 443) at the close of the
 11 fiscal year 1999 is hereby reappropriated for expenditure during
 12 the fiscal year 2000 into fund 0581.

13 Any unexpended balance remaining in the appropriation for
 14 Aeronautics Commission (fund 0500, activity 818) at the close
 15 of the fiscal year 1999 is hereby reappropriated for expenditure
 16 during the fiscal year 2000 into fund 0582.

75—State Rail Authority

(WV Code Chapter 29)

Fund 0506 FY 2000 Org 0804

1	Unclassified—Total	096	\$	718,787
---	--------------------------	-----	----	---------

76—Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2000 Org 0805

1	Unclassified—Total (R)	096	\$	0
2	Unclassified	099		932,680
3	Federal Funds/Grant Match	749		<u>1,100,000</u>
4	Total		\$	2,032,680

5 Any unexpended balances remaining in the appropriations
 6 for Unclassified—Total (fund 0510, activity 096) and Federal
 7 Funds/Grant Match—Surplus (fund 0510, activity 857) at the
 8 close of the fiscal year 1999 are hereby reappropriated for
 9 expenditure during the fiscal year 2000.

77—Public Port Authority

(WV Code Chapter 17)

Fund 0581 FY 2000 Org 0806

1 Unclassified—Total 096 \$ 495,057

78—*Aeronautics Commission*

(WV Code Chapter 29)

Fund 0582 FY 2000 Org 0807

1 Unclassified—Total 096 \$ 900,750

BUREAU OF COMMERCE

79—*Division of Forestry*

(WV Code Chapter 19)

Fund 0250 FY 2000 Org 0305

1 Personal Services 001 \$ 1,374,728

2 Annual Increment 004 34,300

3 Employee Benefits 010 531,393

4 Unclassified 099 396,161

5 Aerial Tanker Air Planes 752 200,000

6 Total \$ 2,536,582

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

80—*Geological and Economic Survey*

(WV Code Chapter 29)

Fund 0253 FY 2000 Org 0306

1 Personal Services 001 \$ 1,236,821

2 Annual Increment 004 27,370

3 Employee Benefits 010 404,399

4 Unclassified 099 365,547

5 Mineral Mapping System (R) 207 1,208,488

6	Geographic Information System (R) . . .	214	312,500
7	Computer Upgrade	349	<u>6,125</u>
8	Total		\$ 3,561,250

9 Any unexpended balances remaining in the appropriations
10 for Mineral Mapping System (fund 0253, activity 207) and
11 Geographic Information System (fund 0253, activity 214) at the
12 close of the fiscal year 1999 are hereby reappropriated for
13 expenditure during the fiscal year 2000.

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

81—West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2000 Org 0307

1	Personal Services	001	\$ 2,209,608
2	Annual Increment	004	34,858
3	Employee Benefits	010	686,817
4	Unclassified	099	2,557,541
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	Intermodal Facilities	212	0
11	Institute for Software Research	217	100,000
12	Guaranteed Work Force Grant (R)	242	3,411,009
13	Small Business Financial Assistance (R)	360	318,931
14	Robert C. Byrd Institute for Advanced\		
15	Flexible Manufacturing—Technology		

16	Outreach and Programs for		
17	Environmental and Advanced		
18	Technologies	367	700,000
19	Industrial Park Assistance (R)	480	1,400,000
20	WV Film Development Office	498	102,609
21	Leverage Technology and Small Business		
22	Development Program (R)	525	800,000
23	WV Partnership for Industrial		
24	Modernization (R)	592	0
25	International Offices (R)	593	926,966
26	Small Business Work Force (R)	735	373,875
27	Polymer Alliance	754	100,000
28	National Institute of Chemical Studies .	805	100,000
29	WV Manufacturing Extension Partnership	731	200,000
30	Local Economic Development Assistance	819	5,000,000
31	Community College Workforce		
32	Development		<u>750,000</u>
33	Total		\$27,089,522

34 Any unexpended balances remaining in the appropriations
35 for Partnership Grants (fund 0256, activity 131), Guaranteed
36 Work Force Grant (fund 0256, activity 242), Local Economic
37 Development Partnerships (fund 0256, activity 133), European
38 Trade and Tourism Office (fund 0256, activity 763), Local
39 Economic Development Assistance (fund 0256, activity 819),
40 Small Business Financial Assistance (fund 0256, activity 360),
41 Industrial Park Assistance (fund 0256, activity 480), Leverage
42 Technology and Small Business Development Program (fund
43 0256, activity 525), Small Business Work Force (fund 0256,
44 activity 735), International Offices (fund 0256, activity 593)
45 and West Virginia Partnership for Industrial Modernization
46 (fund 0256, activity 592) at the close of the fiscal year 1999 are
47 hereby reappropriated for expenditure during the fiscal year
48 2000.

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

82—Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 2000 Org 0308

1	Personal Services	001	\$ 1,573,000
2	Annual Increment	004	21,799
3	Employee Benefits	010	608,754
4	Unclassified	099	1,053,160
5	Crane Operators Certification Fund	783	<u>36,000</u>
6	Total		\$ 3,292,713

7 Any unexpended balance remaining in the appropriation for
 8 Computer/Technology Upgrades (fund 0260, activity 322) at
 9 the close of the fiscal year 1999 is hereby reappropriated for
 10 expenditure during the fiscal year 2000.

83—Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2000 Org 0310

1	Personal Services	001	\$ 8,408,051
2	Annual Increment	004	250,844
3	Employee Benefits	010	3,827,125
4	Unclassified	099	107,883

5	Nongame Wildlife	527	550,000
6	West Virginia Stream Partners Program	637	100,000
7	Upper Mud River Flood Control	654	203,454
8	Law Enforcement	806	300,000
9	Law Enforcement-Special Projects	787	10,000
10	Litter Control Conservation Officers ...	564	<u>200,000</u>
11	Total		\$13,957,357

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

84—Division of Miners' Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2000 Org 0314

1	Personal Services	001	\$ 3,599,443
2	Annual Increment	004	64,100
3	Employee Benefits	010	1,250,355
4	Unclassified	099	1,029,000
5	West Virginia Diesel Equipment		
6	Commission	712	<u>30,000</u>
7	Total		\$ 5,972,898

85—Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2000 Org 0319

1	Personal Services	001	\$ 97,162
2	Annual Increment	004	350
3	Employee Benefits	010	23,860
4	Unclassified	099	<u>39,482</u>
5	Total		\$ 160,854

86—Coal Mine Safety and Technical Review Committee

(WV Code Chapter 22)

Fund 0285 FY 2000 Org 0320

1	Unclassified—Total	096	\$	73,410
---	------------------------------	-----	----	--------

BUREAU OF ENVIRONMENT*87—Environmental Quality Board*

(WV Code Chapter 20)

Fund 0270 FY 2000 Org 0311

1	Personal Services	001	\$	64,819
2	Annual Increment	004		523
3	Employee Benefits	010		23,858
4	Unclassified	099		<u>30,106</u>
5	Total		\$	119,306

88—Interstate Commission on Potomac River Basin

(WV Code Chapter 29)

Fund 0263 FY 2000 Org 0313

1	West Virginia's Contribution to the			
2	Interstate Commission on Potomac			
3	River Basin—Total	134	\$	44,299

89—Ohio River Valley Water Sanitation Commission

(WV Code Chapter 29)

Fund 0264 FY 2000 Org 0313

1	West Virginia's Contribution to the Ohio			
2	River Valley Water Sanitation			
3	Commission—Total	135	\$	125,400

90—Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2000 Org 0313

1	Personal Services	001	\$ 4,073,842
2	Annual Increment	004	78,050
3	Employee Benefits	010	1,423,324
4	Unclassified	099	676,080
5	Black Fly Control	137	320,852
6	Federal Settlement	206	0
7	Dam Safety	607	128,109
8	Office of Water Resources-Non-		
9	Enforcement Activities	855	<u>1,200,000</u>
10	Total		\$ 7,900,257

91—Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2000 Org 0325

1	Unclassified—Total	096	\$ 79,728
---	--------------------------	-----	-----------

BUREAU OF SENIOR SERVICES*92—Bureau of Senior Services*

(WV Code Chapter 29)

Fund 0420 FY 2000 Org 0508

1	Personal Services	001	\$ 118,294
2	Annual Increment	004	2,155
3	Employee Benefits	010	60,954
4	Unclassified	099	438,279
5	Local Programs Service Delivery Costs	200	0
6	Silver Haired Legislature	202	0
7	Area Agencies Administration	203	87,428
8	Foster Grandparents Stipends and Travel	205	0
9	In-Home Services for Senior Citizens ..	224	<u>0</u>
10	Total		\$ 707,110

BUREAU OF EMPLOYMENT PROGRAMS

93—Bureau of Employment Programs

(WV Code Chapter 23)

Fund 0572 FY 2000 Org 0323

1 Welfare-to-Work—Total (R) 416 \$ 1,000,000

2 Any unexpended balance remaining in the appropriation for
 3 Welfare-to-Work—Total (fund 0572, activity 416) at the close
 4 of the fiscal year 1999 is hereby reappropriated for expenditure
 5 during the fiscal year 2000.

94—Claims Against the General Revenue Fund

1 Claims Against the State 319 \$ 0

2 Total TITLE II, Section 1—

3 General Revenue \$ 2,660,622,378

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

DEPARTMENT OF TRANSPORTATION

95—Division of Motor Vehicles

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

Fund 9007 FY 2000 Org 0802

		State Road Fund
1	Personal Services 001	\$ 8,083,248
2	Annual Increment 004	100,750
3	Employee Benefits 010	2,858,727
4	Unclassified 099	17,557,366

5	International Fuel Tax Agreement	536	<u>558,834</u>
6	Total		\$29,158,925

96—Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2000 Org 0803

1	Debt Service	040	\$ 50,000,000
2	ARC Assessment	136	255,910
3	Maintenance, Expressway, Trunkline		
4	and Feeder	270	85,000,000
5	Maintenance, State Local Services	271	144,000,000
6	Maintenance, Contract Paving and		
7	Secondary Road Maintenance	272	50,000,000
8	Bridge Repair and Replacement	273	34,000,000
9	Inventory Revolving	275	2,000,000
10	Equipment Revolving	276	15,000,000
11	General Operations	277	40,316,000
12	Interstate Construction	278	17,000,000
13	Other Federal Aid Programs	279	25,000,000
14	Appalachian Programs	280	10,000,000
15	Nonfederal Aid Construction	281	20,000,000
16	Highway Litter Control	282	<u>1,600,000</u>
17	Total		\$ 494,171,910

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

21 The commissioner of highways shall have the authority to
 22 operate revolving funds within the state road fund for the
 23 operation and purchase of various types of equipment used

24 directly and indirectly in the construction and maintenance of
 25 roads and for the purchase of inventories and materials and
 26 supplies.

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

32 It is the intent of the Legislature to capture and match all
 33 federal funds available for expenditure on the Appalachian
 34 highway system at the earliest possible time. Therefore, should
 35 amounts in excess of those appropriated be required for the
 36 purposes of Appalachian programs, funds in excess of the
 37 amount appropriated may be made available upon recommen-
 38 dation of the commissioner and approval of the governor.
 39 Further, for the purpose of Appalachian programs, funds
 40 appropriated to line items may be transferred to other line items
 41 upon recommendation of the commissioner and approval of the
 42 governor.

97—Division of Highways—

Federal Aid Highway Matching Fund

(WV Code Chapters 17 and 17C)

Fund 9018 FY 2000 Org 0803

1	Interstate Construction	278	\$ 58,000,000
2	Other Federal Aid Programs	279	175,000,000
3	Appalachian Programs	280	<u>90,000,000</u>
4	Total		\$ 323,000,000

98—Claims Against the State Road Fund

1	Claims Against the State	319	\$ 0
2	Total TITLE II, Section 2—		
3	State Road Fund		<u>\$880,770,542</u>

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

LEGISLATIVE

99—Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 1731 FY 2000 Org 2300

	Activity	Other Funds
1 Personal Services	001 \$	185,950
2 Annual Increment	004	3,500
3 Employee Benefits	010	56,800
4 Unclassified	099	40,000
5 Economic Loss Claim Payment Fund (R)	334	<u>2,500,000</u>
6 Total		\$ 2,786,250

7 Any unexpended balance remaining in the appropriation for
 8 Economic Loss Claim Payment Fund (fund 1731, activity 334)
 9 at the close of the fiscal year 1999 is hereby reappropriated for
 10 expenditure during the fiscal year 2000.

EXECUTIVE

100—Chief Technology Officer Administration Fund

(WV Code Chapter 5)

Fund 1028 FY 2000 Org 0100

1 Unclassified—Total	096 \$	0
2 Unclassified	099	1,854,886
3 EPSCoR Undergraduate Scientific		
4 Instrumentation Program		<u>150,000</u>
5 Total		\$ 2,004,886

*101—Auditor's Office—**Land Operating Fund*

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2000 Org 1200

1	Personal Services	001	\$	134,058
2	Annual Increment	004		4,400
3	Employee Benefits	010		40,304
4	Unclassified	099		<u>198,994</u>
5	Total		\$	377,756

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

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

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

(WV Code Chapter 32)

Fund 1225 FY 2000 Org 1200

1	Personal Services	001	\$	488,139
2	Annual Increment	004		4,722
3	Employee Benefits	010		137,979
4	Unclassified	099		<u>404,862</u>
5	Total		\$	1,037,702

*103—Auditor's Office—**Technology Support and Acquisition*

(WV Code Chapter 12)

Fund 1233 FY 2000 Org 1200

1	Unclassified—Total	096	\$	569,128
---	--------------------------	-----	----	---------

*104—Auditor's Office—**Purchasing Card Administration Fund*

(WV Code Chapter 12)

Fund 1234 FY 2000 Org 1200

1	Unclassified—Total	096	\$	129,388
---	--------------------------	-----	----	---------

*105-Auditor's Office-**Office of the Chief Inspector*

(WV Code Chapter 6)

Fund 1235 FY 2000 Org 1200

1	Personal Services	001	\$	1,389,226
2	Annual Increment	004		22,900
3	Employee Benefits	010		443,579
4	Unclassified	099		<u>469,610</u>
5	Total		\$	2,325,315

*106—Treasurer's Office—**Technology Support and Acquisition*

(WV Code Chapter 12)

Fund 1329 FY 2000 Org 1300

1	Unclassified—Total	096	\$	100,000
---	--------------------------	-----	----	---------

107—Department of Agriculture

(WV Code Chapter 19)

Fund 1401 FY 2000 Org 1400

1	Personal Services	001	\$	540,391
---	-------------------------	-----	----	---------

110		APPROPRIATIONS	[Ch. 7
2	Annual Increment	004	4,950
3	Employee Benefits	010	140,674
4	Unclassified	099	<u>854,141</u>
5	Total		\$ 1,540,156

108—Department of Agriculture—

West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

Fund 1408 FY 2000 Org 1400

1	Student and Farm Loans—Total	235	\$ 540,039
---	--	-----	------------

109—Department of Agriculture—

General John McCausland Memorial Farm

(WV Code Chapter 19)

Fund 1409 FY 2000 Org 1400

1	Personal Services	001	\$ 22,196
2	Employee Benefits	010	15,598
3	Unclassified	099	<u>199,537</u>
4	Total		\$ 237,331

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

110—Department of Agriculture—

Farm Operating Fund

(WV Code Chapter 19)

Fund 1412 FY 2000 Org 1400

1	Unclassified—Total	096	\$ 970,658
---	------------------------------	-----	------------

111—Attorney General—

Antitrust Enforcement

(WV Code Chapter 47)

Fund 1507 FY 2000 Org 1500

1	Personal Services	001	\$	215,692
2	Annual Increment	004		935
3	Employee Benefits	010		66,052
4	Unclassified	099		<u>178,285</u>
5	Total		\$	460,964

*112—Attorney General—**Preneed Funeral Regulation Fund*

(WV Code Chapter 47)

Fund 1513 FY 2000 Org 1500

1	Unclassified—Total	096	\$	223,279
---	--------------------------	-----	----	---------

*113—Attorney General—**Preneed Funeral Guarantee Fund*

(WV Code Chapter 47)

Fund 1514 FY 2000 Org 1500

1	Unclassified—Total	096	\$	775,000
---	--------------------------	-----	----	---------

*114—Secretary of State—**Trademark Registration*

(WV Code Chapters 3, 5, and 59)

Fund 1610 FY 2000 Org 1600

1	Unclassified—Total	096	\$	7,000
---	--------------------------	-----	----	-------

DEPARTMENT OF ADMINISTRATION*115—Office of the Secretary—**Natural Gas Contract Refund Fund*

(WV Code Chapter 5A)

Fund 2040 FY 2000 Org 0201

1 Unclassified—Total 096 \$ 200,000

116—Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 2220 FY 2000 Org 0210

1 Personal Services 001 \$ 5,399,672

2 Annual Increment 004 92,815

3 Employee Benefits 010 1,595,824

4 Unclassified 099 1,794,731

5 Total \$ 8,883,042

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

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

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

117—Division of Purchasing—

Revolving Fund

(WV Code Chapter 5A)

Fund 2320 FY 2000 Org 0216

1 Personal Services 001 \$ 600,645

2	Annual Increment	004	19,913
3	Employee Benefits	010	208,236
4	Unclassified	099	<u>265,776</u>
5	Total		\$ 1,094,570

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

9 There is hereby appropriated from this fund, in addition to
10 the above appropriation, the necessary amount for the expendi-
11 ture of funds other than personal services or employee benefits
12 to enable the division to provide printing, publishing and
13 document services and for the purchase of supplies for resale to
14 user agencies. These services include, but are not limited to,
15 offset printing, electronic duplication/copying, microfilming,
16 records storage and the sale of general office supplies.

118—Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 2000 Org 0222

1	Personal Services	001	\$ 2,367,202
2	Annual Increment	004	60,100
3	Employee Benefits	010	643,161
4	Unclassified	099	<u>762,121</u>
5	Total		\$ 3,832,584

6 Any unexpended balance remaining in the appropriation for
7 Human Resource Information System (fund 2440, activity 641)
8 at the close of the fiscal year 1999 is hereby reappropriated for
9 expenditure during the fiscal year 2000.

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

119—WV Prosecuting Attorneys' Institute

(WV Code Chapter 7)

Fund 2521 FY 2000 Org 0228

1 Unclassified—Total 096 \$ 628,792

DEPARTMENT OF EDUCATION

120—State Board of Education—

Strategic Staff Development

(WV Code Chapter 18)

Fund 3937 FY 2000 Org 0402

1 Unclassified—Total 096 \$ 500,000

2 Any unexpended balance remaining in the appropriation for
 3 Unclassified—Total (fund 3937, activity 096) at the close of the
 4 fiscal year 1999 is hereby reappropriated for expenditure during
 5 the fiscal year 2000.

121—State Department of Education—

School Building Authority

(WV Code Chapter 18)

Fund 3959 FY 2000 Org 0402

1	Personal Services	001	\$	434,421
2	Annual Increment	004		5,450
3	Employee Benefits	010		159,054
4	Unclassified	099		<u>272,819</u>
5	Total		\$	871,744

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

*122—State Department of Education—
 FFA-FHA Camp and Conference Center
 (WV Code Chapter 18)*

Fund 3960 FY 2000 Org 0402

1	Personal Services	001	\$	750,600
2	Annual Increment	004		12,522
3	Employee Benefits	010		346,035
4	Unclassified	099		<u>1,042,578</u>
5	Total		\$	2,151,735

DEPARTMENT OF EDUCATION AND THE ARTS

*123—State College and University Systems—
 State Systems Registration Fee—
 Revenue Bond Construction Fund
 (WV Code Chapters 18 and 18B)*

Fund 4033 FY 2000 Org 0453

1	Capital Outlay	511	\$	700,000
---	----------------------	-----	----	---------

2 The appropriation for Capital Outlay (fund 4033, activity
 3 511) shall be paid from available unexpended cash balances and
 4 interest earnings accruing to the fund. The appropriation shall
 5 be expended at the discretion of the Board of Trustees of the
 6 University System and the Board of Directors of the State
 7 College System and the funds may be allocated to any institu-
 8 tion within the system.

9 The total amount of this appropriation shall be paid from
 10 unexpended proceeds of revenue bonds previously issued
 11 pursuant to section eight, article ten, chapter eighteen-b of the
 12 code, which have since been refunded.

*124—State College and University Systems—
 State Systems Tuition Fee—*

Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4041 FY 2000 Org 0453

1 Capital Outlay 511 \$ 3,100,008

2 Any unexpended balance remaining in the above appropria-
3 tion at the close of fiscal year 1999 is hereby reappropriated for
4 expenditure during the fiscal year 2000 except for fund 4041,
5 activities 387, 388, 391, 392, 393, 394, 396, 397 and 398 which
6 shall expire on June 30, 1999.

7 Any balance so reappropriated for 1997 Revenue Bond
8 Costs (fund 4041, activity 734) is hereby redesignated as
9 Capital Outlay (fund 4041, activity 511).

10 The appropriation for Capital Outlay (fund 4041, activity
11 511) shall be paid from available unexpended cash balances and
12 interest earnings accruing to the fund. The appropriation shall
13 be expended at the discretion of the Board of Trustees of the
14 University System and the Board of Directors of the State
15 College System and the funds may be allocated to any institu-
16 tion within the systems.

17 The total amount of this appropriation shall be paid from
18 unexpended proceeds of revenue bonds previously issued
19 pursuant to section eight, article twelve-b, chapter eighteen of
20 the code, which have since been refunded.

125—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 2000 Org 0461

1 Debt Service (R) 040 \$ 2,687,063

2	Capital Repairs and Alterations (R)	251	2,690,400
3	Miscellaneous Projects (R)	252	400,000
4	Computer and Telecommunications		
5	Technology (R)	438	<u>692,850</u>
6	Total		\$ 6,470,313

7 Any unexpended balances remaining in the appropriations
 8 (except fiscal year 1994, 1995, 1996 and 1997, activity 251 and
 9 except for fiscal year 1994, 1996 and 1997, activity 438) are
 10 hereby reappropriated for expenditure during the fiscal year
 11 2000.

12 The total amount of this appropriation shall be paid from
 13 the special capital improvement fund created in section eight,
 14 article ten, chapter eighteen-b of the code. Projects are to be
 15 paid on a cash basis and made available from date of passage.

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

126—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 2000 Org 0461

1	Debt Service (R)	040	\$ 8,362,475
2	Building and Campus Renewal (R)	258	9,263,300
3	Facilities Planning and Administration (R)	386	190,000
4	Computer and Telecommunications		
5	Technology (R)	438	<u>692,850</u>
6	Total		\$ 18,508,625

7 Any unexpended balances remaining in the appropriations
 8 (except fiscal year 1993, 1994, 1995, 1996 and 1997, activity
 9 258 and except fiscal year 1993, 1994, 1996 and 1997, activity
 10 438) are hereby reappropriated for expenditure during the fiscal
 11 year 2000.

12 The total amount of this appropriation shall be paid from
 13 the special capital improvement fund created in section eight,
 14 article ten, chapter eighteen-b of the code. Projects are to be
 15 paid on a cash basis and made available from date of passage.

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

127—State University System—

West Virginia University Health Sciences Center

Spending Authority

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2000 Org 0463

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

2 Any unexpended balance remaining in the appropriation for
 3 the West Virginia University Health Sciences Center is hereby
 4 reappropriated for expenditure during the fiscal year 2000.

128—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 2000 Org 0481

1 Debt Service (R) 040 \$ 1,386,230

2 Capital Repairs and Alterations (R) 251 1,547,000

3 Total \$ 2,933,230

4 Any unexpended balances remaining in the appropriations
5 (except fiscal year 1997, activity 040) are hereby reappropriated
6 for expenditure during the fiscal year 2000.

7 The total amount of this appropriation shall be paid from
8 the special capital improvement fund created in section eight,
9 article ten, chapter eighteen-b of the code. Projects are to be
10 paid on a cash basis and made available from the date of
11 passage.

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

129—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 2000 Org 0481

1	Debt Service (R)	040	\$ 3,740,862
2	Capital Improvements (New) (R)	259	1,157,200
3	Facilities Planning and Administration .	386	190,000
4	Capital Contingencies and		
5	Emergencies (R)	537	250,000
6	Building and Campus Renewal and Facilities		
7	Planning and Administration (R) ..	538	<u>2,214,700</u>
8	Total		\$ 7,552,762

9 Any unexpended balances remaining in the appropriations
10 (except for fiscal year 1997, activity 040, fiscal year 1985,
11 activity 258, and fiscal year 1995, activity 259) are hereby
12 reappropriated for expenditure during the fiscal year 2000.

13 The total amount of this appropriation shall be paid from
 14 the special capital improvement fund created in article twelve-
 15 b, chapter eighteen of the code. Projects are to be paid on a cash
 16 basis and made available from the date of passage.

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

130— State Board of Rehabilitation—

Division of Rehabilitation Services—

West Virginia Rehabilitation Center

Special Account

(WV Code Chapter 18)

Fund 8664 FY 2000 Org 0932

1	Unclassified	099	\$ 2,700,000
2	Workshop Development	163	450,000
3	Workshop-Supported Employment	484	<u>50,000</u>
4	Total		\$ 3,200,000

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

131—Board of Barbers and Cosmetologists

(WV Code Chapters 16 and 30)

Fund 5425 FY 2000 Org 0505

1	Personal Services	001	\$ 202,072
2	Annual Increment	004	4,861
3	Employee Benefits	010	66,320
4	Unclassified	099	<u>113,550</u>
5	Total		\$ 386,803

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

*132—Division of Health—**Vital Statistics*

(WV Code Chapter 16)

Fund 5144 FY 2000 Org 0506

1	Personal Services	001	\$	232,878
2	Annual Increment	004		8,203
3	Employee Benefits	010		116,866
4	Unclassified.	099		<u>99,950</u>
5	Total		\$	457,897

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

(WV Code Chapter 16)

Fund 5156 FY 2000 Org 0506

1	Debt Service (R)	040	\$	2,420,000
2	Institutional Facilities Operations (R) ..	335		32,811,806
3	Medical Services Trust Fund—			
4	Transfer (R)	512		<u>23,300,000</u>
5	Total		\$	58,531,806

6 Any unexpended balances remaining in the appropriations
7 for hospital services revenue account at the close of the fiscal
8 year 1999 are hereby reappropriated for expenditure during the
9 fiscal year 2000, except for fund 5156, activity 335 (fiscal year
10 1997), and fund 5156, activity 040, and activity 566 (fiscal year
11 1998) which shall expire on June 30, 1999.

12 The total amount of this appropriation shall be paid from
13 the hospital services revenue account special fund created by
14 section fifteen-a, article one, chapter sixteen of the code, and

15 shall be used for operating expenses and for improvements in
16 connection with existing facilities and bond payments.

17 The secretary of the department of health and human
18 resources is authorized to utilize up to ten percent of the funds
19 from the appropriation for Institutional Facilities Operations
20 line to facilitate cost effective and cost saving services at the
21 community level.

22 Necessary funds from the above appropriation may be used
23 for medical facilities operations, either in connection with this
24 account or in connection with the line item designated Institu-
25 tional Facilities Operations in the consolidated medical service
26 fund (fund 0525, fiscal year 2000, organization 0506).

27 From the above appropriation to Institutional Facilities
28 Operations, together with available funds from the consolidated
29 medical services fund (fund 0525, activity 335), on July 1,
30 1999, the sum of one hundred fifty-thousand dollars shall be
31 transferred to the department of agriculture—land division as
32 advance payment for the purchase of food products; actual
33 payments for such purchases shall not be required until such
34 credits have been completely expended.

134—Division of Health—

Laboratory Services

(WV Code Chapter 16)

Fund 5163 FY 2000 Org 0506

1	Personal Services	001	\$	454,918
2	Annual Increment	004		9,450
3	Employee Benefits	010		155,776
4	Unclassified	099		<u>349,912</u>
5	Total		\$	970,056

135—Division of Health—

Health Facility Licensing

(WV Code Chapter 16)

Fund 5172 FY 2000 Org 0506

1	Personal Services	001	\$	185,698
2	Annual Increment	004		2,800
3	Employee Benefits	010		67,067
4	Unclassified	099		<u>102,904</u>
5	Total		\$	358,469

*136—Division of Health—**Hepatitis B Vaccine*

(WV Code Chapter 16)

Fund 5183 FY 2000 Org 0506

1	Personal Services	001	\$	51,822
2	Annual Increment	004		1,150
3	Employee Benefits	010		18,315
4	Unclassified	099		<u>3,000,000</u>
5	Total		\$	3,071,287

*137—Division of Health—**Lead Abatement Fund*

(WV Code Chapter 16)

Fund 5204 FY 2000 Org 0506

1	Unclassified—Total	096	\$	65,042
---	--------------------------	-----	----	--------

138—West Virginia Health Care Authority

(WV Code Chapter 16)

Fund 5375 FY 2000 Org 0507

1	Personal Services	001	\$	1,513,992
2	Annual Increment	004		14,750

3	Employee Benefits	010	294,158
4	Unclassified	099	<u>2,072,500</u>
5	Total		\$ 3,895,400

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

139—Division of Human Services—

Health Care Provider Tax

(WV Code Chapter 11)

Fund 5090 FY 2000 Org 0511

1 Unclassified—Total

096	\$ 139,012,285
-----	----------------

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

140—Division of Human Services—

Child Support Enforcement

(WV Code Chapter 48A)

Fund 5094 FY 2000 Org 0511

1 Unclassified—Total

096	\$ 27,486,342
-----	---------------

2 Any unexpended balance remaining in the appropriation for
 3 Unclassified—Total (fund 5094, activity 096) at the close of the
 4 fiscal year 1999 is hereby reappropriated for expenditure during
 5 fiscal year 2000.

141—Division of Human Services—

Medical Services Trust Fund

(WV Code Chapter 9)

Fund 5185 FY 2000 Org 0511

1	Eligibility Expansion	582	\$ 5,459,833
2	State Institutions DPSH Payments	583	6,566,355
3	Hospice Services	584	340,115
4	Match Drop	585	<u>10,472,000</u>
5	Total		\$ 22,838,303

6 The Match Drop line item above shall be used in conjunc-
7 tion with funds appropriated to the division of human services
8 in the Medical Services line item (fund 0403, activity 189). The
9 remainder of all moneys deposited in the fund shall be trans-
10 ferred to the division of human services accounts.

**DEPARTMENT OF MILITARY
AFFAIRS AND PUBLIC SAFETY**

142—State Armory Board—

General Armory Fund

(WV Code Chapter 15)

Fund 6102 FY 2000 Org 0604

1	Unclassified—Total	096	\$ 401,899
---	--------------------------	-----	------------

143—West Virginia Division of Corrections—

Parolee Supervision Fees

(WV Code Chapter 62)

Fund 6362 FY 2000 Org 0608

1	Personal Services	001	\$ 88,976
2	Annual Increment	004	1,000
3	Employee Benefits	010	39,461
4	Unclassified	099	<u>115,408</u>
5	Total		\$ 244,845

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

(WV Code Chapter 17C)

Fund 6501 FY 2000 Org 0612

1	Personal Services	001	\$	692,151
2	Annual Increment	004		3,150
3	Employee Benefits	010		203,689
4	Unclassified (R)	099		<u>556,567</u>
5	Total		\$	1,455,557

6 The total amount of this appropriation shall be paid from
 7 the special revenue fund out of fees collected for inspection
 8 stickers as provided by law.

9 Any unexpended balance remaining in the appropriation for
 10 Unclassified (fund 6501, activity 099) at the close of the fiscal
 11 year 1999 is hereby reappropriated for expenditure during the
 12 fiscal year 2000.

*145—West Virginia State Police—**Drunk Driving Prevention Fund*

(WV Code Chapter 15)

Fund 6513 FY 2000 Org 0612

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

2 The total amount of this appropriation shall be paid from
 3 the special revenue fund out of receipts collected pursuant to
 4 sections nine-a and sixteen, article fifteen, chapter eleven of the
 5 code and paid into a revolving fund account in the state
 6 treasury.

*146—West Virginia State Police—**Surplus Real Property Proceeds Fund*

(WV Code Chapter 15)

Fund 6516 FY 2000 Org 0612

1	Unclassified—Total	096	\$	500,000
---	--------------------------	-----	----	---------

*147—West Virginia State Police—**Surplus Transfer Account**(WV Code Chapter 15)*Fund 6519 FY 2000 Org 0612

1	Unclassified—Total (R)	096	\$	350,000
---	------------------------------	-----	----	---------

2 Any unexpended balance remaining in the appropriation for
 3 Unclassified—Total (fund 6519, activity 096) at the close of the
 4 fiscal year 1999 is hereby reappropriated for expenditure during
 5 the fiscal year 2000.

*148—WV State Police—**Central Abuse Registry Fund**(WV Code Chapter 15)*Fund 6527 FY 2000 Org 0612

1	Unclassified—Total	096	\$	68,795
---	--------------------------	-----	----	--------

*149—Regional Jail and Correctional Facility Authority**(WV Code Chapter 31)*Fund 6675 FY 2000 Org 0615

1	Personal Services	001	\$	745,646
2	Annual Increment	004		7,450
3	Employee Benefits	010		245,156
4	Debt Service	040		9,000,000
5	Unclassified	099		<u>548,089</u>
6	Total		\$	10,546,341

*150—Division of Veterans Affairs—**Veterans Home*

(WV Code Chapter 19A)

Fund 6754 FY 2000 Org 0618

1 Unclassified—Total 096 \$ 216,000

151—Fire Commission—

Fire Marshal Fees

(WV Code Chapter 29)

Fund 6152 FY 2000 Org 0619

1 Personal Services 001 \$ 414,465

2 Annual Increment 004 5,200

3 Employee Benefits 010 127,347

4 Unclassified 099 440,080

5 Total \$ 987,092

6 Any unexpended cash balance remaining in fund 6152 at
 7 the close of the fiscal year 1999 is hereby available for expendi-
 8 ture as part of the fiscal year 2000 appropriation.

152—Criminal Justice Services—

Court Security Fund

(Executive Order)

Fund 6804 FY 2000 Org 0620

1 Unclassified—Total 096 \$ 2,000,000

DEPARTMENT OF TAX AND REVENUE

153—Division of Banking—

Lending and Credit Rate Board

(WV Code Chapter 47A)

Fund 3040 FY 2000 Org 0303

1 Personal Services 001 \$ 5,000

2 Employee Benefits 010 988

3	Unclassified	099	<u>5,000</u>
4	Total		\$ 10,988

154—Division of Banking

(WV Code Chapter 31A)

Fund 3041 FY 2000 Org 0303

1	Personal Services	001	\$ 1,154,290
2	Annual Increment	004	14,558
3	Employee Benefits	010	375,760
4	Unclassified	099	<u>651,540</u>
5	Total		\$ 2,196,148

155—Tax Division—

Office of Chief Inspector

(WV Code Chapter 6)

Fund 7067 FY 2000 Org 0702

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

156—Tax Division—

Cemetery Company Account

(WV Code Chapter 35)

Fund 7071 FY 2000 Org 0702

1	Personal Services	001	\$ 16,116
2	Employee Benefits	010	5,364
3	Unclassified	099	<u>10,900</u>
4	Total		\$ 32,380

*157—Tax Division—**Special Audit and Investigative Unit*

(WV Code Chapter 11)

Fund 7073 FY 2000 Org 0702

1	Personal Services	001	\$	731,113
2	Annual Increment	004		10,250
3	Employee Benefits	010		231,302
4	Unclassified	099		<u>357,898</u>
5	Total		\$	1,330,563

*158—Insurance Commissioner—**Examination Revolving Fund*

(WV Code Chapter 33)

Fund 7150 FY 2000 Org 0704

1	Personal Services	001	\$	416,950
2	Annual Increment	004		1,500
3	Employee Benefits	010		104,580
4	Unclassified	099		<u>241,000</u>
5	Total		\$	764,030

*159—Insurance Commissioner—**Consumer Advocate*

(WV Code Chapter 33)

Fund 7151 FY 2000 Org 0704

1	Personal Services	001	\$	203,984
2	Annual Increment	004		750
3	Employee Benefits	010		71,254
4	Unclassified	099		<u>160,200</u>
5	Total		\$	436,188

160—Insurance Commissioner

(WV Code Chapter 33)

Fund 7152 FY 2000 Org 0704

1	Personal Services	001	\$ 1,665,148
2	Annual Increment	004	29,950
3	Employee Benefits	010	529,550
4	Unclassified	099	<u>1,066,550</u>
5	Total		\$ 3,291,198

6 The total amount of this appropriation shall be paid from a
7 special revenue fund out of collections of fees and charges as
8 provided by law.

*161—Racing Commission—**Relief Fund*

(WV Code Chapter 19)

Fund 7300 FY 2000 Org 0707

1	Medical Expenses—Total	245	\$ 57,000
---	------------------------------	-----	-----------

2 The total amount of this appropriation shall be paid from
3 the special revenue fund out of collections of license fees and
4 fines as provided by law.

5 No expenditures shall be made from this account except for
6 hospitalization, medical care and/or funeral expenses for
7 persons contributing to this fund.

*162—Racing Commission—**Administration and Promotion*

(WV Code Chapter 19)

Fund 7304 FY 2000 Org 0707

1	Personal Services	001	\$ 53,700
2	Annual Increment	004	950

132		APPROPRIATIONS	[Ch. 7
3	Employee Benefits	010	23,553
4	Unclassified	099	<u>47,408</u>
5	Total		\$ 125,611
	<i>163—Racing Commission—</i>		
	<i>General Administration</i>		
	(WV Code Chapter 19)		
	Fund <u>7305</u> FY <u>2000</u> Org <u>0707</u>		
1	Personal Services	001	\$ 1,138,980
2	Annual Increment	004	18,250
3	Employee Benefits	010	335,038
4	Unclassified	099	<u>305,000</u>
5	Total		\$ 1,797,268
	<i>164—Racing Commission—</i>		
	<i>Administration, Promotion and Education Fund</i>		
	(WV Code Chapter 19)		
	Fund <u>7307</u> FY <u>2000</u> Org <u>0707</u>		
1	Unclassified—Total	096	\$ 35,000
	<i>165—Alcohol Beverage Control Administration—</i>		
	<i>Wine License Special Fund</i>		
	(WV Code Chapter 60)		
	Fund <u>7351</u> FY <u>2000</u> Org <u>0708</u>		
1	Personal Services	001	\$ 209,480
2	Annual Increment	004	2,150
3	Employee Benefits	010	80,507
4	Unclassified	099	<u>159,022</u>
5	Total		\$ 451,159

166—Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2000 Org 0708

1	Personal Services	001	\$ 2,706,044
2	Annual Increment	004	73,251
3	Employee Benefits	010	1,471,830
4	Unclassified	099	<u>2,023,296</u>
5	Total		\$ 6,274,421

6 The total amount of this appropriation shall be paid from a
7 special revenue fund out of liquor revenues.

8 The above appropriation includes the salary of the commis-
9 sioner and the salaries, expenses and equipment of administra-
10 tive offices, warehouses and inspectors.

11 There is hereby appropriated from liquor revenues, in
12 addition to the above appropriation, the necessary amount for
13 the purchase of liquor as provided by law.

DEPARTMENT OF TRANSPORTATION*167—Division of Motor Vehicles**Driver's License Reinstatement Fund*

(WV Code Chapter 17B)

Fund 8213 FY 2000 Org 0802

1	Unclassified—Total	096	\$ 641,394
---	--------------------------	-----	------------

*168—Division of Motor Vehicles**Driver Rehabilitation*

(WV Code Chapter 17C)

Fund 8214 FY 2000 Org 0802

1	Unclassified—Total	096	\$ 903,720
---	--------------------------	-----	------------

*169—Division of Motor Vehicles**Insurance Certificate Fees*

(WV Code Chapter 20)

Fund 8215 FY 2000 Org 0802

1	Personal Services	001	\$	585,360
2	Annual Increment	004		16,300
3	Employee Benefits	010		226,351
4	Unclassified	099		<u>72,680</u>
5	Total		\$	900,691

*170—Division of Motor Vehicles**Motorboat Licenses*

(WV Code Chapter 20)

Fund 8216 FY 2000 Org 0802

1	Unclassified—Total	096	\$	160,639
---	--------------------------	-----	----	---------

*171—Division of Motor Vehicles**Returned Check Fees*

(WV Code Chapter 17)

Fund 8217 FY 2000 Org 0802

1	Unclassified—Total	096	\$	21,617
---	--------------------------	-----	----	--------

BUREAU OF COMMERCE*172—Division of Forestry*

(WV Code Chapter 19)

Fund 3081 FY 2000 Org 0305

1	Personal Services	001	\$	306,189
2	Annual Increment	004		3,350
3	Employee Benefits	010		83,189

4	Unclassified	099	<u>359,357</u>
5	Total		\$ 752,085

*173—Division of Forestry**Timberland Enforcement Operations*

(WV Code Chapter 19)

Fund 3082 FY 2000 Org 0305

1	Unclassified—Total	096	\$ 260,000
---	--------------------------	-----	------------

*174—Division of Forestry**Severance Tax Operations*

(WV Code Chapter 11)

Fund 3084 FY 2000 Org 0305

1	Unclassified—Total	096	\$ 3,371,791
---	--------------------------	-----	--------------

175—Geological and Economic Survey

(WV Code Chapter 29)

Fund 3100 FY 2000 Org 0306

1	Personal Services	001	\$ 41,369
2	Annual Increment	004	535
3	Employee Benefits	010	7,473
4	Unclassified	099	<u>177,766</u>
5	Total		\$ 227,143

6 The above appropriation shall be used in accordance with
7 section four, article two, chapter twenty-nine of the code.

*176—West Virginia Development Office—**Energy Assistance*

(WV Code Chapter 5B)

Fund 3144 FY 2000 Org 0307

1	Energy Assistance—Total (R)	647	\$ 500,000
---	-----------------------------------	-----	------------

2 Any unexpended balances remaining in the appropriations
 3 for Unclassified (fund 3144, activity 099) and Energy Assis-
 4 tance—Total (fund 3144, activity 647) at the close of the fiscal
 5 year 1999 are hereby reappropriated for expenditure during the
 6 fiscal year 2000.

177—Division of Labor

Contractor Licensing Board Fund

(WV Code Chapter 21)

Fund 3187 FY 2000 Org 0308

1	Personal Services	001	\$	766,306
2	Annual Increment	004		14,483
3	Employee Benefits	010		285,252
4	Unclassified	099		<u>775,657</u>
5	Total		\$	1,841,698

178—Division of Labor

Elevator Safety Act

(WV Code Chapter 21)

Fund 3188 FY 2000 Org 0308

1	Personal Services	001	\$	170,263
2	Annual Increment	004		1,157
3	Employee Benefits	010		58,584
4	Unclassified	099		<u>77,385</u>
5	Total		\$	307,389

179—Division of Labor—

Crane Operator Certification Fund

(WV Code Chapter 21)

Fund 3191 FY 2000 Org 0308

1 Unclassified—Total 096 \$ 10,000

180—Division of Labor—

Amusement Rides/Amusement Attraction Safety Fund

(WV Code Chapter 21)

Fund 3192 FY 2000 Org 0308

1 Unclassified—Total 096 \$ 75,000

181—Division of Natural Resources—

(WV Code Chapter 20)

Fund 3200 FY 2000 Org 0310

1 Personal Services 001 \$ 6,650,176

2 Annual Increment 004 135,196

3 Employee Benefits 010 2,593,013

4 Unclassified 099 1,945,687

5 Capital Improvements and

6 Land Purchase (R) 248 1,248,568

7 Total \$ 12,572,640

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

11 Any unexpended balance remaining in the appropriation for
12 Capital Improvements and Land Purchase (fund 3200, activity
13 248) at the close of the fiscal year 1999 is hereby
14 reappropriated for expenditure during the fiscal year 2000.

182—Division of Natural Resources

Game, Fish and Aquatic Life Fund

(WV Code Chapter 20)

Fund 3202 FY 2000 Org 0310

1 Unclassified—Total 096 \$ 20,000

183—Division of Natural Resources

Nongame Fund

(WV Code Chapter 20)

Fund 3203 FY 2000 Org 0310

1	Personal Services	001	\$	128,457
2	Annual Increment	004		750
3	Employee Benefits	010		42,510
4	Unclassified	099		<u>51,108</u>
5	Total		\$	222,825

184—Division of Natural Resources

Planning and Development Division

(WV Code Chapter 20)

Fund 3205 FY 2000 Org 0310

1	Personal Services	001	\$	225,452
2	Annual Increment	004		5,250
3	Employee Benefits	010		88,011
4	Unclassified	099		<u>293,281</u>
5	Total		\$	611,994

185—Division of Natural Resources—

Whitewater Study and Improvement Fund

(WV Code Chapter 20)

Fund 3253 FY 2000 Org 0310

1	Unclassified—Total	096	\$	174,201
---	--------------------------	-----	----	---------

186—Division of Natural Resources

Recycling Assistance Fund

(WV Code Chapter 20)

Fund 3254 FY 2000 Org 0310

1	Personal Services	001	\$	147,440
2	Annual Increment	004		2,150
3	Employee Benefits	010		58,015
4	Unclassified (R)	099		<u>1,487,164</u>
5	Total		\$	1,694,769

6 Any unexpended balance remaining in the appropriation for
 7 Unclassified (fund 3254, activity 099) at the close of the fiscal
 8 year 1999 is hereby reappropriated for expenditure during the
 9 fiscal year 2000.

187—Division of Natural Resources

Whitewater Advertising and Promotion Fund

(WV Code Chapter 20)

Fund 3256 FY 2000 Org 0310

1	Unclassified—Total	096	\$	20,000
---	--------------------------	-----	----	--------

BUREAU OF EMPLOYMENT PROGRAMS

188—Bureau of Employment Programs

Workers' Compensation Fund

(WV Code Chapter 23)

Fund 3440 FY 2000 Org 0322

1	Personal Services	001	\$	19,703,549
2	Annual Increment	004		379,553
3	Employee Benefits	010		6,835,737
4	Unclassified (R)	099		18,786,931
5	Employer Excess Liability Fund	226		<u>115,372</u>
6	Total		\$	45,821,142

7 Any unexpended balance remaining in the appropriation for
 8 Unclassified (fund 3440, activity 099) and Contractual and
 9 Professional Services (fund 3440, activity 830) at the close of

10 the fiscal year 1999 is hereby reappropriated for expenditure
 11 during the fiscal year 2000.

BUREAU OF ENVIRONMENT

189—Solid Waste Management Board

(WV Code Chapter 20)

Fund 3288 FY 2000 Org 0312

1	Personal Services	001	\$	473,718
2	Annual Increment	004		3,200
3	Employee Benefits	010		154,857
4	Unclassified	099		1,424,192
5	Business/Technical Assistance	828		<u>0</u>
6	Total		\$	2,055,967

190—Division of Environmental Protection

Special Reclamation Fund

(WV Code Chapter 22A)

Fund 3321 FY 2000 Org 0313

1	Personal Services	001	\$	191,491
2	Annual Increment	004		6,900
3	Employee Benefits	010		56,607
4	Unclassified	099		<u>7,580,002</u>
5	Total		\$	7,835,000

191—Division of Environmental Protection

Oil and Gas Reclamation Trust

(WV Code Chapter 22B)

Fund 3322 FY 2000 Org 0313

1	Unclassified—Total	096	\$	465,000
---	--------------------------	-----	----	---------

*192—Division of Environmental Protection**Oil and Gas Operating Permits*

(WV Code Chapter 22B)

Fund 3323 FY 2000 Org 0313

1	Personal Services	001	\$	211,264
2	Annual Increment	004		2,025
3	Employee Benefits	010		65,830
4	Unclassified	099		<u>477,082</u>
5	Total		\$	756,201

*193—Division of Environmental Protection**Mines and Minerals Operations Fund*

(WV Code Chapter 22)

Fund 3324 FY 2000 Org 0313

1	Personal Services	001	\$	2,329,672
2	Annual Increment	004		35,200
3	Employee Benefits	010		713,709
4	Unclassified	099		<u>768,031</u>
5	Total		\$	3,846,612

*194—Division of Environmental Protection**Underground Storage Tanks**Administrative Fund*

(WV Code Chapter 20)

Fund 3325 FY 2000 Org 0313

1	Personal Services	001	\$	286,881
2	Annual Increment	004		3,975
3	Employee Benefits	010		92,093

4	Unclassified	099	<u>146,356</u>
5	Total		\$ 529,305

195—Division of Environmental Protection

Hazardous Waste Emergency and Response Fund

(WV Code Chapter 20)

Fund 3331 FY 2000 Org 0313

1	Personal Services	001	\$ 306,426
2	Annual Increment	004	7,175
3	Employee Benefits	010	98,544
4	Unclassified	099	<u>754,274</u>
5	Total		\$ 1,166,419

196—Division of Environmental Protection

Solid Waste Reclamation and

Environmental Response Fund

(WV Code Chapter 20)

Fund 3332 FY 2000 Org 0313

1	Personal Services	001	\$ 163,650
2	Annual Increment	004	1,950
3	Employee Benefits	010	48,603
4	Unclassified	099	<u>692,930</u>
5	Total		\$ 907,133

197—Division of Environmental Protection

Solid Waste Enforcement Fund

(WV Code Chapter 20)

Fund 3333 FY 2000 Org 0313

1	Personal Services	001	\$ 1,429,619
---	-------------------------	-----	--------------

2	Annual Increment	004	23,025
3	Employee Benefits	010	457,769
4	Unclassified	099	<u>738,212</u>
5	Total		\$ 2,648,625

*198—Division of Environmental Protection**Fees and Operating Expenses*

(WV Code Chapter 16)

Fund 3336 FY 2000 Org 0313

1	Personal Services	001	\$ 2,612,097
2	Annual Increment	004	17,850
3	Employee Benefits	010	783,156
4	Unclassified	099	<u>1,399,400</u>
5	Total		\$ 4,812,503

*199—Division of Environmental Protection—**Environmental Laboratory**Certification Fund*

(WV Code Chapter 22)

Fund 3340 FY 2000 Org 0313

1	Personal Services	001	\$ 112,613
2	Annual Increment	004	1,550
3	Employee Benefits	010	35,776
4	Unclassified	099	<u>72,051</u>
5	Total		\$ 221,990

*200—Division of Environmental Protection**Stream Restoration Fund*

(WV Code Chapter 22)

Fund 3349 FY 2000 Org 0313

1 Unclassified—Total 096 \$ 2,000,000

201—Division of Environmental Protection

Mountaintop Removal Fund

(WV Code Chapter 22)

Fund 3490 FY 2000 Org 0313

1 Unclassified—Total 096 \$ 100,000

202—Oil and Gas Conservation Commission

(WV Code Chapter 22)

Fund 3371 FY 2000 Org 0315

1 Personal Services 001 \$ 152,915

2 Annual Increment 004 1,500

3 Employee Benefits 010 29,466

4 Unclassified 099 47,462

5 Total \$ 231,343

MISCELLANEOUS BOARDS AND COMMISSIONS

203—Hospital Finance Authority

(WV Code Chapter 16)

Fund 5475 FY 2000 Org 0509

1 Personal Services 001 \$ 29,324

2 Annual Increment 004 500

3 Employee Benefits 010 11,927

4 Unclassified. 099 25,895

5 Total \$ 67,646

6 The total amount of this appropriation shall be paid from
7 the special revenue fund out of fees and collections as provided
8 by article twenty-nine-a, chapter sixteen of the code.

204—Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2000 Org 0706

1	Personal Services	001	\$	155,774
2	Annual Increment	004		2,500
3	Employee Benefits	010		56,994
4	Unclassified	099		<u>76,728</u>
5	Total		\$	291,996

*205—WV State Board of Examiners**for Licensed Practical Nurses*

(WV Code Chapter 30)

Fund 8517 FY 2000 Org 0906

1	Unclassified—Total	096	\$	339,709
---	--------------------------	-----	----	---------

*206—WV Board of Examiners for**Registered Professional Nurses*

(WV Code Chapter 30)

Fund 8520 FY 2000 Org 0907

1	Unclassified—Total	096	\$	788,087
---	--------------------------	-----	----	---------

207—Public Service Commission

(WV Code Chapter 24)

Fund 8623 FY 2000 Org 0926

1	Personal Services	001	\$	6,711,769
2	Annual Increment	004		120,000
3	Employee Benefits	010		2,067,008
4	Unclassified	099		3,252,000
5	Imaging System			<u>400,000</u>

6 Total \$ 12,550,777

7 The total amount of this appropriation shall be paid from a
8 special revenue fund out of collections for special license fees
9 from public service corporations as provided by law.

10 The Public Service Commission is authorized to spend up
11 to \$250,000, from surplus funds in this account, to meet the
12 expected deficiencies in the Motor Carrier Division account due
13 to passage of enrolled house bill no. 2715, regular session,
14 1997.

208—Public Service Commission—

Gas Pipeline Division

(WV Code Chapter 24B)

Fund 8624 FY 2000 Org 0926

1	Personal Services	001	\$	139,488
2	Annual Increment	004		5,556
3	Employee Benefits	010		42,159
4	Unclassified	099		<u>98,500</u>
5	Total		\$	285,703

6 The total amount of this appropriation shall be paid from a
7 special revenue fund out of receipts collected for or by the
8 public service commission pursuant to and in the exercise of
9 regulatory authority over pipeline companies as provided by
10 law.

209—Public Service Commission—

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8625 FY 2000 Org 0926

1	Personal Services	001	\$	1,494,805
2	Annual Increment	004		34,723

3	Employee Benefits	010	474,677
4	Unclassified	099	<u>670,500</u>
5	Total		\$ 2,674,705

6 The total amount of this appropriation shall be paid from a
7 special revenue fund out of receipts collected for or by the
8 public service commission pursuant to and in the exercise of
9 regulatory authority over motor carriers as provided by law.

210—Public Service Commission—

Consumer Advocate

(WV Code Chapter 24)

Fund 8627 FY 2000 Org 0926

1	Personal Services	001	\$ 409,935
2	Annual Increment	004	4,350
3	Employee Benefits	010	123,488
4	Unclassified	099	<u>297,985</u>
5	Total		\$ 835,758

6 The total amount of this appropriation shall be paid from a
7 special revenue fund out of collections made by the public
8 service commission.

211—Real Estate Commission

(WV Code Chapter 47)

Fund 8635 FY 2000 Org 0927

1	Personal Services	001	\$ 298,204
2	Annual Increment	004	4,400
3	Employee Benefits	010	101,449
4	Unclassified	099	<u>269,400</u>
5	Total		\$ 673,453

6 The total amount of this appropriation shall be paid out of
 7 collections of license fees as provided by law.

212—WV Board of Examiners for Speech-Language

Pathology and Audiology

(WV Code Chapter 30)

Fund 8646 FY 2000 Org 0930

1 Unclassified—Total 096 \$ 46,000

213—WV Board of Respiratory Care

(WV Code Chapter 30)

Fund 8676 FY 2000 Org 0935

1 Unclassified—Total 096 \$ 113,908

214—WV Board of Licensed Dietitians

Fund 8680 FY 2000 Org 0936

1 Unclassified—Total 096 \$ 20,000

215—Massage Therapy Licensure Board

(WV Code Chapter 30)

Fund 8671 FY 2000 Org 0938

1 Unclassified—Total 096 \$ 31,000

216—Claims Against Other Funds

1 Claims Against the State 319 \$ 0

2 Total TITLE II, Section 3—

3 Other Funds \$498,743,081

1 **Sec. 4. Appropriations from lottery net profits.—**Net
 2 profits of the lottery * ~~;~~ ~~not to exceed one hundred sixteen~~
 3 ~~million three hundred one thousand five hundred eighty five~~
 4 ~~dollars;~~ * are to be deposited by the lottery director to the
 5 following accounts in the amounts indicated. The lottery
 6 director shall prorate each deposit of net profits * ~~among fund~~
 7 ~~numbers 2252, 3067, 3267, 3508, 3559, 3951, 3963, 4057 and~~

* Language deleted by the Governor

8 5405 * in the proportion the appropriation for each account
 9 bears to the total of the appropriations for the * ~~nine~~ * accounts.

217—*Education, Arts, Sciences and Tourism*

Debt Service Fund

(WV Code Chapter 5)

Fund 2252 FY 2000 Org 0211

	Activity	Lottery Funds
1 Debt Service—Total	310	\$ 10,000,000
2 Any unexpended balance remaining in the appropriation for		
3 Debt Service—Total (fund 2252, activity 310) at the close of		
4 the fiscal year 1999 is hereby reappropriated for expenditure		
5 during the fiscal year 2000.		

218—*West Virginia Development Office—*

Division of Tourism

(WV Code Chapter 5B)

Fund 3067 FY 2000 Org 0304

1 Tourism—Telemarketing Center	463	\$ 100,000
2 Tourism—Advertising (R)	618	3,040,000
3 State Parks and Recreation		
4 Advertising (R)	619	760,000
5 Tourism—Unclassified (R)	662	3,026,626
6 Tourism-Special Projects (R)		<u>1,000,000</u>
7 Total		\$ 7,926,626
8 Any unexpended balances remaining in the appropriations		
9 for Tourism-Advertising (fund 3067, activity 618), State Parks		
10 and Recreation Advertising (fund 3067, activity 619), Tourism-		
11 Unclassified (fund 3067, activity 662), and Tour-		
12 ism—Unclassified—Lottery Surplus (fund 3067, activity 773)		
13 are hereby reappropriated for expenditure during the fiscal year		
14 2000.		

* Language deleted by the Governor

219—Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2000 Org 0310

1	Pricketts Fort State Park	324	\$	120,000
2	Parks Operations—Unclassified (R) . . .	645		1,494,513
3	Canaan Valley—Land Acquisition (R) .	710		200,000
4	State Parks—Special Projects (R)			<u>5,000,000</u>
5	Total		\$	6,814,513

6 Any unexpended balances remaining in the appropriations
 7 for Parks Operations—Unclassified (fund 3267, activity 645),
 8 Capital Outlay—Parks (fund 3267, activity 288) and Canaan
 9 Valley—Land Acquisition (fund 3267, activity 710) at the close
 10 of the fiscal year 1999 are hereby reappropriated for expendi-
 11 ture during the fiscal year 2000.

220—State Department of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2000 Org 0402

1	Computer Basic Skills	145	\$	16,309,199
2	Technology Repair and Modernization .	298		1,000,000
3	Technology and Telecommunications			
4	Initiative(R)	596		2,006,484
5	Technology Demonstration Project	639		150,000
6	Educational Development	823		<u>1,500,000</u>
7	Total		\$	20,965,683

8 Any unexpended balances remaining in the appropriation
 9 for Computer Basic Skills—Total (fund 3951, activity 567) and
 10 Technology and Telecommunications Initiative (fund 3951,
 11 activity 596) at the close of the fiscal year 1999 are hereby
 12 reappropriated for expenditure during the fiscal year 2000.

221—*State Department of Education—
School Building Authority—Debt Service Fund*

(WV Code Chapter 18)

Fund 3963 FY 2000 Org 0402

1 Debt Service—Total 310 \$ 18,000,000

222—*Department of Education and the Arts—*

Office of the Secretary

(WV Code Chapter 5F)

Fund 3505 FY 2000 Org 0431

1 Any unexpended balance remaining in the appropriation for
2 Capital Outlay and Improvements—Total (fund 3505, activity
3 762) at the close of the fiscal year 1999 is hereby
4 reappropriated for expenditure during the fiscal year 2000 and
5 transferred into fund 3508.

223—*Department of Education and the Arts—*

Office of the Secretary—

Lottery Education Fund

(WV Code Chapter 5F)

Fund 3507 FY 2000 Org 0431

1 Any unexpended balances remaining in the appropriations
2 for Unclassified (fund 3507, activity 096), Shepherd Col-
3 lege—Capital Improvements—Lottery Surplus (fund 3507,
4 activity 759), Shepherd College—Capital Improve-
5 ments—Total—Lottery Surplus (fund 3507, activity 764), West
6 Virginia Northern Community College—Capital Improve-
7 ments—Lottery Surplus (fund 3507, activity 760), Unclassified
8 (fund 3507, activity 099), Higher Education Grant Program
9 (fund 3507, activity 164), Capital Outlay and Improve-
10 ments—Total (fund 3507, activity 847) * ~~and WV-2001 Project~~
11 ~~(fund 3507, activity 836)~~ * at the close of fiscal year 1999 are
12 hereby reappropriated for expenditure during the fiscal year
13 2000 into fund 4057.

* Language deleted by the Governor

14 Any unexpended balance remaining in the appropriation for
 15 Infomine Network—Library Commission (fund 3507, activity
 16 696) at the close of fiscal year 1999 is hereby reappropriated for
 17 expenditure during the fiscal year 2000 into fund 3559.

18 Any unexpended balance remaining in the appropriation for
 19 WV 2001 Project (fund 3507, activity 836) at the close of the
 20 fiscal year 1999 is hereby reappropriated for expenditure during
 21 the fiscal year 2000 into fund 3508.

224—Department of Education and the Arts—

Office of the Secretary

Control Account—

Lottery Education Fund

(WV Code Chapter 5F)

Fund 3508 FY 2000 Org 0431

1	Unclassified (R)	099	\$ 4,000,000
2	WVU-University Affiliated Center for		
3	Developmental Disabilities	157	80,000
4	WV Humanities Council	168	300,000
5	WV2001 Project—Total	230	0
6	Arts Programs	500	40,000
7	WV2001 Project	836	1,500,000
8	Energy Express		425,000
9	Challenger Learning Center		60,000
10	Jobs for West Virginia Graduates		<u>500,000</u>
11	Total		\$ 6,905,000

225—Division of Culture and History—

Lottery Education Fund

(WV Code Chapter 10)

Fund 3534 FY 2000 Org 0432

1	Fairs and Festivals	122	\$ 1,650,000
2	Mountain State Forest Festival		75,000
3	Historic Preservation Grants	311	101,889
4	West Virginia Public Theater	312	180,000
5	Theater Arts of West Virginia	464	360,000
6	Contemporary American		
7	Theater Festival	811	60,000
8	Independence Hall	812	50,000
9	Huntington Symphony	027	50,000
10	Project ACCESS		500,000
11	Capital Outlay, Repairs, and		
12	Equipment (R)	589	<u>1,500,000</u>
13	Total		\$ 4,526,889

226—Educational Broadcasting Authority—

Lottery Education Fund

(WV Code Chapter 10)

Fund 3587 FY 2000 Org 0439

1	Mountain Stage-Total		\$ 200,000
---	----------------------------	--	------------

227—Library Commission—

Lottery Education Fund

(WV Code Chapter 10)

Fund 3559 FY 2000 Org 0433

1	Infomine Network	158	1,000,000
2	Grants to Public Libraries	182	7,198,884
3	Infomine Network—		
4	Library Commission—Total	231	<u>0</u>
5	Total		\$ 8,198,884

*228—Department of Education and the Arts—
Board of Trustees of the University System of West Virginia and
Board of Directors of the State College Systems—*

Central Office

Control Account—

Lottery Education Fund

(WV Code Chapters 18B and 18C)

Fund 4057 FY 2000 Org 0452

1	Unclassified	099	\$ 3,521,857
2	Higher Education Grant Program (R) ..	164	13,362,050
3	HEAPS Grant Program (R)		1,000,000
4	WV Engineering, Science, and Technology		
5	Scholarship Program (R)		500,000
6	Minority Doctoral Fellowship	166	100,000
7	Underwood-Smith Scholarship Program-		
8	Student Awards(R)	167	150,000
9	Health Sciences Scholarship Fund(R) ..	176	148,500
10	Health Sciences Career Opportunities		
11	Program (R)		75,000
12	MA Public Health Program and Health		
13	Science Technology	623	75,000
14	HSTA Program (R)		<u>500,000</u>
15	Total		\$ 19,432,407

229—Bureau of Senior Services

(WV Code Chapter 29)

Fund 5405 FY 2000 Org 0508

1	Local Programs Service Delivery Costs	200	\$ 2,475,250
2	Silver Haired Legislature	202	14,400

3	Foster Grandparents Stipends and Travel	205	57,734
4	In-Home Services for Senior Citizens ..	224	700,000
5	Senior Citizen Centers and Programs ..	462	3,750,000
6	Direct Services	481	2,800,000
7	Transfer to Division of Human Services		
8	for Health Care and Title XIX		
9	Waiver for Senior Citizens	539	11,000,000
10	Senior Services Medicaid Transfer		6,500,000
11	World Aging Conference		<u>350,000</u>
12	Total		\$ 27,647,384

13 Any unexpended balances remaining in the appropriations
 14 for Senior Citizens Centers and Programs—Lottery Surplus
 15 (fund 5405, activity 782), Holly Grove Mansion Restoration
 16 (fund 5405, activity 685) and Senior Citizens Centers, Mainte-
 17 nance and Repairs (fund 5405, activity 848) at the close of the
 18 fiscal year 1999 are hereby reappropriated for expenditure
 19 during the fiscal year 2000.

20 The above appropriation for Health Care and Title XIX
 21 Waiver for Senior Citizens along with the federal monies
 22 generated thereby shall be used for reimbursement for services
 23 provided under the program. Further, the program shall be
 24 preserved within the aggregate of these funds.

25 Total TITLE II, Section 4—
 26 Lottery Funds

\$ 130,617,386

1 **Sec. 5. Appropriations of federal funds.**—In accordance
 2 with article eleven, chapter four of the code, from federal funds
 3 there are hereby appropriated conditionally upon the fulfillment
 4 of the provisions set forth in article two, chapter five-a of the
 5 code the following amounts, as itemized, for expenditure during
 6 the fiscal year two thousand.

LEGISLATIVE

230—Crime Victims Compensation Fund

(WV Code Chapter 14)
Fund 8738 FY 2000 Org 2300

	Activity		Federal Funds
1	Unclassified—Total	096	\$ 920,000

JUDICIAL*231—Supreme Court—**General Judicial*Fund 8805 FY 2000 Org 2400

1	Unclassified—Total	096	\$ 126,204
---	--------------------------	-----	------------

EXECUTIVE*232—Governor's Office—**Governor's Cabinet on Children and Families*

(WV Code Chapter 5)

Fund 8792 FY 2000 Org 0100

1	Unclassified—Total	096	\$ 841,709
---	--------------------------	-----	------------

*233—Governor's Office—**Office of Economic Opportunity*

(WV Code Chapter 5)

Fund 8797 FY 2000 Org 0100

1	Unclassified—Total	096	\$ 5,342,330
---	--------------------------	-----	--------------

*234—Governor's Office—**Commission for National and Community Service*

(WV Code Chapter 5)

Fund 8800 FY 2000 Org 0100

1	Unclassified—Total	096	\$ 3,500,683
---	--------------------------	-----	--------------

235—Auditor’s Office

(WV Code Chapter 12)

Fund 8807 FY 2000 Org 1200

1 Unclassified—Total 096 \$ 9,742,000

236—Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 2000 Org 1400

1 Unclassified—Total 096 \$ 1,592,677

237—Department of Agriculture—

Meat Inspection

(WV Code Chapter 19)

Fund 8737 FY 2000 Org 1400

1 Unclassified—Total 096 \$ 728,686

DEPARTMENT OF ADMINISTRATION

238—West Virginia Prosecuting Attorney’s Institute

(WV Code Chapter 7)

Fund 8834 FY 2000 Org 0028

1 Unclassified—Total 096 \$ 70,000

DEPARTMENT OF EDUCATION

239—State Department of Education

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2000 Org 0402

1 Unclassified—Total 096 \$ 30,150,792

240—State Department of Education—

School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2000 Org 0402

1 Unclassified—Total 096 \$ 75,001,160

*241—State Board of Education—
Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2000 Org 0402

1 Unclassified—Total 096 \$ 25,002,204

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

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2000 Org 0402

1 Unclassified—Total 096 \$ 35,002,076

DEPARTMENT OF EDUCATION AND THE ARTS*243—Division of Culture and History*

(WV Code Chapter 29)

Fund 8718 FY 2000 Org 0432

1 Unclassified—Total 096 \$ 948,962

244—Library Commission

(WV Code Chapter 10)

Fund 8720 FY 2000 Org 0433

1 Unclassified—Total 096 \$ 1,902,317

245—Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 8721 FY 2000 Org 0439

1 Unclassified—Total 096 \$ 2,955,000

246—State Board of Rehabilitation—

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 8734 FY 2000 Org 0932

1 Unclassified—Total 096 \$ 45,959,645

DEPARTMENT OF HEALTH AND HUMAN RESOURCES*247—Consolidated Medical Service Fund*

(WV Code Chapter 16)

Fund 8723 FY 2000 Org 0506

1 Unclassified—Total 096 \$ 2,802,308

*248—Division of Health—**Central Office*

(WV Code Chapter 16)

Fund 8802 FY 2000 Org 0506

1 Unclassified—Total 096 \$ 52,381,987

*249—Division of Health—**West Virginia Safe Drinking Water Treatment*

(WV Code Chapter 16)

Fund 8824 FY 2000 Org 0506

1 Unclassified—Total 096 \$ 16,000,000

250—Human Rights Commission

(WV Code Chapter 5)

Fund 8725 FY 2000 Org 0510

1 Unclassified—Total 096 \$ 213,299

251—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2000 Org 0511

1 Unclassified—Total 096 \$1,221,702,033

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

252—Adjutant General—State Militia

(WV Code Chapter 15)

Fund 8726 FY 2000 Org 0603

1 Unclassified—Total 096 \$ 29,223,071

253—Office of Emergency Services

(WV Code Chapter 15)

Fund 8727 FY 2000 Org 0606

1 Unclassified—Total 096 \$ 1,590,036

254—West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2000 Org 0612

1 Unclassified—Total 096 \$ 4,125,103

255—Division of Veterans Affairs—

Veterans Home

(WV Code Chapter 9A)

Fund 8728 FY 2000 Org 0618

1 Unclassified—Total 096 \$ 458,721

256—Division of Criminal Justice Services

(Executive Order)

Fund 8803 FY 2000 Org 0620

1 Unclassified—Total 096 \$ 20,634,281

DEPARTMENT OF TAX AND REVENUE

257—Tax Division

(WV Code Chapter 11)

Fund 7069 FY 2000 Org 0702

1 Unclassified—Total 096 \$ 75,000

DEPARTMENT OF TRANSPORTATION*258—State Rail Authority*

(WV Code Chapter 29)

Fund 8733 FY 2000 Org 0804

1 Unclassified—Total 096 \$ 1,710,000

259—Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 2000 Org 0805

1 Unclassified—Total 096 \$ 14,903,426

260—Division of Motor Vehicles

(WV Code Chapter 17B)

Fund 8787 FY 2000 Org 0802

1 Unclassified—Total 096 \$ 2,337,289

261—Public Port Authority

(WV Code Chapter 17)

Fund 8830 FY 2000 Org 0806

1 Unclassified—Total 096 \$ 2,070,000

262—Aeronautics Commission

(WV Code Chapter 29)

Fund 8831 FY 2000 Org 0807

1 Unclassified—Total 096 \$ 350,000

BUREAU OF COMMERCE*263—Division of Forestry*

(WV Code Chapter 19)

Fund 8703 FY 2000 Org 0305

1 Unclassified—Total 096 \$ 1,020,671

264—Geological and Economic Survey

(WV Code Chapter 29)

Fund 8704 FY 2000 Org 0306

1 Unclassified—Total 096 \$ 913,220

265—West Virginia Development Office

(WV Code Chapter 5B)

Fund 8705 FY 2000 Org 0307

1 Unclassified—Total 096 \$ 3,715,643

266—Division of Labor

(WV Code Chapters 21 and 47)

Fund 8706 FY 2000 Org 0308

1 Unclassified—Total 096 \$ 436,199

267—Division of Natural Resources

(WV Code Chapter 20)

Fund 8707 FY 2000 Org 0310

1 Unclassified—Total 096 \$ 7,867,188

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

(WV Code Chapter 22)

Fund 8709 FY 2000 Org 0314

1 Unclassified—Total 096 \$ 576,338

BUREAU OF ENVIRONMENT*269—Division of Environmental Protection*

(WV Code Chapter 22)

Fund 8708 FY 2000 Org 0313

1 Unclassified—Total 096 \$106,041,110

BUREAU OF SENIOR SERVICES*270—Bureau of Senior Services*

(WV Code Chapter 29)

Fund 8724 FY 2000 Org 0508

1 Unclassified—Total 096 \$ 12,098,690

BUREAU OF EMPLOYMENT PROGRAMS*271—Bureau of Employment Programs—*

(WV Code Chapter 21A)

Fund 8835 FY 2000 Org 0323

1 Unclassified—Total 096 \$ 512,657

2 Pursuant to the requirements of 42 U.S.C. 1103, Section
 3 903 of the Social Security Act, as amended, and the provisions
 4 of section nine, article nine, chapter twenty-one-a of the code
 5 of West Virginia, one thousand nine hundred thirty-one, as
 6 amended, the above appropriation to Unclassified shall be used
 7 by the bureau of employment programs for the specific purpose
 8 of administration of the state's unemployment insurance
 9 program or job service activities, subject to each and every
 10 restriction, limitation or obligation imposed on the use of the
 11 funds by those federal and state statutes.

MISCELLANEOUS BOARDS AND COMMISSIONS*272—Public Service Commission—**Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8743 FY 2000 Org 0926

1 Unclassified—Total 096 \$ 911,953

273—Public Service Commission—

Gas Pipeline Division

(WV Code Chapter 24B)

Fund 8744 FY 2000 Org 0926

1	Unclassified—Total	096	\$	<u>261,994</u>
2	Total TITLE II, Section 5—			
3	Federal Funds		\$	<u>1,744,718,662</u>

1 **Sec. 6. Appropriations from federal block grants.—**The
 2 following items are hereby appropriated from federal block
 3 grants to be available for expenditure during the fiscal year
 4 2000.

274—Governor’s Office—

Office of Economic Opportunity

Fund 8799 FY 2000 Org 0100

1	Unclassified—Total	096	\$	7,147,164
---	------------------------------	-----	----	-----------

275—West Virginia Development Office—

Community Development

Fund 8746 FY 2000 Org 0307

1	Unclassified—Total	096	\$	25,313,896
---	------------------------------	-----	----	------------

276—Bureau of Employment Programs—

Job Training Partnership Act

Fund 8749 FY 2000 Org 0323

1	Unclassified—Total	096	\$	57,603,147
---	------------------------------	-----	----	------------

277—State Department of Education—

Education Grant

Fund 8748 FY 2000 Org 0402

1	Unclassified—Total	096	\$	112,001,016
---	------------------------------	-----	----	-------------

*278—Division of Health—**Maternal and Child Health*Fund 8750 FY 2000 Org 0506

1 Unclassified—Total 096 \$ 7,808,634

*279—Division of Health—**Preventive Health*Fund 8753 FY 2000 Org 0506

1 Unclassified—Total 096 \$ 2,222,654

*280—Division of Health—**Substance Abuse Prevention and Treatment*Fund 8793 FY 2000 Org 0506

1 Unclassified—Total 096 \$ 9,542,469

*281—Division of Health—**Community Mental Health Services*Fund 8794 FY 2000 Org 0506

1 Unclassified—Total 096 \$ 2,842,077

*282—Division of Health—**Abstinence Education Program*Fund 8825 FY 2000 Org 0506

1 Unclassified—Total 096 \$ 975,205

*283—Division of Human Services—**Energy Assistance*Fund 8755 FY 2000 Org 0511

1 Unclassified—Total 096 \$ 12,785,310

*284—Division of Human Services—**Child Care and Development*

Fund 8756 FY 2000 Org 0511

1 Unclassified—Total 096 \$ 7,142,437

*285—Division of Human Services—
Social Services*

Fund 8757 FY 2000 Org 0511

1 Unclassified—Total 096 \$ 17,842,695

*286—Division of Human Services—
Empowerment Zone and Enterprise Community Program*

Fund 8806 FY 2000 Org 0511

1 Unclassified—Total 096 \$ 1,000,000

*287—Division of Human Services—
Temporary Assistance Needy Families*

Fund 8816 FY 2000 Org 0511

1 Unclassified—Total 096 \$ 165,649,690

*288—Division of Human Services—
Child Care and Development*

Fund 8817 FY 2000 Org 0511

1 Unclassified—Total 096 \$ 23,292,053

*289—Division of Criminal Justice Services—
Juvenile Accountability Incentive*

Fund 8829 FY 2000 Org 0620

1 Unclassified—Total 096 \$ 3,000,041

*290—Division of Criminal Justice Services—
Local Law Enforcement Training and Education Assistance*

Fund 8832 FY 2000 Org 0620

1 Unclassified—Total 096 \$ 50,000

291—Division of Criminal Justice Services—

Local Law Enforcement

Fund 8833 FY 2000 Org 0620

1 Unclassified—Total 096 \$ 750,046

2 Total TITLE II, Section 6—

3 Federal Block Grants \$ 456,968,534

1 **Sec. 7. Awards for claims against the state.**—There are
2 hereby appropriated for the remainder of the fiscal year 1998-
3 1999 and to remain in effect until June 30, 2000, from the fund
4 as designated, in the amounts as specified and for the claimants
5 named in enrolled committee substitute for house bill no. 2682,
6 regular session 1999, and enrolled senate bill no. 488, regular
7 session 1999, general revenue funds of \$3,160,289.52 for
8 payment of claims against the state.

9 There are hereby appropriated for the remainder of the
10 fiscal year 1998-1999 and to remain in effect until June 30,
11 2000, from the funds as designated, in the amounts as specified
12 and for the claimants named in enrolled committee substitute
13 for house bill no. 2682, regular session 1999, special revenue
14 funds of \$273,079.97 and state road funds of \$154,263.06 for
15 payment of claims against the state.

1 **Sec. 8. Special revenue appropriations.**—There are
2 hereby appropriated for expenditure during the fiscal year two
3 thousand appropriations made by general law from special
4 revenue which are not paid into the state fund as general
5 revenue under the provisions of section two, article two, chapter
6 twelve of the code: *Provided*, That none of the money so
7 appropriated by this section shall be available for expenditure
8 except in compliance with and in conformity to the provisions
9 of articles two and three, chapter twelve and article two, chapter
10 five-a of the code, with due consideration to the digest of
11 legislative intent of the budget bill prepared pursuant to article
12 one, chapter four, unless the spending unit has filed with the
13 director of the budget and the legislative auditor prior to the
14 beginning of each fiscal year:

15 (a) An estimate of the amount and sources of all revenues
16 accruing to such fund;

17 (b) A detailed expenditure schedule showing for what
18 purposes the fund is to be expended.

1 **Sec. 9. State improvement fund appropria-**
2 **tions.**—Bequests or donations of nonpublic funds, received by
3 the governor on behalf of the state during the fiscal year two
4 thousand, for the purpose of making studies and recommenda-
5 tions relative to improvements of the administration and
6 management of spending units in the executive branch of state
7 government, shall be deposited in the state treasury in a
8 separate account therein designated state improvement fund.

9 There are hereby appropriated all moneys so deposited
10 during the fiscal year two thousand to be expended as autho-
11 rized by the governor, for such studies and recommendations
12 which may encompass any problems of organization, proce-
13 dures, systems, functions, powers or duties of a state spending
14 unit in the executive branch, or the betterment of the economic,
15 social, educational, health and general welfare of the state or its
16 citizens.

1 **Sec. 10. Specific funds and collection accounts.**—A fund
2 or collection account which by law is dedicated to a specific use
3 is hereby appropriated in sufficient amount to meet all lawful
4 demands upon the fund or collection account and shall be
5 expended according to the provisions of article three, chapter
6 twelve of the code.

1 **Sec. 11. Appropriations for refunding erroneous**
2 **payment.**—Money that has been erroneously paid into the state
3 treasury is hereby appropriated out of the fund into which it was
4 paid, for refund to the proper person.

5 When the officer authorized by law to collect money for the
6 state finds that a sum has been erroneously paid, he or she shall
7 issue his or her requisition upon the auditor for the refunding of
8 the proper amount. The auditor shall issue his or her warrant to
9 the treasurer and the treasurer shall pay the warrant out of the
10 fund into which the amount was originally paid.

1 **Sec. 12. Sinking fund deficiencies.**—There is hereby
2 appropriated to the governor a sufficient amount to meet any
3 deficiencies that may arise in the mortgage finance bond
4 insurance fund of the West Virginia housing development fund
5 which is under the supervision and control of the municipal
6 bond commission as provided by section twenty-b, article
7 eighteen, chapter thirty-one of the code, or in the funds of the
8 municipal bond commission because of the failure of any state
9 agency for either general obligation or revenue bonds or any
10 local taxing district for general obligation bonds to remit funds
11 necessary for the payment of interest and sinking fund require-
12 ments. The governor is authorized to transfer from time to time
13 such amounts to the municipal bond commission as may be
14 necessary for these purposes.

15 The municipal bond commission shall reimburse the state
16 of West Virginia through the governor from the first remittance
17 collected from the West Virginia housing development fund or
18 from any state agency or local taxing district for which the
19 governor advanced funds, with interest at the rate carried by the
20 bonds for security or payment of which the advance was made.

1 **Sec. 13. Appropriations for local governments.**—There
2 are hereby appropriated for payment to counties, districts and
3 municipal corporations such amounts as will be necessary to
4 pay taxes due counties, districts and municipal corporations and
5 which have been paid into the treasury:

- 6 (a) For redemption of lands;
7 (b) By public service corporations;
8 (c) For tax forfeitures.

1 **Sec. 14. Total appropriations.**—Where only a total sum is
2 appropriated to a spending unit, the total sum shall include
3 personal services, annual increment, employee benefits, current
4 expenses, repairs and alterations, equipment and capital outlay,
5 where not otherwise specifically provided and except as
6 otherwise provided in TITLE I—GENERAL PROVISIONS,
7 Sec. 3.

1 **Sec. 15. 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 appropriated
 4 for expenditure in accordance with section sixteen, article
 5 nine-a, chapter eighteen of the code.

TITLE III—ADMINISTRATION.

TITLE III—ADMINISTRATION.

§1. Appropriations conditional.

§2. Constitutionality.

1 **Section 1. Appropriations conditional.**—The expenditure
 2 of the appropriations made by this act, except those appropria-
 3 tions made to the legislative and judicial branches of the state
 4 government, are conditioned upon the compliance by the
 5 spending unit with the requirements of article two, chapter
 6 five-a of the code.

7 Where spending units or parts of spending units have been
 8 absorbed by or combined with other spending units, it is the
 9 intent of this act that reappropriations shall be to the succeeding
 10 or later spending unit created, unless otherwise indicated.

1 **Sec. 2. Constitutionality.**—If any part of this act is
 2 declared unconstitutional by a court of competent jurisdiction,
 3 its decision shall not affect any portion of this act which
 4 remains, but the remaining portion shall be in full force and
 5 effect as if the portion declared unconstitutional had never been
 6 a part of the act.

CHAPTER 8

(H. B. 3044 — By Delegates Ashley, Fieischauer,
 Pettit, Proudfoot, Facemyer, Hall and Leggett)

[Passed March 13, 1999; 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

16 The purpose of this bill is to supplement this account in the
17 budget act for the fiscal year ending the thirtieth day of June,
18 one thousand nine hundred ninety-nine, by adding eighty-one
19 thousand dollars to unclassified for expenditure during the
20 fiscal year one thousand nine hundred ninety-nine.

CHAPTER 9

(H. B. 3042 — By Delegates Ashley, Frederick,
Jenkins, Pettit, Proudfoot, Facemyer and Miller)

[Passed March 13, 1999; 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-nine, in the amount of six million nine hundred ninety-nine thousand nine hundred seventy-three dollars from the income tax refund reserve fund, 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-nine, to the department of agriculture, state soil conservation committee, fund 0132, fiscal year 1999, organization 1400; to the department of administration, division of information services and communications, fund 0583, fiscal year 1999, organization 0210; to the department of education and the arts, educational broadcasting authority, fund 0300, fiscal year 1999, organization 0439; to the board of trustees of the university system of West Virginia, university of West Virginia health sciences account, fund 0323, fiscal year 1999, organization 0478; to the department of military affairs and public safety, West Virginia Parole Board, fund 0440, fiscal year 1999, organization 0605; bureau of commerce, geological and economic survey, fund 0253, fiscal year 1999, organization 0306; and to the bureau of environment, division of environmental protection, fund 0273, fiscal year 1999, organiza-

tion 0313; all for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

WHEREAS, The Legislature finds that the balance in the income tax refund reserve fund exceeds that which is necessary for the purpose for which the fund was established; 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-nine; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of funds in the income tax refund reserve
2 fund, fund 1313, organization 1300, be decreased by expiring
3 the amount of six million nine hundred ninety-nine thousand
4 nine hundred seventy-three dollars to the unappropriated
5 surplus balance of the state fund, general revenue, and that the
6 total appropriation for fiscal year ending the thirtieth day of
7 June, one thousand nine hundred ninety-nine, to fund 0132,
8 fiscal year 1999, organization 1400, be supplemented and
9 amended by increasing the total appropriation by two million
10 five hundred thousand dollars as follows:

11 TITLE II—APPROPRIATIONS.

12 Section 1. Appropriations from general revenue.

13 EXECUTIVE

14 13—Department of Agriculture—

15 State Soil Conservation Committee

16 (WV Code Chapter 19)

17 Fund 0132 FY 1999 Org 1400

18									
19									
20									
21	5	Soil Conservation Projects (R)	120	\$	2,500,000			

22 Any unexpended balances remaining in the appropriation
 23 for Soil Conservation Projects (R) (fund 0132, activity 120) at
 24 the close of the fiscal year 1998-99 are hereby reappropriated
 25 for expenditure during the fiscal year 1999-2000.

26 That an appropriation for expenditure during the fiscal year
 27 ending the thirtieth day of June, one thousand nine hundred
 28 ninety-nine, be made in a new fund designated fund 0583, fiscal
 29 year 1999, organization 0210, in the amount of two million five
 30 hundred thousand dollars in a new line item as follows:

31 TITLE II—APPROPRIATIONS.

32 Section 1. Appropriations from general revenue.

33 DEPARTMENT OF ADMINISTRATION

34 21a—*Division of Information Services and Communications*

35 (WV Code Chapter 5A)

36 Fund 0583 FY 1999 Org 0210

									General
									Revenue
									Fund

40	1	Asynchronous Transfer Mode							
41		(ATM)Program(R)	199	\$	2,500,000				

42 Any unexpended balances remaining in the appropriation
 43 for Asynchronous Transfer Mode (ATM) Program (fund 0583,
 44 activity 199) at the close of the fiscal year 1998-99 are hereby
 45 reappropriated for expenditure during the fiscal year 1999-
 46 2000.

47 That the total appropriation for fiscal year ending the
 48 thirtieth day of June, one thousand nine hundred ninety-nine, to
 49 fund 0300, fiscal year 1999, organization 0439, be supple-
 50 mented and amended by increasing the total appropriation by
 51 three hundred thousand dollars in a new line item as follows:

52 TITLE II—APPROPRIATIONS.

53 Section 1. Appropriations from general revenue.

54 DEPARTMENT OF EDUCATION AND THE ARTS

55 *43—Educational Broadcasting Authority—*

56 (WV Code Chapter 10)

57 Fund 0300 FY 1999 Org 0439

58			General
59		Act-	Revenue
60		ivity	Fund

61	4a Equipment (R)	070	\$ 300,000
----	----------------------------	-----	------------

62 Any unexpended balance remaining in the appropriation for
 63 Equipment (fund 0300, activity 070) at the close of the fiscal
 64 year 1998-99 are hereby reappropriated for expenditure during
 65 the fiscal year 1999-2000.

66 That the total appropriation for fiscal year ending the
 67 thirtieth day of June, one thousand nine hundred ninety-nine, to
 68 fund 0323, fiscal year 1999, organization 0478, be supple-
 69 mented and amended by increasing the total appropriation by
 70 three hundred thousand dollars as follows:

71 TITLE II—APPROPRIATIONS.

72 Section 1. Appropriations from general revenue.

73 DEPARTMENT OF EDUCATION AND THE ARTS

74 *48—Board of Trustees of the University*

75 *System of West Virginia—*

76 *University of West Virginia*

77 *Health Sciences Account*

78 (WV Code Chapter 18B)

79 Fund 0323 FY 1999 Org 0478

80			General
81		Act-	Revenue
82		ivity	Fund

83	1 School of Osteopathic Medicine . . .	172	\$ 5,000
----	--	-----	----------

176

APPROPRIATIONS

[Ch. 9

84 2 Marshall School of Medicine 173 \$ 50,000

85 3 WVU-Health Sciences 174 \$ 245,000

86 That the total appropriation for fiscal year ending the
87 thirtieth day of June, one thousand nine hundred ninety-nine, to
88 fund 0440, fiscal year 1999, organization 0605, be supple-
89 mented and amended by increasing the total appropriation by
90 eighty thousand dollars as follows:

91 TITLE II—APPROPRIATIONS.

92 Section 1. Appropriations from general revenue.

93 DEPARTMENT OF MILITARY AFFAIRS
94 AND PUBLIC SAFETY

95 58—*West Virginia Parole Board*

96 (WV Code Chapter 62)

97 Fund 0440 FY 1999 Org 0605

98	99	100	Act- ivity	General Revenue Fund
101	4	Unclassified (R)	099	\$ 80,000

102 Any unexpended balances remaining in the appropriation
103 for Unclassified (fund 0440, activity 099) at the close of the
104 fiscal year 1998-99 are hereby reappropriated for expenditure
105 during the fiscal year 1999-2000.

106 That the total appropriation for fiscal year ending the
107 thirtieth day of June, one thousand nine hundred ninety-nine, to
108 fund 0253, fiscal year 1999, organization 0306, be supple-
109 mented and amended by increasing the total appropriation by
110 two hundred forty-four thousand nine hundred seventy-three
111 dollars as follows:

112 TITLE II—APPROPRIATIONS.

113 Section 1. Appropriations from general revenue.

114 BUREAU OF COMMERCE

115 76—*Geological and Economic Survey*

116 (WV Code Chapter 29)

117 Fund 0253 FY 1999 Org 0306

118				
119			Act-	General
120			ivity	Revenue
				Fund

121	7	Computer Upgrade (R)	349	\$ 244,973
-----	---	----------------------------	-----	------------

122 Any unexpended balances remaining in the appropriation
123 for Computer Upgrade (fund 0253, activity 349) at the close of
124 the fiscal year 1998-99 are hereby reappropriated for expendi-
125 ture during the fiscal year 1999-2000.

126 And that the total appropriation for fiscal year ending the
127 thirtieth day of June, one thousand nine hundred ninety-nine, to
128 fund 0273, fiscal year 1999, organization 0313, be supple-
129 mented and amended by increasing the total appropriation by
130 one million seventy-five thousand dollars in new line items as
131 follows:

132 TITLE II—APPROPRIATIONS.

133 Section 1. Appropriations from general revenue.

134 BUREAU OF ENVIRONMENT

135 86—*Division of Environmental Protection*

136 (WV Code Chapter 22)

137 Fund 0273 FY 1999 Org 0313

138				
139			Act-	General
140			ivity	Revenue
				Fund

141	7	Office of Water Resources -		
142		Equipment (R)	XXX	\$ 975,000

143	8	Federal Settlement	206	\$ 100,000
-----	---	--------------------------	-----	------------

144 Any unexpended balances remaining in the appropriation
145 for Office of Water Resources - Equipment (fund 0273, activity

146 XXX) at the close of the fiscal year 1998-99 are hereby
147 reappropriated for expenditure during the fiscal year 1999-
148 2000.

149 The purpose of this bill is to expire the sum of six million
150 nine hundred ninety-nine thousand nine hundred seventy-three
151 dollars from the income tax refund reserve fund, fund 1313,
152 organization 1300; to supplement the department of agriculture,
153 state soil conservation committee, fund 0132, fiscal year 1999,
154 organization 1400, by adding two million five hundred thou-
155 sand dollars to the existing appropriation; to make an appropria-
156 tion to department of administration, division of information
157 services and communications, in a new fund designated fund
158 0583, fiscal year 1999, organization 0210, in the amount of two
159 million five hundred thousand dollars; to supplement the
160 department of education and the arts, educational broadcasting
161 authority, fund 0300, fiscal year 1999, organization 0439 by
162 adding three hundred thousand dollars to the existing appropria-
163 tion; to supplement the board of trustees of the university
164 system of West Virginia, university of West Virginia health
165 sciences account, fund 0323, fiscal year 1999, organization
166 0478, by adding three hundred thousand dollars to the existing
167 appropriation; to supplement the department of military affairs
168 and public safety, West Virginia parole board, fund 0440, fiscal
169 year 1999, organization 0605 by adding eighty thousand dollars
170 to the existing appropriation; to supplement the bureau of
171 commerce, geological and economic survey, fund 0253, fiscal
172 year 1999, organization 0306, by adding two hundred forty-four
173 thousand nine hundred seventy-three dollars to the existing
174 appropriation; and to supplement the bureau of environment,
175 division of environmental protection, fund 0273, fiscal year
176 1999, organization 0313 by adding one million seventy-five
177 thousand dollars to the existing appropriation.

CHAPTER 10

(H. B. 3012 — By Delegates Michael, Doyle,
Cann, Beane, Ashley, Hall and Miller)

[Passed March 10, 1999; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation in the state fund, general revenue, to the department of administration—West Virginia prosecuting attorneys’ institute, fund 0557, fiscal year 1999, organization 0228, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

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-nine, to fund 0557, fiscal year 1999, organization 0228, be supplemented and amended to read as follows:

		TITLE II—APPROPRIATIONS.		
2		Section 1. Appropriations from general revenue.		
3		DEPARTMENT OF ADMINISTRATION		
4		<i>31—West Virginia Prosecuting Attorneys’ Institute</i>		
5		Fund <u>0557</u> FY <u>1999</u> Org <u>0228</u>		
6				General
7			Act-	Revenue
8			ivity	Fund
9	1	Federal Funds/Grants Match	749	\$ 80,000
10	2	Forensic Medical Examinations—		
11	3	Total	681	201,346
12	3a	Transfers	426	<u>50,000</u>
13	4	Total		\$ 331,346

14 The above appropriation for transfers shall be transferred to
15 fund 2252—gifts, grants and donations as provided by chapter
16 seven of the code.

17 The purpose of this bill is to supplement this account in the
18 budget act for the fiscal year ending the thirtieth day of June,
19 one thousand nine hundred ninety-nine, by reducing the
20 appropriation for forensic medical examinations—total by fifty
21 thousand dollars and by adding fifty thousand dollars to a new
22 item of appropriation for transfers and by amending language
23 with no new money being appropriated.

CHAPTER 11

(H. B. 3017 — By Delegates Ashley, Campbell,
Compton, Frederick, Kelley, Laird and Leach)

[Passed March 10, 1999; 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-nine, to a new item of appropriation designated to the auditor's office, purchasing card administration fund, fund 1234, fiscal year 1999, organization 1200, by supplementing and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

WHEREAS, The governor has established that there now remains an unappropriated balance in the auditor's office, purchasing card administration fund, fund 1234, fiscal year 1999, organization 1200, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine; therefore

Be it enacted by the Legislature of West Virginia:

That chapter six, acts of the Legislature, regular session, one thousand nine hundred ninety-eight, known as the "Budget Bill", be supplemented and amended by adding to Title II, section three thereof, the following:

1 TITLE II—APPROPRIATIONS.

2 Section 3. Appropriations of other funds.

3 EXECUTIVE

4 *98a—Auditor's Office*

5 (WV Code Chapter 12)

6 Fund 1234 FY 1999 Org 1200

7		Act-	Other
8		ivity	Funds
9 1	Unclassified—Total	096	\$ 65,000

10 The purpose of this supplementary appropriation bill is to
 11 supplement this account in the budget act for the fiscal year
 12 ending the thirtieth day of June, one thousand nine hundred
 13 ninety-nine, by providing for a new item of appropriation to be
 14 established therein to appropriate other funds in the amount of
 15 sixty-five thousand dollars to the Purchasing Card Administra-
 16 tion Fund.

CHAPTER 12

(H. B. 3043 — By Delegates Campbell, Cann, Compton,
 Frederick, Kominar, Laird and Thompson)

[Passed March 13, 1999; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the balance of the auditor's office, chief inspector's fund, fund 1235, fiscal year 2000, organization 1200, for the fiscal year ending the thirtieth day of June, two thousand, in the amount of five hundred thousand dollars from the auditor's office, securities regulation fund, fund 1225, fiscal year 2000, organization 1200.

WHEREAS, The Legislature finds that the account balance in the auditor's office, securities regulation fund, fund 1225, fiscal year 2000, organization 1200, will exceed 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 the
2 fiscal year ending the thirtieth day of June, two thousand, to the
3 auditor's office, securities regulation fund, fund 1225, fiscal
4 year 2000, organization 1200, be decreased by expiring the
5 amount of five hundred thousand dollars to the balance to the
6 auditor's office, chief inspector's fund, fund 1235, fiscal year
7 2000, organization 1200, to be available for appropriation
8 during the fiscal year two thousand.

9 The purpose of this bill is to expire the sum of five hundred
10 thousand dollars from the auditor's office, securities regulation
11 fund, fund 1225, fiscal year 2000, organization 1200, to the
12 balance of the auditor's office, chief inspector's fund, fund
13 1235, fiscal year 2000, organization 1200, for the fiscal year
14 ending the thirtieth day of June, two thousand, to be available
15 for appropriation during the fiscal year two thousand.

CHAPTER 13

**(S. B. 683 — By Senators Cralgo, Anderson, Bailey, Bowman,
Chafin, Edgell, Helmick, Jackson, Love, Plymale, Prezioso, Sharpe,
Unger, Walker, Sprouse, Boley and Minear)**

[Passed March 8, 1999; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand, in the amount of two million one hundred fifty-nine thousand dollars from the board of risk and insurance management - premium tax savings fund, fund 2367, fiscal year 2000, organization 0218.

WHEREAS, The Legislature finds that the account balance in the board of risk and insurance management - premium tax savings fund, fund 2367, fiscal year 2000, organization 0218, will exceed 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 the
2 fiscal year ending the thirtieth day of June, two thousand, to the
3 board of risk and insurance management - premium tax savings
4 fund, fund 2367, fiscal year 2000, organization 0218, be
5 decreased by expiring the amount of two million one hundred
6 fifty-nine thousand dollars to the unappropriated balance of the
7 state fund, general revenue, to be available for appropriation
8 during the fiscal year two thousand.

9 The purpose of this bill is to expire the sum of two million
10 one hundred fifty-nine thousand dollars from the board of risk
11 and insurance management - premium tax savings fund, fund
12 2367, fiscal year 2000, organization 0218, to the unappropriated
13 balance in the state fund, general revenue, for the fiscal year
14 ending the thirtieth day of June, two thousand, to be available
15 for appropriation during the fiscal year two thousand.

CHAPTER 14

(H. B. 3045 — By Delegates Ashley, Compton,
Fleischauer, Frederick, Kelley, Leach and Border)

[Passed March 13, 1999; 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-nine, in the department of health and human resources, division of human services - medical services trust fund, fund 5185, fiscal year 1999,

organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

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, fund 5185, fiscal year 1999, organization 0511, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine; therefore

Be it enacted by the Legislature of West Virginia:

1 That the total appropriation for the fiscal year ending the
2 thirtieth day of June, one thousand nine hundred ninety-nine,
3 fund 5185, fiscal year 1999, organization 0511, be supple-
4 mented and amended by increasing the total appropriation by
5 two million nine hundred forty-nine thousand seven hundred
6 dollars in the line items as follows:

7 TITLE II—APPROPRIATIONS.

8 Sec. 3. Appropriations from other funds.

9 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

10 135—Human Services—

11 Medical Services Trust Fund

12 (WV Code Chapter 9)

13 Fund 5185 FY 1999 Org 0511

14		Act-	Other
15		ivity	Funds
16	2 State Institutions DPSH Payments .	583	\$ 2,949,700

17 The purpose of this supplementary appropriation bill is to
18 supplement this fund in the budget act for the fiscal year ending
19 the thirtieth day of June, one thousand nine hundred ninety-
20 nine, by adding two million nine hundred forty-nine thousand
21 seven hundred dollars to the existing appropriation for State
22 Institutions DPSH Payments for expenditure during fiscal year
23 one thousand nine hundred ninety-nine.

CHAPTER 15

**(S. B. 684 — By Senators Craigo, Anderson, Bailey,
Bowman, Chafin, Edgell, Helmick, Jackson, Love, Plymale,
Prezioso, Sharpe, Unger, Walker, Sprouse, Boley and Minear)**

[Passed March 5, 1999; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand, in the amount of five hundred thousand dollars from the insurance commission - examination revolving fund, fund 7150, fiscal year 2000, organization 0704.

WHEREAS, The Legislature finds that the account balance in the insurance commission - examination revolving fund, fund 7150, fiscal year 2000, organization 0704, will exceed 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 the
2 fiscal year ending the thirtieth day of June, two thousand, to the
3 insurance commission - examination revolving fund, fund 7150,
4 fiscal year 2000, organization 0704, be decreased by expiring
5 the amount of five hundred thousand dollars to the unappropri-
6 ated balance of the state fund, general revenue, to be available
7 for appropriation during the fiscal year two thousand.

8 The purpose of this bill is to expire the sum of five hundred
9 thousand dollars from the insurance commission - examination
10 revolving fund, fund 7150, fiscal year 2000, organization 0704,
11 to the unappropriated balance in the state fund, general revenue,
12 for the fiscal year ending the thirtieth day of June, two thou-
13 sand, to be available for appropriation during the fiscal year two
14 thousand.

CHAPTER 16

(S. B. 685 — By Senators Cralgo, Anderson, Bailey, Bowman, Chafin, Edgell, Helmick, Jackson, Love, Plymale, Prezioso, Sharpe, Unger, Walker, Sprouse, Boley and Mlinear)

[Passed March 5, 1999; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand, in the amount of one million five hundred thousand dollars from the insurance commission - insurance commission fund, fund 7152, fiscal year 2000, organization 0704.

WHEREAS, The Legislature finds that the account balance in the insurance commission - insurance commission fund, fund 7152, fiscal year 2000, organization 0704, will exceed 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 the
2 fiscal year ending the thirtieth day of June, two thousand, to the
3 insurance commission - insurance commission fund, fund 7152,
4 fiscal year 2000, organization 0704, be decreased by expiring
5 the amount of one million five hundred thousand dollars to the
6 unappropriated balance of the state fund, general revenue, to be
7 available for appropriation during the fiscal year two thousand.

8 The purpose of this bill is to expire the sum of one million
9 five hundred thousand dollars from the insurance commission -
10 insurance commission fund, fund 7152, fiscal year 2000,
11 organization 0704, to the unappropriated balance in the state
12 fund, general revenue, for the fiscal year ending the thirtieth
13 day of June, two thousand, to be available for appropriation
14 during the fiscal year two thousand.

CHAPTER 17

(S. B. 686 — By Senators Craigo, Anderson, Bailey, Bowman, Chafin, Edgell, Helmick, Jackson, Love, Plymale, Prezioso, Sharpe, Unger, Walker, Sprouse, Boley and Minear)

[Passed March 5, 1999; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand, in the amount of two million dollars from the public service commission, fund 8623, fiscal year 2000, organization 0926.

WHEREAS, The Legislature finds that the account balance in the public service commission, fund 8623, fiscal year 2000, organization 0926, will exceed 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 the
2 fiscal year ending the thirtieth day of June, two thousand, to the
3 public service commission, fund 8623, fiscal year 2000,
4 organization 0926, be decreased by expiring the amount of two
5 million dollars to the unappropriated balance of the state fund,
6 general revenue, to be available for appropriation during the
7 fiscal year two thousand.

8 The purpose of this bill is to expire the sum of two million
9 dollars from the public service commission, fund 8623, fiscal
10 year 2000, organization 0926, to the unappropriated balance in
11 the state fund, general revenue, for the fiscal year ending the
12 thirtieth day of June, two thousand, to be available for appropri-
13 ation during the fiscal year two thousand.

CHAPTER 18

(S. B. 687 — By Senators Craigo, Anderson, Bailey, Bowman, Chafin, Edgell, Helmick, Jackson, Love, Plymale, Prezioso, Sharpe, Unger, Walker, Sprouse, Boley and Minear)

[Passed March 5, 1999; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and reducing items of the existing appropriation to the public service commission, fund 8623, fiscal year 1999, organization 0926, as originally appropriated by chapter six, acts of the Legislature, regular session, one thousand nine hundred ninety-eight, 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, fund 8623, fiscal year 1999, 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

4 199—Public Service Commission

5 (WV Code Chapter 24)

6 Fund 8623 FY 1999 Org 0926

7		Act-	Other
8		ivity	Funds
9	4	Unclassified	099 \$357,000

10 The purpose of this supplementary appropriation bill is to
11 supplement, amend and reduce existing items in the aforesaid
12 account for the designated spending unit. The item for unclassi-
13 fied is reduced by three hundred fifty-seven thousand dollars.

CHAPTER 19

**(S. B. 688 — By Senators Craigo, Anderson, Bailey,
Bowman, Chafin, Edgell, Helmick, Jackson, Love, Plymale,
Prezioso, Sharpe, Unger, Walker, Sprouse, Boley and Minear)**

[Passed March 5, 1999; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and reducing items of the existing appropriations to the public service commission - motor carrier division, fund 8625, fiscal year 1999, organization 0926, as originally appropriated by chapter six, acts of the Legislature, regular session, one thousand nine hundred ninety-eight, 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, fund 8625, fiscal year 1999, 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>201—Public Service Commission—</i>		
5	<i>Motor Carrier Division</i>		
6	(WV Code Chapter 24A)		
7	Fund <u>8625</u> FY <u>1999</u> Org <u>0926</u>		
8		Act-	Other
9		ivity	Funds
10	4	Unclassified 099	\$ 114,240

11 The purpose of this supplementary appropriation bill is to
12 supplement, amend and reduce existing items in the aforesaid

- 13 account for the designated spending unit. The item for unclassi-
 14 fied is reduced by one hundred fourteen thousand two hundred
 15 forty dollars.

CHAPTER 20

(S. B. 587 — By Senators Craig, Anderson, Bailey,
 Bowman, Chafin, Edgell, Helmick, Jackson, Love, Plymale,
 Prezioso, Sharpe, Unger, Walker, Sprouse, Boley and Minear)

[Passed March 2, 1999; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations to the department of education and the arts - state board of rehabilitation - division of rehabilitation services - West Virginia rehabilitation center - special account, fund 8664, fiscal year 1999, organization 0932, as originally appropriated by chapter six, acts of the Legislature, first regular session, one thousand nine hundred ninety-eight, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation to the department of education and the arts - state board of rehabilitation - division of rehabilitation services - West Virginia rehabilitation center - special account, fund 8664, fiscal year 1999, organization 0932, be amended and reduced in the line item as follows:

- | | |
|---|---|
| 1 | TITLE II—APPROPRIATIONS. |
| 2 | Sec. 3. Appropriations from other funds. |
| 3 | DEPARTMENT OF EDUCATION AND THE ARTS |
| 4 | <i>124—State Board of Rehabilitation—</i> |
| 5 | <i>Division of Rehabilitation Services—</i> |
| 6 | <i>West Virginia Rehabilitation Center—</i> |
| 7 | <i>Special Account</i> |

8 (WV Code Chapter 19)

9 Fund 8664 FY 1999 Org 0932

10	11	12	13	14	15	16	17	18	19
					Act-	Other			
					ivity	Funds			
12	4	Medical Services Trust Fund—							
13	5	Transfer	512	\$		2,000,000			

14 And, that the items of the total appropriations to the
 15 department of education and the arts - state board of rehabilita-
 16 tion - division of rehabilitation services - West Virginia
 17 rehabilitation center - special account, fund 8664, fiscal year
 18 1999, organization 0932, be amended and increased in the line
 19 items as follows:

20 TITLE II—APPROPRIATIONS.

21 Sec. 3. Appropriations from other funds.

22 DEPARTMENT OF EDUCATION AND THE ARTS

23 *124—State Board of Rehabilitation—*

24 *Division of Rehabilitation Services—*

25 *West Virginia Rehabilitation Center—*

26 *Special Account*

27 Fund 8664 FY 1999 Org 0932

28	29	30	31	32	33	34	35	36	37
					Act-	Other			
					ivity	Funds			
30	1	Unclassified	099	\$		2,000,000			

31 The purpose of this supplementary appropriation bill is to
 32 supplement, amend, reduce and increase existing items in the
 33 aforesaid account for the designated spending unit. The item for
 34 medical services trust fund - transfer is reduced by two million
 35 dollars. The item for unclassified is increased by two million
 36 dollars. The amounts as itemized for expenditure in the fiscal
 37 year ending the thirtieth day of June, one thousand nine hundred
 38 ninety-nine, shall be available for expenditure during fiscal year
 39 one thousand nine hundred ninety-nine.

CHAPTER 21

(H. B. 3013 — By Delegates Michael, Doyle, Thompson,
Frederick, Compton, Border and Facemyer)

[Passed March 10, 1999; 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-nine, to the department of transportation - state rail authority, fund 8733, fiscal year 1999, organization 0804, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

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-nine, 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-nine, to fund 8733, fiscal year 1999, organization 0804, be supplemented and amended by increasing the total appropriation by five hundred ninety-nine thousand four hundred nineteen dollars in the line item as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Section 5. Appropriations of federal funds.**
- 3 DEPARTMENT OF TRANSPORTATION
- 4 *247—State Rail Authority*
- 5 (WV Code Chapter 29)

6	Fund <u>8733</u> FY <u>1999</u> Org <u>0804</u>		
7		Act-	Federal
8		ivity	Funds
9	1 Unclassified—Total	096	\$ 599,419

10 The purpose of this supplementary appropriation bill is to
 11 supplement this account in the budget act for fiscal year ending
 12 the thirtieth day of June, one thousand nine hundred ninety-
 13 nine, by adding five hundred ninety-nine thousand four hundred
 14 nineteen dollars to the existing appropriation for Unclassi-
 15 fied—Total for expenditure during fiscal year one thousand
 16 nine hundred ninety-nine.

CHAPTER 22

(H. B. 3010 — By Delegates Michael, Doyle, Leach,
 Campbell, Kominar, Border and Facemyer)

[Passed March 10, 1999; 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-nine, to the West Virginia development office — community development, fund 8746, fiscal year 1999, organization 0307, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

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-nine, 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-nine, to fund 8746, fiscal year 1999, organization 0307, be supplemented and amended by increasing the total appropriation by five million dollars in the line item as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 6. Appropriations of federal block grants.		
3	<i>262—West Virginia Development Office—</i>		
4	<i>Community Development</i>		
5	Fund <u>8746</u> FY <u>1999</u> Org <u>0307</u>		
6		Act-	Federal
7		ivity	Funds
8	1	Unclassified—Total	096 \$ 5,000,000

9 The purpose of this supplementary appropriation bill is to
 10 supplement this account in the budget act for fiscal year ending
 11 the thirtieth day of June, one thousand nine hundred ninety-
 12 nine, by adding five million dollars to the existing appropriation
 13 for Unclassified—Total for expenditure during fiscal year one
 14 thousand nine hundred ninety-nine.

CHAPTER 23

(H. B. 3014 — By Delegates Michael, Doyle,
 Pettit, Warner, Laird, Leggett and Evans)

[Passed March 10, 1999; 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-nine, to the department of

transportation - division of motor vehicles, fund 8787, fiscal year 1999, organization 0802, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

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-nine, 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-nine, to fund 8787, fiscal year 1999, organization 0802, be supplemented and amended by increasing the total appropriation by three hundred fifty-five thousand dollars in the line item as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 5. Appropriations of federal funds.		
3	DEPARTMENT OF TRANSPORTATION		
4	249— <i>Division of Motor Vehicles</i>		
5	(WV Code Chapter 17B)		
6	Fund <u>8787</u> FY <u>1999</u> Org <u>0802</u>		
7		Act-	Federal
8		ivity	Funds
9	1	Unclassified—Total	096 \$ 355,000

10 The purpose of this supplementary appropriation bill is to
11 supplement this account in the budget act for fiscal year ending
12 the thirtieth day of June, one thousand nine hundred ninety-
13 nine, by adding three hundred fifty-five thousand dollars to the
14 existing appropriation for Unclassified—Total for expenditure
15 during fiscal year one thousand nine hundred ninety-nine.

CHAPTER 24

(H. B. 3016 — By Delegates Ashley, Compton,
Fleischauer, Jenkins, Pettit, Warner and Leggett)

[Passed March 10, 1999; 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-nine, to the auditor's office, fund 8807, fiscal year 1999, organization 1200, by supplementing and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

WHEREAS, The governor has established the availability of federal funds for continuing programs that are now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, 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-nine, to fund 8807, fiscal year 1999, organization 1200, 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 5. Appropriations of federal funds. |
| 3 | EXECUTIVE |
| 4 | <i>223—Auditor's Office</i> |
| 5 | (WV Code Chapter 12) |
| 6 | Fund <u>8807</u> FY <u>1999</u> Org <u>1200</u> |

7		Act-	Other
8		ivity	Funds
9	1	Unclassified—Total	096 \$ 4,000,000
10		The purpose of this supplementary appropriation bill is to	
11		supplement this account in the budget act for the fiscal year	
12		ending the thirtieth day of June, one thousand nine hundred	
13		ninety-nine, by adding four million to the existing appropriation	
14		for Unclassified—Total for expenditure during fiscal year one	
15		thousand nine hundred ninety-nine.	

CHAPTER 25

(H. B. 3011 — By Delegates Michael, Doyle, Proudfoot,
Jenkins, Fleischauer, Leggett and Evans)

[Passed March 10, 1999; in effect from passage.]

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-nine, to a new item of appropriation designated to the department of military affairs and public safety - division of corrections - correctional units, fund 8818, fiscal year 1999, organization 0608, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

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-nine, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter six, acts of the Legislature, regular session, one thousand nine hundred ninety-eight, 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 MILITARY AFFAIRS		
4	AND PUBLIC SAFETY		
5	<i>240a—Division of Corrections—</i>		
6	<i>Correctional Units</i>		
7	(WV Code Chapters 25, 28, 49 and 62)		
8	Fund <u>8818</u> FY <u>1999</u> Org <u>0608</u>		
9		Act-	Federal
10		ivity	Funds
11	1	Unclassified—Total 096	\$ 35,000

12 The purpose of this supplementary appropriation bill is to
 13 supplement this account in the budget act for fiscal year ending
 14 the thirtieth day of June, one thousand nine hundred ninety-
 15 nine, by providing for a new item of appropriation to be
 16 established therein to appropriate federal funds in the amount
 17 of thirty-five thousand dollars to Unclassified—Total for
 18 expenditure during fiscal year one thousand nine hundred
 19 ninety-nine.

CHAPTER 26

(H. B. 3015 — By Delegates Compton, Thompson,
 Leggett, Jenkins, Leach and Pettit)

[Passed March 10, 1999; 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-nine, to a new item of appropriation designated to the department of administration—West Virginia prosecuting attorneys’ institute, fund 8834, fiscal year 1999, organization 0228, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

WHEREAS, The governor has established the availability of federal funds for continuing programs that are now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter six, acts of the Legislature, regular session, one thousand nine hundred ninety-eight, 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 ADMINISTRATION		
4	<i>225a—West Virginia Prosecuting Attorneys’ Institute</i>		
5	(WV Code Chapter 7)		
6	Fund <u>8834</u> FY <u>1999</u> Org <u>0228</u>		
7		Act-	Federal
8		ivity	Funds
9	1	Unclassified—Total 096	\$ 35,960

10 The purpose of this supplementary appropriation bill is to
 11 supplement this account in the budget act for fiscal year ending
 12 the thirtieth day of June, one thousand nine hundred ninety-
 13 nine, by providing for a new item of appropriation to be
 14 established therein to appropriate federal funds in the amount
 15 of thirty-five thousand nine hundred sixty dollars to Unclassi-
 16 fied—Total for expenditure during fiscal year one thousand
 17 nine hundred ninety-nine.

7	Fund 8835 FY 1999 Org 0323		
8		Act-	Federal
9		ivity	Funds
10	1	Unclassified—Total	096 \$ 512,656.28

11 Pursuant to the requirements of 42 U.S.C. 1103, Section
 12 903 of the Social Security Act, as amended, and the provisions
 13 of section nine, article nine, chapter twenty-one-a of the code
 14 of West Virginia, one thousand nine hundred thirty-one, as
 15 amended, the above appropriation to Unclassified shall be used
 16 by the bureau of employment programs for the specific purpose
 17 of administration of the state's unemployment insurance
 18 program or job service activities, subject to each and every
 19 restriction, limitation or obligation imposed on the use of the
 20 funds by those federal and state statutes.

21 The purpose of this bill is to supplement the budget act for
 22 fiscal year ending the thirtieth day of June, one thousand nine
 23 hundred ninety-nine, by providing for a new item of appropria-
 24 tion to be established therein to appropriate federal funds in the
 25 amount of five hundred twelve thousand six hundred fifty-six
 26 dollars and twenty-eight cents for unclassified for the adminis-
 27 tration of the state's unemployment insurance program or job
 28 service activities for expenditure during fiscal year one thou-
 29 sand nine hundred ninety-nine.

CHAPTER 28

(S. B. 400 — By Senators Craigo, Anderson, Bailey,
 Bowman, Chafin, Edgell, Helmick, Jackson, Love, Plymale,
 Prezioso, Sharpe, Unger, Walker, Sprouse, Boley and Mlinear)

[Passed March 2, 1999; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated balance in the state road fund, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, from the department of

transportation, division of motor vehicles, fund 9007, fiscal year 1997, organization 0802, activity 222.

WHEREAS, The Legislature finds that the account balance in the department of transportation, division of motor vehicles, fund 9007, fiscal year 1997, organization 0802, activity 222, 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 the
2 fiscal year ending the thirtieth day of June, one thousand nine
3 hundred ninety-nine, to the department of transportation,
4 division of motor vehicles, fund 9007, fiscal year 1997,
5 organization 0802, activity 222, be amended and decreased by
6 expiring the amount of one million six hundred twenty-five
7 thousand dollars to the unappropriated balance of the state road
8 fund to be available for additional and further appropriation.

9 The purpose of this bill is to expire the sum of one million
10 six hundred twenty-five thousand dollars from the department
11 of transportation, division of motor vehicles, fund 9007, fiscal
12 year 1997, organization 0802, activity 222 to the unappropri-
13 ated balance of the state road fund to be available for additional
14 and further appropriation.

CHAPTER 29

(S. B. 401 — By Senators Craigo, Anderson, Bailey,
Bowman, Chafin, Edgell, Helmick, Jackson, Love, Plymale,
Prezioso, Sharpe, Unger, Walker, Sprouse, Boley and Mlinear)

[Passed March 2, 1999; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated balance in the state road fund, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, from the department of transportation, division of motor vehicles, fund 9007, fiscal year 1998, organization 0802, activity 222.

WHEREAS, The Legislature finds that the account balance in the department of transportation, division of motor vehicles, fund 9007, fiscal year 1998, organization 0802, activity 222, 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 the
2 fiscal year ending the thirtieth day of June, one thousand nine
3 hundred ninety-nine, to the department of transportation,
4 division of motor vehicles, fund 9007, fiscal year 1998,
5 organization 0802, activity 222, be amended and decreased by
6 expiring the amount of nine hundred eighty thousand dollars to
7 the unappropriated balance of the state road fund to be available
8 for additional and further appropriation.

9 The purpose of this bill is to expire the sum of nine hundred
10 eighty thousand dollars from the department of transportation,
11 division of motor vehicles, fund 9007, fiscal year 1998,
12 organization 0802, activity 222 to the unappropriated balance
13 of the state road fund to be available for additional and further
14 appropriation.

CHAPTER 30

(S. B. 402 — By Senators Cralgo, Anderson, Balley,
Bowman, Chaffin, Edgell, Helmick, Jackson, Love, Plymale,
Prezioso, Sharpe, Unger, Walker, Sprouse, Boley and Mlinear)

[Passed March 2, 1999; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and reducing items of the existing appropriation to the department of transportation, division of motor vehicles, fund 9007, fiscal year 1999, organization 0802, as originally appropriated by chapter six, acts of the Legislature, first regular session, one thousand nine hundred ninety-eight, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation to the department of transportation, division of motor vehicles, fund 9007, fiscal year 1999, 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	<i>90-Division of Motor Vehicles</i>		
5	(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)		
6	Fund <u>9007</u> FY <u>1999</u> Org <u>0802</u>		
7		Act-	State Road
8		ivity	Fund
9	5	Capital Outlay-Building	222 \$ 980,000

10 The purpose of this supplementary appropriation bill is to
 11 supplement, amend and reduce existing items in the aforesaid
 12 account for the designated spending unit. The item for capital
 13 outlay-building is reduced by nine hundred eighty thousand
 14 dollars.

CHAPTER 31

(S. B. 690 — By Senators Craigo, Anderson, Bailey,
 Bowman, Chaffin, Edgell, Helmick, Jackson, Love, Plymale,
 Prezioso, Sharpe, Unger, Walker, Sprouse, Boley and MInear)

[Passed March 10, 1999; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state road fund to the department of transportation, division of highways, account no. fund 9017, fiscal year 1999, organization 0803, as originally

appropriated by chapter six, acts of the Legislature, regular session, one thousand nine hundred ninety-eight, known as the budget bill.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 13, 1999, which included the statement of the state road fund setting forth therein the cash balances and investments as of July 1, 1998, and further included the estimate of revenues for the fiscal year 1998-99, less net appropriation balances forwarded and regular appropriations for fiscal year 1998-99.

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-nine, therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state road fund to account 9017, fiscal year 1999, organization 0803, be amended and reduced in the line items as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 2. Appropriations from state road fund.		
3	DEPARTMENT OF TRANSPORTATION		
4	<i>91—Division of Highways</i>		
5	(WV Code Chapters 17 and 17C)		
6	Fund <u>9017</u> FY <u>1999</u> Org <u>0803</u>		
7		Act-	State
8		ivity	Road
9			Fund
10	1	Debt Service	040 \$ 2,500,000
11	2	ARC Assessment	136 607,000
12	14	Appalachian Programs	280 5,750,000

13 And, that the items of the total appropriations from the state
 14 road fund to account no. fund 9017, fiscal year 1999, organiza-

15 tion 0803, be amended and increased in the line items as
16 follows:

17 TITLE II—APPROPRIATIONS.

18 **Sec. 2. Appropriations from state road fund.**

19 DEPARTMENT OF TRANSPORTATION

20 *91—Division of Highways*

21 (WV Code Chapters 17 and 17C)

22 Fund 9017 FY 1999 Org 0803

			Act- ivity	State Road Funds
26	5	Maintenance, State Local Service .	271	\$ 10,299,000
27	6	Maintenance, Contract Paving and .		
28	7	Secondary Road Maintenance ...	272	4,500,000
29	9	Inventory Revolving	275	750,000
30	10	Equipment Revolving	276	1,500,000
31	11	General Operations	277	2,700,000
32	12	Interstate Construction	278	4,000,000
33	13	Other Federal Aid Programs	279	45,250,000
34	15	Nonfederal Aid Construction	281	3,500,000

35 The purpose of this supplementary appropriation bill is to
36 supplement, amend, reduce and increase existing items in the
37 aforesaid account for the designated spending unit. The item for
38 Debt Service is reduced by two million five hundred thousand
39 dollars, ARC Assessment is reduced by six hundred seven
40 thousand dollars, and Appalachian Programs is reduced by five
41 million seven hundred fifty thousand dollars. The item for
42 Maintenance, State Local Service is increased by ten million
43 two hundred ninety-nine thousand dollars, Maintenance,
44 Contract Paving and Secondary Road Maintenance is increased
45 by four million five hundred thousand dollars, Inventory

46 Revolving is increased by seven hundred fifty thousand dollars,
47 Equipment Revolving is increased by one million five hundred
48 thousand dollars, General Operations is increased by two
49 million seven hundred thousand dollars, Interstate Construction
50 is increased by four million dollars, Other Federal Aid Pro-
51 grams is increased by forty-five million two hundred fifty
52 thousand dollars, and Nonfederal Aid Construction is increased
53 by three million five hundred thousand dollars. The amounts as
54 itemized for expenditure in fiscal year ending the thirtieth day
55 of June, one thousand nine hundred ninety-nine shall be
56 available for expenditure immediately upon the effective date
57 of this bill.

CHAPTER 32

(S. B. 689 — By Senators Craig, Anderson, Bailey,
Bowman, Chafin, Edgell, Helmick, Jackson, Love, Plymale,
Prezioso, Sharpe, Unger, Walker, Sprouse, Boley and Minear)

[Passed March 8, 1999; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state road fund to the department of transportation, division of highways, account no. fund 9018, fiscal year 1999, organization 0803, as originally appropriated by chapter six, acts of the Legislature, regular session, one thousand nine hundred ninety-eight, known as the budget bill.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 13, 1999, which included the statement of the state road fund setting forth therein the cash balances and investments as of July 1, 1998, and further included the estimate of revenues for the fiscal year 1998-99, less net appropriation balances forwarded and regular appropriations for fiscal year 1998-99.

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-nine, therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state road fund to account 9018, fiscal year 1999, 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>92—Division of Highways—</i>		
5	<i>Federal Aid Highway Matching Fund</i>		
6	(WV Code Chapters 17 and 17C)		
7	Fund <u>9018</u> FY <u>1999</u> Org <u>0803</u>		
8		Act-	State
9		ivity	Road
10			Fund
11	2	Other Federal Aid Programs	279 \$ 14,500,000

12 And, that the items of the total appropriations from the state
 13 road fund to account no. fund 9018, fiscal year 1999, organiza-
 14 tion 0803, be amended and increased in the line items as
 15 follows:

16	TITLE II—APPROPRIATIONS.		
17	Sec. 2. Appropriations from state road fund.		
18	DEPARTMENT OF TRANSPORTATION		
19	<i>92—Division of Highways-</i>		
20	<i>Federal Aid Highway Matching Fund</i>		
21	(WV Code Chapters 17 and 17C)		

		Fund <u>2018</u> FY <u>1999</u> Org <u>0803</u>	
		Act- ivity	State Road Fund
26	1 Interstate Construction	278	\$ 11,750,000
27	3 Appalachian Programs	280	11,000,000
28	The purpose of this supplementary appropriation bill is to		
29	supplement, amend, reduce and increase existing items in the		
30	aforesaid account for the designated spending unit. The item for		
31	Other Federal Aid Programs is reduced by fourteen million five		
32	hundred thousand dollars. The item for Interstate Construction		
33	is increased by eleven million seven hundred fifty thousand		
34	dollars and Appalachian Programs is increased by eleven		
35	million dollars. The amounts as itemized for expenditure in		
36	fiscal year ending the thirtieth day of June, one thousand nine		
37	hundred ninety-nine shall be available for expenditure immedi-		
38	ately upon the effective date of this bill.		

CHAPTER 33

(H. B. 2397 — By Delegate Modesitt)

[Passed March 2, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, six and twenty, article five-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state athletic commission; increasing the membership; raising fees to be paid to officials at athletic commission boxing events; and raising license fees for professional contestants, trainers, inspectors, referees and professional managers.

Be it enacted by the Legislature of West Virginia:

That sections one, six and twenty, article five-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 5A. STATE ATHLETIC COMMISSION.

§29-5A-1. Creation of commission; members; officers; seal and rules.

§29-5A-6. Payment of official in charge.

§29-5A-20. Licenses for contestants, referees and managers.

§29-5A-1. Creation of commission; members; officers; seal and rules.

1 The state boxing commission, heretofore created, is hereby
2 continued and renamed the state athletic commission. The
3 commission shall consist of five persons appointed by the
4 governor, by and with the consent of the Senate, no more than
5 three of whom shall belong to the same political party and no
6 two of whom shall be residents of the same county at the same
7 time. The members shall serve without pay. The present
8 members and terms of the members of the state boxing com-
9 mission shall continue as the state athletic commission. At the
10 expiration of the term of each member, his or her successor
11 shall be appointed by the governor for a term of four years. In
12 the event of a vacancy in said board, said vacancy shall likewise
13 be filled by appointment by the governor and the governor shall
14 likewise have the power to remove any commissioner at his or
15 her pleasure. Any three members of the commission shall
16 constitute a quorum for the exercise of the power or authority
17 conferred upon it. The members of the commission shall at the
18 first meeting after their appointment elect one of their number
19 chairman of the commission, and another of their number
20 secretary of the commission, shall adopt a seal for the commis-
21 sion, and shall make such rules for the administration of their
22 office, not inconsistent herewith, as they may deem expedient;
23 and they may hereafter amend or abrogate such rules. The
24 concurrence of at least three commissioners shall be necessary
25 to render a choice or decision of the commission.

§29-5A-6. Payment of official in charge.

1 The deputy, inspector or other officials designated by the
2 commission to be in charge of a boxing event shall be paid by

3 the promoter at a rate of seventy-five dollars for each weigh-in
4 ceremony and seventy-five dollars for each day of bouts. If a
5 weigh-in occurs within three hours before the boxing bouts are
6 scheduled to begin, the deputy, inspector or other officials will
7 be paid only seventy-five dollars once for that particular night
8 or day's events. Judges, timekeepers and inspectors shall be
9 paid by the promoter at a rate of fifty dollars per day. Referees
10 shall be paid by the promoter at a rate of seventy-five dollars
11 per day.

§29-5A-20. Licenses for contestants, referees and managers.

1 No professional contestant, trainer, inspector, referee or
2 professional manager is permitted to take part in any boxing
3 contest or exhibition unless holding a license from the state,
4 said license to be issued by the commission upon payment of
5 ten dollars a year. Such fees shall accompany the application
6 and shall be in the form of a certified check or money order and
7 shall be issued to the treasurer of the state of West Virginia to
8 be deposited in the general fund. Should such license not be
9 granted, the treasurer shall refund the full amount.

CHAPTER 34

(Com. Sub. for S. B. 635 — By Senators Craigo, Sharpe and Wooton)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article nine, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eleven, all relating to transferring the powers, duties, assets and personnel of the chief inspector from the state tax commissioner to the state auditor; authorizing the state auditor to propose legislative rules; specifying an effective date; requiring an interagency agreement; and requiring a report to the Legislature.

Be it enacted by the Legislature of West Virginia:

That article nine, chapter 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 eleven, to read as follows:

ARTICLE 9. SUPERVISION OF LOCAL GOVERNMENT OFFICES.

§6-9-11. Transfer of certain powers and duties of tax commissioner to state auditor; rules; interagency agreement; report to Legislature.

1 (a) Effective the first day of July, one thousand nine
2 hundred ninety-nine, the state auditor shall be the chief inspec-
3 tor and supervisor of local government offices. For the purposes
4 of this section and any section of this code relating to the chief
5 inspector, "local government office" means any unit of local
6 government within the state, including a county, county board
7 of education, municipality, and any other authority, board,
8 commission, district, office, public authority, public corporation
9 or other instrumentality of a county, county board of education
10 or municipality or any combination of two or more local
11 governments. The state auditor shall assume and perform those
12 duties previously vested in the tax commissioner under this
13 section and any section of this code relating to the chief
14 inspector, which sections are identified in subsection (d) of this
15 section, pertaining to:

16 (1) Making annual or special financial and compliance
17 examinations or audits of local government offices;

18 (2) Providing annual training to county officials pertaining
19 to their work: *Provided*, That this annual training may not
20 include matters directly or indirectly pertaining to determining
21 the appraised or assessed value of property or equalization of
22 assessed values of property for ad valorem property tax
23 purposes;

24 (3) Reviewing and approving annual budgets and changes
25 in budgets during the fiscal year; and

26 (4) Approving proposed levy rates, whether regular or
27 special.

28 (b) Effective the first day of July, one thousand nine
29 hundred ninety-nine, all records, property of whatever kind and
30 character, including, but not limited to, current office space
31 occupied by the chief inspector division of the tax division, all
32 personnel in positions assigned to the chief inspector division
33 and the fund established in section eight of this article shall be
34 transferred to the state auditor.

35 (c) The state auditor shall propose rules for legislative
36 approval in accordance with the provisions of article three,
37 chapter twenty-nine-a of this code to implement the provisions
38 of this section and any section of this code relating to the chief
39 inspector.

40 (d) Notwithstanding any provision of this code to the
41 contrary, after the thirtieth day of June, one thousand nine
42 hundred ninety-nine, whenever the words "tax commissioner"
43 or "state tax commissioner" appear in the following subsections,
44 sections or articles of this code, these words shall mean
45 the "state auditor in his or her capacity as the chief inspector
46 and supervisor of local government offices": Article nine,
47 chapter six; section nine, article one, chapter seven; sections
48 sixteen and eighteen, article five of chapter seven; sections two,
49 three, four and seventeen, article seven of chapter seven;
50 section twelve, article twelve of chapter seven; section nine,
51 article thirteen of chapter seven; section seventeen, article
52 seventeen of chapter seven; section sixteen, article eight of
53 chapter eight; sections seven, eighteen, nineteen and twenty-
54 three, article thirteen of chapter eight; section seven, article
55 sixteen of chapter eight; section four, article twenty-three of
56 chapter eight; section sixteen, article twenty-nine of chapter
57 eight; section four, article twenty-nine-a of chapter eight;
58 section two, article thirty-two of chapter eight; section eight,
59 article thirty-three of chapter eight; section six, article one of
60 chapter ten; sections six-b, six-c, seven, eight, ten, ten-a, eleven,
61 twelve, twelve-a, thirteen, fourteen, fourteen-a, fifteen, eigh-
62 teen, twenty, twenty-one, twenty-three, twenty-four, twenty-
63 five-a, twenty-six-a and thirty, article eight of chapter eleven;
64 subsections (i) and (j), section five-a and subsections (i) and (j),
65 section six, article thirteen-a of chapter eleven; sections eight,

66 twelve and thirteen, article one of chapter eleven-a; section
67 eleven, article two of chapter eleven-a; sections fourteen, thirty-
68 two and sixty-four, article three of chapter eleven-a; section
69 twenty, article three of chapter twelve; section five, article four
70 of chapter twelve; section twenty, article one of chapter
71 thirteen; section twenty-five, article two of chapter eighteen;
72 section three-a, article nine of chapter eighteen; sections one,
73 three, six, nine, twelve and thirteen, article nine-b of chapter
74 eighteen; section five, article nine-d of chapter eighteen; section
75 thirteen-b, article twenty-one-a of chapter nineteen; section
76 eight, article two of chapter twenty-four; section nineteen,
77 article twenty-one of chapter twenty-nine; section twenty,
78 article one of chapter fifty-two; and section thirty, article one of
79 chapter fifty-nine, all of this code.

80 (e) On or before the first day of July, one thousand nine
81 hundred ninety-nine, the state auditor and the state tax commis-
82 sioner shall file with the governor, the president of the Senate
83 and the speaker of the House of Delegates, an interagency
84 agreement clarifying transition procedures and respective
85 powers of the auditor and tax commissioner. A copy of the
86 interagency agreement shall be filed with the secretary of state,
87 and shall be a public record.

88 (f) On or before the first day of December, one thousand
89 nine hundred ninety-nine, the state auditor and the state tax
90 commissioner shall jointly report to the Legislature as to any
91 conflicts in this code created by the enactment of this section
92 for which legislation is recommended for enactment during the
93 regular session of the year two thousand.

CHAPTER 35

(Com. Sub. for H. B. 2481 — By Delegates Ennis,
Davis, Stemple, Martin, Willis, Fletcher and Armstead)

[Passed March 12, 1999; in effect July 1, 1999. Approved by the Governor.]

AN ACT to amend and reenact section seven, article nine, chapter six 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 one-a; and to amend and reenact section thirteen, article nine-b, chapter eighteen of said code, all relating to defining audit and review procedures as it pertains to supervision of public offices; annual examinations and compliance with the Single Audit Act; audits and reviews of local government agencies; allowing county boards of education to have its annual examination performed by a certified public accountant approved by the chief inspector; requiring the chief inspector to prepare a list of certified public accountants; requiring certified public accountants making examinations to follow procurement standards; requiring certified public accountants making examinations to comply with applicable requirements that include distribution of the audit or review report and recommendation to the chief inspector when the examination discloses misfeasance, malfeasance or nonfeasance; permitting offices with annual expenditures equal to or less than three hundred thousand dollars to satisfy financial examination requirements by review; requiring county board of education and other local offices to be audited at least one year out of every three years by the office of chief inspector; financial affairs of a local government that are not examined annually; filing of the certified report of each examination; bids taken by the chief inspector for local government that are not a county board of education; and examinations by a certified public accountant selected by the county board of education.

Be it enacted by the Legislature of West Virginia:

That section seven, article nine, chapter six 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 one-a; and that section thirteen, article nine-b, chapter eighteen of said code be amended and reenacted to read as follows:

Chapter

6. General Provisions Respecting Officers.

18. Education.

**CHAPTER 6. GENERAL PROVISIONS
RESPECTING OFFICERS.**

ARTICLE 9. SUPERVISION OF LOCAL GOVERNMENT OFFICES.

§6-9-1a. Definitions.

§6-9-7. Examinations into affairs of local public officers; penalties.

§6-9-1a. Definitions.

1 As used in this article:

2 (a) "Audit" means a systematic examination and collection
3 of sufficient, competent evidential matter needed for an auditor
4 to attest to the fairness of management's assertions in the
5 financial statements and to evaluate whether management has
6 sufficiently and effectively carried out its responsibilities and
7 complied with applicable laws and regulations. An audit shall
8 be conducted in accordance with generally accepted auditing
9 standards, standards issued by the chief inspector, and, as
10 applicable, the single audit requirement of OMB Circular A-
11 133 Audits of States, Local Governments and Non-Profit
12 Organizations as amended or revised from time to time, or any
13 successor circular.

14 (b) "Examination" includes an audit or review as defined in
15 this section.

16 (c) "Federal awards" means federal financial assistance and
17 federal cost-reimbursement contracts that nonfederal entities
18 receive directly from federal awarding agencies or indirectly
19 from pass-through entities.

20 (d) "Federal financial assistance" means assistance that
21 nonfederal entities receive or administer in the form of grants,
22 loans, loan guarantees, property, cooperative agreements,
23 interest subsidies, insurance, food commodities, direct appropri-
24 ations, or other assistance, but does not include amounts
25 received as reimbursement for services rendered to individuals
26 in accordance with guidance issued by the director of the
27 federal office of management and budget.

28 (e) "Financial audit" includes financial statement audits and
29 financial related audits, as defined by government auditing
30 standards.

31 (f) "Government auditing standards" means the government
32 auditing standards issued by the comptroller general of the
33 United States, which are applicable to financial audits of
34 government organizations, programs and activities.

35 (g) "Local government" means any unit of local govern-
36 ment within the state, including a county, county board of
37 education, municipality, and any other authority, board,
38 commission, district, office, public authority, public corpora-
39 tion, or other instrumentality of a county, county board of
40 education, or municipality or any combination of two or more
41 local governments.

42 (h) "Nonfederal entity" means a state, local government, or
43 nonprofit organization.

44 (i) "Office of management and budget (OMB)" means the
45 executive office of the president of the United States, office of
46 management and budget.

47 (j) "Review" means an inquiry or analytical procedures that
48 provide the auditor with a reasonable basis for expressing
49 limited assurance that there are no material modifications that
50 should be made to the financial statements in order for them to
51 be in conformity with generally accepted accounting principles
52 or, if applicable, with another comprehensive basis of account-
53 ing.

54 (k) "Single audit" means a financial and compliance audit
55 as defined in the federal Single Audit Act of 1996, as amended,
56 in section 7502(d), chapter 75, title 31 of the United States
57 Code, of a nonfederal entity that includes the entity's financial
58 statements and federal awards. Each single audit conducted for
59 any fiscal year shall cover the operations of the entire
60 nonfederal entity; or at the option of the nonfederal entity, the
61 audit shall include a series of audits that cover departments,
62 agencies, and other organizational units that expend or other-
63 wise administer federal awards during the fiscal year being
64 audited except that each such audit shall encompass the
65 financial statements and schedule of expenditures of federal
66 awards for each department, agency, and organizational unit,
67 which shall be considered to be a nonfederal entity.

§6-9-7. Examinations into affairs of local public officers; penalties.

1 (a) The chief inspector has the power by himself or herself,
2 or by any person appointed, designated or approved by the chief
3 inspector to perform the service, to examine into all financial
4 affairs of every local governmental office or political subdivi-
5 sion and all boards, commissions, authorities, agencies or other
6 offices created under authority thereof. An examination shall be
7 made annually, if required, to comply with the Single Audit Act
8 and when otherwise required by law or contract. When that act
9 does not apply, unless otherwise required by law or by contract
10 the examination shall be made at least once a year, if practica-
11 ble.

12 (b) When required for compliance with regulations for
13 federal funds received or expended by county boards of
14 education the chief inspector or his or her designee, including
15 any certified public accountant approved by the chief inspector
16 shall conduct and issue an audit report within the time specified
17 in controlling federal regulations. Examinations of other local
18 governments shall be conducted and audit or review reports
19 issued in accordance with uniform procedures of the chief
20 inspector.

21 (c) A county board of education may elect, by the first day
22 of May of the fiscal year to be audited, to have its annual
23 examination performed by a certified public accountant
24 approved by the chief inspector to perform such examinations.
25 When this election is made, a copy of the order of the board
26 making the election shall be filed with the chief inspector and
27 the state board of school finance. The county board of education
28 is allowed to contract with any certified public accountant on
29 the chief inspector's then current list of approved certified
30 public accountants, unless the state board of school finance or
31 the prosecuting attorney of the county in which the board is
32 located timely submits to the chief inspector a written request
33 for the examination to be performed by the chief inspector or a
34 person appointed by the chief inspector, or the chief inspector
35 determines that a special or unusual situation exists: *Provided,*

36 That no less than once every three-year period the audit of a
37 county board of education shall be performed by the office of
38 chief inspector. The school board shall follow the audit bid
39 procurement procedures established by the chief inspector in
40 obtaining such audit.

41 (d) The chief inspector shall, at least annually, prepare a list
42 of certified public accountants approved by the chief inspector
43 to perform examinations of local governments. Names shall be
44 added to or deleted from that list in accordance with uniform
45 procedures of the chief inspector. When each list or updated list
46 is issued, the chief inspector shall promptly file a copy of the
47 list in the state register and send a copy to the state board of
48 education, the state board of school finance and to local
49 governments who request a copy.

50 (e) A county board of education, when procuring the
51 services of a certified public accountant on the chief inspector's
52 list, shall follow the procurement standards prescribed by the
53 grants management common rule, OMB Circular A-102
54 "Grants and Cooperative Agreements with State and Local
55 Governments" in effect for the fiscal year being examined, or
56 in any replacement circular or regulation of the office of
57 management and budget and in addition shall follow those
58 standards as determined by the office of chief inspector.

59 (f) The approved independent certified public accountant
60 making examinations under this section shall comply with
61 requirements of this section applicable to examinations per-
62 formed by the chief inspector, including applicable require-
63 ments of the federal government and uniform procedures of the
64 chief inspector applicable to examinations of county boards of
65 education.

66 (1) Upon completion of the certified public accountant's
67 examination and audit or review report, the certified public
68 accountant shall promptly send two copies of the certified
69 report to the county board of education who shall file one copy
70 with the federal audit clearing house. The certified public
71 accountant shall send one copy of the certified report to the
72 state board of school finance, and one copy to the chief inspec-
73 tor.

74 (2) If any examination discloses misfeasance, malfeasance
75 or nonfeasance in office on the part of any public officer or
76 employee, the certified public accountant shall submit his or her
77 recommendation to the chief inspector regarding the legal
78 action the approved certified public accountant considers
79 appropriate, including, but not limited to, whether criminal
80 prosecution or civil action to effect restitution is appropriate,
81 and three additional copies of the certified audit report. After
82 review of the recommendations and the audit report, the chief
83 inspector shall proceed as provided in subsection (n) of this
84 section. For purposes of this section and section thirteen, article
85 nine-b, chapter eighteen of this code, a certified audit report of
86 an approved certified public accountant shall be treated in the
87 same manner as a report of the chief inspector.

88 (g) On every examination, inquiry shall be made as to the
89 financial conditions and resources of the agency having
90 jurisdiction over the appropriations and levies disbursed by the
91 office and whether the requirements of the constitution and
92 statutory laws of the state and the ordinances and orders of the
93 agency have been properly complied with and also inquire into
94 the methods and accuracy of the accounts and such other
95 matters of audit and accounting as the chief inspector may
96 prescribe.

97 (h) A local government office that is subject to separate
98 examination under this section by the chief inspector may elect
99 to have a review performed to satisfy the annual examination
100 requirement if it is not subject to a single audit requirement
101 under federal regulations or if it is not otherwise required by
102 law or contract to undergo an annual audit and its expenditures
103 from all sources are less than three hundred thousand dollars
104 during the fiscal year for which the election is made: *Provided,*
105 That an audit must be performed at least once every three years
106 by the chief inspector and shall be performed whenever during
107 the course of a review the chief inspector determines that
108 special or unusual circumstances warrant making an audit.

109 (i) When not required to have an audit by then existing
110 federal regulations or by any law or contract provision and the
111 financial affairs of a local government are not examined

112 annually but are examined on a biennial or other periodic basis,
113 the chief inspector or his or her designee may, in his or her
114 discretion, after making an audit of one of the fiscal years,
115 make a review of the years remaining to be examined.

116 (j) The chief inspector or any authorized assistant may issue
117 subpoenas and compulsory process, direct the service thereof
118 by any sheriff, compel the attendance of witnesses and the
119 production of books and papers at any designated time and
120 place, selected in their respective county, and administer oaths.

121 (k) If any person refuses to appear before the chief inspec-
122 tor or his or her authorized assistant when required to do so,
123 refuses to testify on any matter or refuses to produce any books
124 or papers in his or her possession or under his or her control, he
125 or she is guilty of a misdemeanor and, upon conviction thereof,
126 shall be fined not more than one hundred dollars and impris-
127 oned in the county jail not more than six months.

128 (l) A person convicted of willful false swearing in an
129 examination is guilty of a misdemeanor and, upon conviction
130 thereof, shall be fined not more than one hundred dollars and
131 imprisoned in the county jail not more than six months.

132 (m) Except as otherwise provided in this section, a copy of
133 the certified report of each examination shall be filed in the
134 office of the commissioner, chief inspector with the governing
135 body of the local government and with other offices as pre-
136 scribed in uniform procedures of the chief inspector.

137 (n) If any examination discloses misfeasance, malfeasance
138 or nonfeasance in office on the part of any public officer or
139 employee, a certified copy of the report shall be filed by the
140 chief inspector with the proper legal authority of the agency, the
141 prosecuting attorney of the county wherein the agency is
142 located and with the attorney general for such legal action as is
143 proper. At the time the certified audit report is filed, the chief
144 inspector shall notify the proper legal authority of the agency,
145 the prosecuting attorney and the attorney general in writing of
146 his or her recommendation as to the legal action that the chief
147 inspector considers proper, whether criminal prosecution or
148 civil action to effect restitution, or both.

149 (o) If the proper legal authority or prosecuting attorney,
150 within nine months of receipt of the certified audit report and
151 recommendations, refuses, neglects or fails to take efficient
152 legal action by a civil suit to effect restitution or by prosecuting
153 criminal proceedings to a final conclusion, in accordance with
154 the recommendations, the chief inspector may institute the
155 necessary proceedings or participate therein and prosecute the
156 proceedings in any court of the state to a final conclusion.

157 (p) A local government that is not a county board of
158 education, may elect, by the first day of May of the fiscal year
159 to be audited, to have its annual examination performed by a
160 certified public accountant approved by the chief inspector to
161 perform such examinations. When this election is made, a copy
162 of the order of the governing body making the election shall be
163 filed with the chief inspector. An electing local government is
164 allowed to contract with any certified public accountant on the
165 chief inspector's then current list of approved certified public
166 accountants, unless the prosecuting attorney of the county in
167 which the local government is located timely submits to the
168 chief inspector a written request for the examination to be
169 performed by the chief inspector or a person appointed by the
170 chief inspector, or the chief inspector determines that a special
171 or unusual situation exists: *Provided*, That no less than once
172 every three-year period the audit of a local government shall be
173 performed by the office of chief inspector. The local govern-
174 ment shall follow the audit bid procurement procedures
175 established by the chief inspector in obtaining such audit:
176 *Provided, however*, That the chief inspector may elect to
177 conduct the audit of a local unit of government with one or
178 more members of his or her audit staff where, in the opinion of
179 the chief inspector, a special or unusual situation exists.

CHAPTER 18. EDUCATION.

ARTICLE 9B. STATE BOARD OF SCHOOL FINANCE.

§18-9B-13. Inspection and audit of school finance administration.

1 The board of finance may, through its duly authorized
2 representatives, make inspections and examinations of the fiscal
3 administration of a county school district. The inspection and

4 examination may extend to any matter or practice subject to
5 regulation by the state board. Regular and special examinations
6 may be made by a certified public accountant approved
7 pursuant to section seven, article nine, chapter six of this code
8 selected by the county board of education in accordance with
9 nonemergency regulations submitted by the chief inspector, or
10 by the chief inspector himself or herself: *Provided*, That at least
11 once every three years, or more often if deemed necessary by
12 the office of chief inspector, a county board of education shall
13 undergo a performance and compliance audit by the office of
14 chief inspector. All examinations shall be made as provided in
15 section seven, article six of this code. The board may make
16 selective audits to determine the accuracy of statements and
17 reports made by a county board or superintendent.

18 The report of the examination shall be certified to the
19 county board of education, which should include the identifica-
20 tion of procedures and practices found to not be in accordance
21 with the requirements of the state board. The county board shall
22 comply with the instructions forthwith.

23 The state board, through its duly authorized representatives,
24 shall have full access to all books, records, papers and docu-
25 ments of the county board of education.

CHAPTER 36

(S. B. 663 — By Senator Mitchell)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article two-a, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exempting grand jury subpoenas served upon financial institutions from statutory provisions requiring notice to the customer or a judicial waiver.

Be it enacted by the Legislature of West Virginia:

That section six, article two-a, 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 2A. MAXWELL GOVERNMENTAL ACCESS TO FINANCIAL RECORDS ACT.

§31A-2A-6. Subpoena issued by grand jury.

1 (a) Notwithstanding the provisions of section five of this
2 article, a financial institution may disclose or produce
3 financial records upon being served with a subpoena issued
4 under authority of a grand jury without notice or service
5 upon the customer.

6 (b) Financial records obtained pursuant to a subpoena
7 issued under the authority of a grand jury:

8 (1) Shall be returned and actually presented to the grand
9 jury;

10 (2) Shall be used only: (A) For the purpose of consider-
11 ing whether to issue an indictment or presentment by that
12 grand jury; (B) for the purpose of prosecuting a crime for
13 which that indictment or presentment is issued; or (C) for
14 any other purpose authorized by the West Virginia rules of
15 criminal procedure; and

16 (3) Shall be destroyed or returned to the financial
17 institution if not used for one of the purposes specified in
18 subdivision (2) of this subsection.

19 (c) Financial records obtained pursuant to a subpoena
20 issued under the authority of a grand jury and any descrip-
21 tions of the contents of such financial records must be
22 maintained in sealed records of the grand jury unless such
23 financial records or descriptions thereof have been used in
24 the prosecution of a crime for which the grand jury issued an
25 indictment or presentment or for any other purpose autho-
26 rized by the West Virginia rules of criminal procedure.

CHAPTER 37

(H. B. 2478 — By Delegates Douglas, Collins,
Prunty, H. White, Hatfield and Stalnaker)

[Passed February 23, 1999; in effect ninety days from passage.
Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the board of banking and financial institutions.

Be it enacted by the Legislature of West Virginia:

That section one, article three, 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 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-1. Board created; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members disqualified from participation; compensation; records; office space; personnel; continuation.

- 1 (a) There is hereby created the West Virginia board of
- 2 banking and financial institutions which shall consist of six
- 3 members and the commissioner, who shall be chairman. The six
- 4 members shall be appointed by the governor by and with the
- 5 advice and consent of the Senate. Three of the members shall be
- 6 executive officers of state banking institutions, of whom one
- 7 shall be truly representative of such state banking institutions
- 8 having assets not greater than seventy-five million dollars, one
- 9 shall be truly representative of such state banking institutions
- 10 having total assets greater than seventy-five million dollars but

11 not greater than two hundred million dollars, and one shall be
12 truly representative of such banking institutions having total
13 assets greater than two hundred million dollars. One member
14 shall be an executive officer of a financial institution other than
15 a banking institution. Two members shall represent the public,
16 neither of whom shall be an employee, officer, trustee, director
17 or stockholder of any financial institution. No member shall
18 hold any other office, employment or position with the United
19 States, any state, county, municipality or other governmental
20 entity, any instrumentality or agency of any of the foregoing or
21 with any political party.

22 (b) The members of the board shall be appointed for
23 overlapping terms of six years, except that of the original
24 appointments, two members shall be appointed for a term of
25 two years, two members shall be appointed for a term of four
26 years and two members shall be appointed for a term of six
27 years, and in every instance until their respective successors
28 have been appointed and qualified. Any member appointed for
29 a full six-year term may not be reappointed until two years after
30 the expiration of such term. Any member appointed for less
31 than a full six-year term shall be eligible for reappointment for
32 a full term. Before entering upon the performance of his duties,
33 each member shall take and subscribe to the oath required by
34 section five, article IV of the constitution of this state. The
35 governor shall, within sixty days following the occurrence of a
36 vacancy on the board, fill the same by appointing a person for
37 the unexpired term of, and meeting the same requirements for
38 membership as, the person vacating said office. Any member
39 may be removed by the governor in case of incompetency,
40 neglect of duty, gross immorality or malfeasance in office.

41 (c) A majority of the members of the board shall constitute
42 a quorum. The board shall meet at least once in each calendar
43 quarter on a date fixed by the board. The commissioner may,
44 upon his own motion, or shall upon the written request of three
45 members of the board, call additional meetings of the board
46 upon at least twenty-four hours' notice. No member shall
47 participate in a proceeding before the board to which a corpora-
48 tion, partnership or unincorporated association is a party, and of

49 which he is, or was at any time in the preceding twelve months,
50 a director, officer, owner, partner, employee, member or
51 stockholder. A member may disqualify himself from participa-
52 tion in a proceeding for any other cause deemed by him to be
53 sufficient. Each member shall receive fifty dollars for each day
54 or portion thereof spent in attending meetings of the board and
55 shall be reimbursed for all reasonable and necessary expenses
56 incurred incident to his duties as a member of the board.

57 (d) The board shall keep an accurate record of all its
58 proceedings and make certificates thereupon as may be required
59 by law. The commissioner shall make available necessary
60 office space and secretarial and other assistance as the board
61 may reasonably require.

62 Pursuant to the provisions of section four, article ten,
63 chapter four of this code, and following a preliminary perfor-
64 mance audit review conducted through the joint committee on
65 government operations, the West Virginia board of banking and
66 financial institutions shall continue to exist until the first day of
67 July, two thousand five.

CHAPTER 38

(Com. Sub. for H. B. 2281 — By Delegates H. White,
Douglas, Collins, Varner, Stalnaker and Willison)

[Passed March 4, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twelve, article eight of said chapter; to further amend said article by adding thereto a new section, designated section twelve-d; and to amend and reenact section three, article eight-e of said chapter, all relating to branch banking; authorizing the board of banking and financial institutions to receive and hear appeals from parties

adversely affected by an order of the commissioner issued under section twelve-d, article eight, chapter thirty-one-a; reducing the examination and investigation fee of applicants for a branch bank and authorizing the commissioner to require examinations of financial institutions that are merged into a state-chartered bank; providing new standards for an applicant state-chartered banking institution to qualify for branch banking; providing an alternative procedure for a banking institution to establish a branch bank by de novo construction or lease; and procedures for interstate branching by West Virginia state banks.

Be it enacted by the Legislature of West Virginia:

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

Article

3. Board of Banking and Financial Institutions.

8. Hearings; Administrative Procedures; Judicial Review; Unlawful Acts; Penalties.

8E. Interstate Branching by De Novo Entry and Acquisition of Branches.

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-2. General powers and duties.

1 (a) In addition to other powers conferred by this chapter,
2 the board has the power to:

3 (1) Regulate its own procedure and practice;

4 (2) Promulgate reasonable rules to implement any provision
5 of this article in accordance with the provisions of article three,
6 chapter twenty-nine-a of this code;

7 (3) Advise the commissioner in all matters within his or her
8 jurisdiction;

9 (4) Study the organization, programs and services of
10 financial institutions and the laws relating thereto in this state

11 and in other jurisdictions, and to report and recommend to the
12 governor and the Legislature all such changes and amendments
13 in laws, policies and procedures relating thereto as it considers
14 proper;

15 (5) Grant permission and authority to a financial institution:

16 (A) To participate in a public agency hereafter created
17 under the laws of this state or of the United States, the purpose
18 of which is to afford advantages or safeguards to financial
19 institutions or to depositors therein, and to comply with all
20 lawful requirements and conditions imposed upon those
21 participants;

22 (B) To engage in any financial institution activity, services,
23 procedures and practices in which financial institutions of the
24 same type subject to the jurisdiction of the federal government
25 may hereafter be authorized by federal laws, rules or regula-
26 tions to engage, notwithstanding any contrary provision of this
27 code; and

28 (C) To pay interest on demand deposits of the United States
29 or any agency thereof, if the payment of interest is permitted
30 under any applicable federal law, rule or regulation.

31 Any permission and authority granted by the board pursuant
32 to this subdivision shall terminate upon the adjournment of the
33 next regular session of the Legislature, unless the Legislature
34 enacts legislation authorizing the financial institution participa-
35 tion, activity, services and procedures or payment of interest
36 with respect to which such permission and authority were
37 granted, in which event the permission and authority shall
38 continue in effect until the effective date of the legislation; and

39 (6) Seek judicial enforcement to compel compliance with
40 any of its orders and to seek and obtain civil penalties as set
41 forth under this chapter.

42 (b) The board also has the power, by entering appropriate
43 orders, to:

44 (1) Restrict the withdrawal of deposits from any financial
45 institution when, in the judgment of the board, extraordinary

46 circumstances make the restrictions necessary for the protection
47 of creditors of and depositors in the affected institution;

48 (2) Compel the holder of shares in any corporate financial
49 institution to refrain from voting the shares on any matter when,
50 in the judgment of the board, the order is necessary to protect
51 the institution against reckless, incompetent or careless man-
52 agement, to safeguard funds of depositors in the institution or
53 to prevent willful violation of any applicable law or of any rule
54 and regulation or order issued thereunder. In such a case the
55 shares of the holder may not be counted in determining the
56 existence of a quorum or a percentage of the outstanding shares
57 necessary to take any corporate action;

58 (3) Approve or disapprove applications to incorporate and
59 organize state banking institutions in accordance with the
60 provisions of sections six and seven, article four of this chapter;

61 (4) Approve or disapprove applications to incorporate and
62 organize state-chartered bankers' banks in accordance with the
63 provisions of sections six and seven, article four of this chapter;

64 (5) Exempt a bankers' bank from any provision of this
65 chapter if the board finds that the provision is inconsistent with
66 the purpose for which a bankers' bank is incorporated and
67 organized and that the welfare of the public or any banking
68 institution or other financial institution would not be jeopard-
69 ized thereby;

70 (6) Revoke the certificate of authority, permit, certificate or
71 license of any state banking institution to engage in business in
72 this state if that institution fails or refuses to comply with any
73 order of the commissioner entered pursuant to the provisions of
74 paragraph (A) or (B), subdivision (15), subsection (c), section
75 four, article two of this chapter, or at the board's election to
76 direct the commissioner to apply to any court having jurisdic-
77 tion for a prohibitory or mandatory injunction or other appropri-
78 ate remedy to compel obedience to such order;

79 (7) Suspend or remove a director, officer or employee of
80 any financial institution who is or becomes ineligible to hold
81 that position under any provision of law or rule and regulation

82 or order, or who willfully disregards or fails to comply with any
83 order of the board or commissioner made and entered in
84 accordance with the provisions of this chapter or who is
85 dishonest or grossly incompetent in the conduct of financial
86 institution business;

87 (8) To receive from state banking institutions applications
88 to establish branch banks by the purchase of the business and
89 assets and assumption of the liabilities of, or merger or consoli-
90 dation with, another banking institution, or by the construction,
91 lease or acquisition of branch bank facilities in an unbanked
92 area; examine and investigate such applications, to hold
93 hearings thereon, and to approve or disapprove such applica-
94 tions, all in accordance with section twelve, article eight of this
95 chapter;

96 (9) Approve or disapprove the application of any state bank
97 to purchase the business and assets and assume the liabilities of,
98 or merge or consolidate with, another state banking institution
99 in accordance with the provisions of section seven, article seven
100 of this chapter;

101 (10) Approve or disapprove the application of any state
102 bank to purchase the business and assets and assume the
103 liabilities of a national banking association, or merge or
104 consolidate with a national banking association to form a
105 resulting state bank in accordance with the provisions of section
106 seven, article seven of this chapter; and

107 (11) In addition to any authority granted pursuant to section
108 twelve, article eight of this chapter, incident to the approval of
109 an application pursuant to subdivisions (7) or (8) of this
110 subsection, permit the bank the application of which is so
111 approved to operate its banking business under its name from
112 the premises of the bank the business and assets of which have
113 been purchased and the liabilities of which have been assumed
114 by such applicant bank or with which the applicant bank has
115 merged or consolidated: *Provided*, That this permission may be
116 granted only if the board has made the findings required by
117 subsection (f), section three of this article and such applicant
118 bank has no common directors or officers nor common owner-

119 ship of stock exceeding ten percent of total outstanding voting
 120 stock with the bank whose business and assets are being
 121 purchased and liabilities assumed, or with whom the applicant
 122 bank is being merged; and

123 (12) To receive an appeal from any party who is adversely
 124 affected by an order of the commissioner issued pursuant to
 125 section twelve-d, article eight of this chapter, and hold hearings
 126 in accordance with the provisions of article five, chapter
 127 twenty-nine-a of this code.

128 (c) A provision of this section may not be construed to
 129 alter, reduce or modify the rights of shareholders, or obligations
 130 of a banking institution in regard to its shareholders, as set forth
 131 in section one hundred seventeen, article one, chapter thirty-one
 132 of this code and section seven, article seven of this chapter, and
 133 other applicable provisions of this code.

134 (d) Any order entered by the West Virginia board of
 135 banking and financial institutions pursuant to this section is a
 136 matter of public record.

**ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL
 REVIEW; UNLAWFUL ACTS; PENALTIES.**

§31A-8-12. Procedure for authorization of branch banks; temporary offices at colleges and universities; limitations and restrictions; examinations and hearings; standards of review; penalties for violation of section.

§31A-8-12d. Expedited procedure for authorization of de novo branch banks.

§31A-8-12. Procedure for authorization of branch banks; temporary offices at colleges and universities; limitations and restrictions; examinations and hearings; standards of review; penalties for violation of section.

1 (a) A banking institution may not engage in business in this
 2 state at any place other than at its principal office in this state,
 3 at a branch bank in this state, at a customer bank communica-
 4 tion terminal permitted by section twelve-b of this article or at
 5 any loan origination office permitted by section twelve-c of this
 6 article:

7 (1) Acceptance of a deposit or allowing a withdrawal at the
8 banking offices of any subsidiary affiliate, as defined in section
9 one, article eight-a of this chapter, for credit or debit to the
10 customer's account at any other subsidiary of the same bank
11 holding company is permissible and does not constitute branch
12 banking. In addition, the conduct of activity at branch offices as
13 an agent for any bank subsidiary of the same bank holding
14 company shall be permitted to the same extent allowed by
15 federal law for national banks pursuant to 12 U.S.C. §1828, and
16 does not constitute branch banking; nor does this activity
17 constitute a violation of section forty-two, article four of this
18 chapter: *Provided*, That a banking institution may not utilize
19 that agency relationship to evade state consumer protection
20 laws, including usury laws, or any other applicable laws of this
21 state, or to conduct any activity that is not financially-related,
22 as that term is defined by section two, article eight-c of this
23 chapter;

24 (2) A banking institution located in a county where there is
25 also a higher educational institution as defined in section two,
26 article one, chapter eighteen-b of this code, may establish a
27 temporary business office on the campus of any educational
28 institution located in the county for the limited purposes of
29 opening accounts and accepting deposits for a period not in
30 excess of four business days per semester, trimester or quarter:
31 *Provided*, That prior to opening any temporary office, a banking
32 institution must first obtain written permission from the
33 institution of higher education. The term "business days", for
34 the purpose of this subsection, means days exclusive of
35 Saturdays, Sundays and legal holidays as defined in section one,
36 article two, chapter two of this code;

37 (3) Any banking institution which on the first day of
38 January, one thousand nine hundred eighty-four, was authorized
39 to operate an off-premises walk-in or drive-in facility, pursuant
40 to the law then in effect, may, as of the seventh day of June, one
41 thousand nine hundred eighty-four, operate such facility as a
42 branch bank and it is not necessary, for the continued operation
43 of the branch bank, to obtain additional approvals, notwith-
44 standing the provisions of subsection (d) of this section and

45 subdivision (6), subsection (b), section two, article three of this
46 chapter.

47 (b) Except for a bank holding company, it is unlawful for
48 any individual, partnership, society, association, firm, institu-
49 tion, trust, syndicate, public or private corporation, or any other
50 legal entity, or combination of entities acting in concert, to
51 directly or indirectly own, control or hold with power to vote,
52 twenty-five percent or more of the voting shares of each of two
53 or more banks, or to control in any manner the election of a
54 majority of the directors of two or more banks.

55 (c) A banking institution may establish branch banks either
56 by:

57 (1) The construction, lease or acquisition of branch bank
58 facilities within any county of this state; or

59 (2) The purchase of the business and assets and assumption
60 of the liabilities of, or merger or consolidation with, another
61 banking institution.

62 (d) Subject to and in furtherance of the board's authority
63 under the provisions of subdivision (6), subsection (b), section
64 two, article three of this chapter, and subsection (g) of this
65 section, the board, by order, may approve or disapprove the
66 application of any state banking institution to establish a branch
67 bank.

68 (e) The main office or a branch of a West Virginia state
69 banking institution may not be relocated without the approval
70 by order of the commissioner.

71 (f) Any banking institution which is authorized to establish
72 branch banks pursuant to this section may provide the same
73 banking services and exercise the same powers at each such
74 branch bank as may be provided and exercised at its principal
75 banking house.

76 (g) The board shall, upon receipt of any application to
77 establish a branch bank under the provisions of this section,
78 provide notice of the application to all banking institutions. A
79 banking institution may, within ten days after receipt of the

80 notice, file a petition to intervene and shall, if it files a petition,
81 thereupon become a party to any hearing relating thereto before
82 the board.

83 (h) The commissioner shall prescribe the form of the
84 application for a branch bank under the provisions of this
85 section and shall collect an examination and investigation fee
86 of five hundred dollars for each filed application for a branch
87 bank that is to be established by the construction, lease or
88 acquisition of a branch bank facility, and five hundred dollars
89 for a branch bank that is to be established by the purchase of the
90 business and assets and assumption of the liabilities of, or
91 merger or consolidation with another banking institution.
92 Notwithstanding the above, if the merger or consolidation is
93 between an existing banking institution and a bank newly
94 incorporated solely for the purpose of facilitating the acquisition
95 of the existing banking institution, the commissioner shall
96 collect an examination and investigation fee of one hundred
97 dollars. The commissioner may require an examination of a
98 financial institution or an office of a financial institution that is
99 being merged into a state-chartered bank. If an examination is
100 required, the applicant is responsible for paying the examination
101 costs at a rate of fifty dollars per examiner hour. The board
102 shall complete the examination and investigation within ninety
103 days from the date on which the application and fee are
104 received, unless the board requests in writing additional
105 information and disclosures concerning the proposed branch
106 bank from the applicant banking institution. If the board makes
107 that request, the ninety-day period shall be extended for an
108 additional period of thirty days plus the number of days
109 between the date of the request and the date the additional
110 information and disclosures are received.

111 (i) Upon completion of the examination and investigation
112 with respect to the application, the board shall, if a hearing be
113 required pursuant to subsection (j) of this section, forthwith
114 give notice and hold a hearing pursuant to the following
115 provisions:

116 (1) Notice of hearing must be given to the banking institu-
117 tion with respect to which the hearing is to be conducted in

118 accordance with the provisions of section two, article seven,
119 chapter twenty-nine-a of this code, and the hearing and the
120 administrative procedures in connection therewith are governed
121 by all of the provisions of article five, chapter twenty-nine-a of
122 this code, and must be held at a time and place set by the board
123 but may not be less than ten nor more than thirty days after the
124 notice is given;

125 (2) At the hearing a party may represent himself or herself
126 or be represented by an attorney at law admitted to practice
127 before any circuit court of this state;

128 (3) After the hearing and consideration of all the testimony
129 and evidence, the board shall make and enter an order approv-
130 ing or disapproving the application, which order shall be
131 accompanied by findings of fact and conclusions of law as
132 specified in section three, article five, chapter twenty-nine-a of
133 this code, and a copy of the order and accompanying findings
134 and conclusions shall be served upon all parties to the hearing,
135 and their attorneys of record, if any.

136 (j) A state banking institution may not establish a branch
137 bank until the board, following an examination, investigation,
138 notice and hearing, enters an order approving an application for
139 that branch bank: *Provided*, That a hearing is not required with
140 respect to any application to establish a branch bank which is
141 approved by the board unless a banking institution has timely
142 filed a petition to intervene pursuant to subsection (g) of this
143 section. The order shall be accompanied by findings of fact
144 that:

145 (1) The applicant state-chartered banking institution
146 satisfies such reasonable and appropriate requirements as to
147 sound financial condition as the commissioner or board may
148 from time to time establish;

149 (2) The establishment of the proposed branch bank would
150 not result in a monopoly, nor be in furtherance of any combina-
151 tion or conspiracy to monopolize the business of banking in any
152 section of this state;

153 (3) The establishment of the proposed branch bank would
154 not have the effect in any section of the state of substantially

155 lessening competition, nor tend to create a monopoly or in any
156 other manner be in restraint of trade, unless the anticompetitive
157 effects of the establishment of that proposed branch bank are
158 clearly outweighed in the public interest by the probable effect
159 of the establishment of the proposed branch bank in meeting the
160 convenience and needs of the community to be served by that
161 proposed branch bank;

162 (4) The applicant state-chartered banking institution meets
163 a satisfactory standard of compliance with federal and state
164 community reinvestment act requirements as evidenced by its
165 most recent state or federal examination;

166 (5) The applicant state-chartered banking institution meets
167 a satisfactory standard of compliance with federal and state
168 consumer compliance law and regulations as evidenced by its
169 most recent state or federal regulatory examination; and

170 (6) The applicant state-chartered banking institution meets
171 acceptable standards for investment in premises and fixed
172 assets as permitted by section thirteen, article four of this
173 chapter.

174 (k) Any party who is adversely affected by the order of the
175 board is entitled to judicial review thereof in the manner
176 provided in section four, article five, chapter twenty-nine-a of
177 this code. Any such party adversely affected by a final judg-
178 ment of a circuit court following judicial review as provided in
179 the foregoing sentence may seek review thereof by appeal to the
180 supreme court of appeals in the manner provided in article six,
181 chapter twenty-nine-a of this code.

182 (l) Pursuant to the resolution of its board of directors and
183 with the prior written approval of the commissioner, a state
184 banking institution may discontinue the operation of a branch
185 bank upon at least thirty days prior public notice given in such
186 form and manner as the commissioner prescribes.

187 (m) Any violation of any provision of this section is a
188 misdemeanor offense punishable by applicable penalties as
189 provided in section fifteen of this article.

§31A-8-12d. Expedited procedure for authorization of de novo branch banks.

1 (a) As an alternative to using the procedures established in
2 subdivisions (g) through (j) of section twelve of this article, a
3 banking institution desiring to establish a branch bank by de
4 novo construction or lease may file a notice, containing
5 information as prescribed by the commissioner, of its intent
6 which must be received by the commissioner at least thirty-five
7 days prior to the date on which the proposed branch will be
8 established accompanied by a fee of two hundred fifty dollars.
9 The commissioner must provide written notice of his or her
10 acceptance or rejection of the branch notice prior to the
11 expiration of the thirty-five day period. However, if the
12 commissioner requests additional information from the branch-
13 ing institution, the period for the commissioner's consideration
14 of the notice shall be extended an additional fifteen days from
15 the time the information requested is received by the commis-
16 sioner.

17 (b) A state banking institution may not establish a branch
18 bank under this section until the commissioner provides written
19 approval of the notice for that branch bank. The commissioner's
20 approval or rejection of the notice must be accompanied by
21 findings of fact on whether the applicant bank:

22 (1) Satisfies such reasonable and appropriate requirements
23 as to sound financial condition as the commissioner or board,
24 from time to time, may establish;

25 (2) Meets a satisfactory standard of compliance with federal
26 and state community reinvestment act requirements as evi-
27 denced by its most recent state or federal examination;

28 (3) Meets a satisfactory standard of compliance with federal
29 and state consumer compliance law and regulations as evi-
30 denced by its most recent state or federal regulatory examina-
31 tion; and

32 (4) Meets the acceptable standards for investment in
33 premises and fixed assets as permitted by section thirteen,
34 article four of this chapter.

35 (c) Any party who is adversely affected by an action of the
36 commissioner taken pursuant to the criteria established by
37 subsection (b) of this section may appeal within ten business
38 days of the commissioner's decision to the board of banking
39 and financial institutions which must, after holding a hearing
40 pursuant to the provisions of subdivision (12), subsection (b),
41 section two, article three of this chapter, affirm, reverse or
42 modify the order of the commissioner. Any party who is
43 adversely affected by an order of the board of banking and
44 financial institutions issued pursuant to the provisions of this
45 subsection is entitled to judicial review in the same manner as
46 provided by the provisions of subsection (k), section twelve of
47 this article.

**ARTICLE 8E. INTERSTATE BRANCHING BY DE NOVO ENTRY AND
ACQUISITION OF BRANCHES.**

**§31A-8E-3. Interstate branching by West Virginia state banks
through de novo establishment or acquisition of
branches in other states.**

1 (a) Beginning on the thirty-first day of May, one thousand
2 nine hundred ninety-seven, and pursuant to the procedures and
3 standards established in either section twelve or section twelve-
4 d, article eight of this chapter, any West Virginia state bank
5 may establish and maintain a de novo branch or acquire a
6 branch in a state other than West Virginia, if the new branch is
7 in conformity with, and would be permitted under the laws of
8 the state where the branch is to be located.

9 (b) A West Virginia state bank desiring to establish and
10 maintain a branch in another state under this section shall file
11 a notice on a form prescribed by the commissioner and pay the
12 branch notice fee set forth in subsection (a), section twelve-d,
13 article eight of this chapter.

CHAPTER 39

(S. B. 211 — By Senators Helmick, Ross,
Minard, Fanning, Sharpe, Schoonover and Sprouse)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article six, chapter seven of said code; and to amend and reenact section four, article one, chapter twelve of said code, all relating to the inclusion of letters of credit issued by federal land banks, or federal loan banks, or such letters of credit approved by the state treasurer as permissible collateral security for bonds to be given by depositories of public funds.

Be it enacted by the Legislature of West Virginia:

That section five, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section two, article six, chapter seven of said code be amended and reenacted; and that section four, article one, chapter twelve of said code be amended and reenacted, all to read as follows:

Chapter

- 5. General Powers And Authority of The Governor, Secretary of State And Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.**
- 7. County Commissions and Officers.**
- 12. Public Moneys and Securities.**

**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 6. STATE BUILDING COMMISSION.**§5-6-5. Deposit and disbursement of funds of commission; security for deposits; audits.**

1 Except as provided in sections five-a and eleven-a of this
2 article, all moneys of the commission from whatever source
3 derived shall be paid to the treasurer of the state of West
4 Virginia who shall not commingle the moneys, but shall deposit
5 them to a special revenue fund to be known as the "state
6 building commission fund". The moneys in the account shall be
7 impressed with and subject to the lien or liens on the moneys in
8 favor of the bondholders provided in the proceedings for
9 issuance of bonds pursuant to this article. The moneys in the
10 account shall be paid out on check of the treasurer on requisition
11 of the chairman of the commission, or of such other person
12 as the commission may authorize to make the requisition. All
13 deposits of the moneys shall, if required by the treasurer or the
14 commission, be secured by obligations of the United States, of
15 the state of West Virginia, or of the commission, of a market
16 value equal at all times to the amount of the deposit, or letters
17 of credit of the federal land banks, or federal home loan banks,
18 or other letters of credit approved by the treasurer, and all
19 banking institutions are authorized to give such security for the
20 deposits. The legislative auditor and his or her legally authorized
21 representatives are hereby authorized and empowered
22 from time to time to examine the accounts and books of the
23 commission, including its receipts, disbursements, contracts,
24 leases, sinking funds, investments and any other matters
25 relating to its financial standing.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**ARTICLE 6. COUNTY DEPOSITORIES.****§7-6-2. Bond of depositories.**

1 No such designation shall be binding on any county, nor
2 shall any public money be deposited thereunder, until the
3 banking institution designated shall execute bond with good and
4 sufficient sureties, to be accepted and approved by the county
5 commission, payable to the state of West Virginia, in a sum as

6 the county commission shall direct, and which shall not be less
7 than the maximum sum that shall be deposited in the depository
8 at any one time. The bond shall be executed by at least four
9 resident freeholders as sureties owning in the aggregate
10 unencumbered real estate having an assessed valuation thereon
11 equal to the penalty of the bond, or by a fidelity or indemnity
12 company authorized to do business within the state, satisfactory
13 to, and acceptable by the county commission, and having not
14 less than six hundred thousand dollars capital; and the bond
15 shall be conditioned for the receipt, safekeeping and payment
16 over of all money which may be deposited in or come under the
17 custody of the banking institution designated a county deposi-
18 tory under the provisions hereof, together with the interest
19 thereon at the rate specified by this article; and the bond shall
20 be further conditioned for the faithful performance, by the
21 banking institution so designated, of all the duties imposed by
22 this article upon a depository of public moneys: *Provided*, That
23 the clerk of the county commission shall keep a record of each
24 surety on all personal bonds given as hereinbefore provided for
25 and the clerk shall notify the county commission of every
26 recorded conveyance of real estate made by any surety on said
27 personal bond.

28 An action shall lie on the bond at the instance of the county
29 commission, or the sheriff, for the recovery of any money
30 deposited in the depository, upon failure or default of the
31 depository to fully and faithfully account for and pay over any
32 and all public moneys deposited by the sheriff and of all
33 interests earned and accrued thereon as required by this article.
34 A bond shall not be accepted by the county commission until it
35 shall have been submitted to the prosecuting attorney, and
36 certified by him or her to be in due and legal form, and con-
37 formable to the provisions of this article, which certificate shall
38 be indorsed thereon: *Provided*, That the county commission
39 may, in lieu of the bond provided for hereinbefore, accept as
40 security for money deposited as aforesaid, interest-bearing
41 securities of the United States, or of a state, county, district or
42 municipal corporation, or of the federal land banks, or indorsed
43 county and district warrants of the county in which the deposi-

44 tory is located, or letters of credit of the federal land banks, or
45 federal home loan banks, or such other letters of credit ap-
46 proved by the treasurer; the face value of which securities shall
47 not be less than the sum hereinbefore specified as the amount
48 to be named in the bond in lieu of which the securities are
49 accepted; or the county commission may accept the securities
50 as partial security to the extent of their face value for the money
51 so deposited, and require bond for the remainder of the full
52 amount hereinbefore specified, to be named in the bond, and in
53 the bond so required, the acceptance of securities as partial
54 security, and the extent thereof, shall be set forth. The hypothe-
55 cation of the securities shall be by proper legal transfer as
56 collateral security to protect and indemnify by trust any and all
57 loss in case of any default on the part of the banking institution
58 in its capacity as depository as aforesaid. All the securities shall
59 be delivered to or deposited for the account of the county
60 commission, and withdrawal or substitution thereof may be
61 permitted from time to time upon approval by the county
62 commission by order of record, but the collateral security shall
63 be released only by order of record of the county commission
64 when satisfied that full and faithful accounting and payment of
65 all the moneys has been made under the provisions hereof. In
66 the event actual possession of the hypothecated securities are
67 delivered to the county commission, it shall make ample
68 provision for the safekeeping thereof and the interest thereon
69 when paid shall be turned over to the banking institution, so
70 long as it is not in default as aforesaid. The county commission
71 may permit the deposit under proper receipt of the securities
72 with one or more banking institutions within or without the
73 state of West Virginia and may contract with any institution for
74 safekeeping and exchange of any hypothecated securities, and
75 may prescribe the rules for handling and protecting the same.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1. STATE DEPOSITORIES.

§12-1-4. Bonds to be given by depositories.

1 Before allowing any money to be deposited with any
2 eligible depository in excess of the amount insured by an

3 agency of the federal government, the state treasurer shall
4 require the depository to give a collaterally secured bond, in the
5 amount of not less than ten thousand dollars, payable to the
6 state of West Virginia, conditioned upon the prompt payment,
7 whenever lawfully required, of any state money, or part thereof,
8 that may be deposited with that depository, or of any accrued
9 interest on deposits. The bond shall be a continuous bond but
10 may be increased or decreased in amount or replaced by a new
11 bond with the approval of the state treasurer. The collateral
12 security for the bond shall consist of bonds of the United States,
13 or bonds or letters of credit of the federal land banks, of the
14 federal home loan banks, or bonds of the state of West Virginia
15 or of any county, district or municipality of this state, or other
16 bonds, letters of credit, or securities approved by the treasurer.
17 All bonds so secured are here designated as collaterally secured
18 bonds. Withdrawal or substitution of any collateral pledged as
19 security for the performance of the conditions of the bond may
20 be permitted with the approval in writing of the treasurer. All
21 depository bonds shall be recorded by the treasurer in a book
22 kept in his or her office for the purpose, and a copy of the
23 record, certified by the treasurer, shall be prima facie evidence
24 of the execution and contents of the bond in any suit or legal
25 proceeding. All collateral securities shall be delivered to or
26 deposited for the account of the treasurer of the state of West
27 Virginia and in the event said securities are delivered to the
28 treasurer, he or she shall furnish a receipt therefor to the owner
29 thereof. The treasurer and his or her bondsmen shall be liable
30 to any person for any loss by reason of the embezzlement or
31 misapplication of the securities by the treasurer or any of his or
32 her employees, and for the loss thereof due to his or her
33 negligence or the negligence of his or her employees; and the
34 securities shall be delivered to the owner thereof when liability
35 under the bond which they are pledged to secure has terminated.
36 The treasurer may permit the deposit under proper receipt of the
37 securities with one or more banking institutions within or
38 outside the state of West Virginia and may contract with any
39 institution for safekeeping and exchange of any collateral
40 securities and may prescribe the rules for handling and protect-
41 ing the collateral securities.

CHAPTER 40

(Com. Sub. for S. B. 117 — By Senators Ross, Anderson and Plymale)

[Passed March 9, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen, relating to requiring that all new buildings that are built and maintained with public funds to have sloped roofs in accordance with the current state building code.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. STATE BUILDING COMMISSION.

§5-6-16. Sloped roofs required.

1 Notwithstanding any other provision of this code to the
2 contrary, after the first day of June, one thousand nine
3 hundred ninety-nine, any new building, which includes a
4 roof, designed, constructed and maintained with public funds
5 of the state, a county or a municipality shall have a roof of
6 sufficient slope so that water will not accumulate into a pool
7 on any area of the roof, in accordance with the current state
8 building code as it relates to roofs and roof structures.

CHAPTER 41

(S. B. 521 — By Senators Prezioso and Edgell)

[Passed March 11, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-h, relating to authorizing the adjutant general to establish morale, welfare and recreation facilities at Camp Dawson; authorizing the establishment of an enterprise; exempting sales of goods at the facilities from the consumer sales tax; authorizing the promulgation of regulations; limiting the use of the facilities to specific groups; and limiting the use of proceeds to Camp Dawson improvements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1H. MORALE, WELFARE AND RECREATION FACILITIES.

§15-1H-1. Definitions.

§15-1H-2. Morale, welfare and recreation facilities upon Camp Dawson; nonappropriated fund instrumentalities.

§15-1H-3. Regulations.

§15-1H-4. Use of funds.

§15-1H-5. Sales to be tax exempt.

§15-1H-6. Limitation on sales.

§15-1H-1. Definitions.

1 As used in this article:

- 2 (1) "Camp Dawson" means the state military reservation
3 located near Kingwood, Preston County, West Virginia, and
4 any training areas, ranges or facilities located on or about the
5 reservation used for military purposes.

6 (2) "Morale, welfare and recreation facility" means any
7 post exchange, canteen, barber shop, fitness center, snack bar,
8 transient housing, billeting operation, laundry or similar
9 facility, the purpose of which is to enhance the morale and
10 welfare of military personnel.

11 (3) "Nonappropriated fund instrumentality" means an
12 enterprise operated exclusively with funds derived from sales
13 or user fees, which receives no legislative appropriations for its
14 operations.

15 (4) "Nonappropriated fund employee" means an employee
16 of a nonappropriated fund instrumentality, who is not an
17 employee of the state.

**§15-1H-2. Morale, welfare and recreation facilities upon Camp
Dawson; nonappropriated fund instrumentalities.**

1 (a) The adjutant general is authorized to establish morale,
2 welfare and recreation facilities upon Camp Dawson as in his
3 or her judgment may be necessary and proper for military
4 purposes.

5 (b) Notwithstanding any other provision of this code to the
6 contrary, the adjutant general is authorized to establish a
7 nonappropriated fund instrumentality for the purpose of
8 operating the morale, welfare and recreation facilities.

9 (c) A nonappropriated fund instrumentality established
10 under this section may:

11 (1) Contract for goods and services;

12 (2) Hire employees under terms and conditions as it may
13 negotiate, subject only to applicable state and federal labor
14 laws; and

15 (3) Establish a system of bookkeeping, accounting and
16 auditing procedures for the proper handling of funds derived
17 from its operations.

18 (d) A nonappropriated fund instrumentality established
19 under this section is solely responsible for its operations. No

20 debt of the nonappropriated fund instrumentality is a debt of the
21 state. No action of the nonappropriated fund instrumentality is
22 an action of the state, nor does it obligate the state in any
23 manner.

§15-1H-3. Regulations.

1 The adjutant general shall promulgate regulations for the
2 operation of morale, welfare and recreation facilities and any
3 nonappropriated fund instrumentality established under this
4 article.

§15-1H-4. Use of funds.

1 All proceeds derived from the operation of the morale,
2 welfare and recreation facilities on Camp Dawson shall, after
3 the payment of operating expenses, notwithstanding any
4 provision of this code to the contrary, be used exclusively for
5 the improvement of Camp Dawson.

§15-1H-5. Sales to be tax exempt.

1 Any sales of goods made by a canteen or snack bar facility
2 on a state reservation or state training facility under the
3 jurisdiction of the adjutant general are exempt from the
4 payment of state consumers sales taxes pursuant to the provi-
5 sions of article fifteen, chapter eleven of this code.

§15-1H-6. Limitation on sales.

1 Use of the morale, welfare and recreation facilities provided
2 for in this article are limited to:

- 3 (1) Active and reserve component members of the armed
4 forces of the United States;
- 5 (2) Persons retired from the armed forces of the United
6 States;
- 7 (3) Dependents of service members or retirees;
- 8 (4) Civilian employees of the department of defense; and
- 9 (5) Employees of the adjutant general's department.

CHAPTER 42

(Com. Sub. for S. B. 170 — By Senators Bailey, Walker and Plymale)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article two-d, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article ten of said chapter, all relating to providing safety and security at the capitol complex and other state facilities; setting forth legislative findings; establishing division of protective services; purpose and continuation of the division; providing for a director of the division and establishing qualifications therefor; establishing powers and duties of director and members; legislative rules; interagency agreement; status report; oath of office; applicability of article; and authorizing division to cooperate with other law-enforcement agencies.

Be it enacted by the Legislature of West Virginia:

That article two-d, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section three, article ten of said chapter be amended and reenacted, all to read as follows:

Article

2D. Division of Protective Services.

10. Cooperation Between Law-enforcement Agencies.

ARTICLE 2D. DIVISION OF PROTECTIVE SERVICES.

§15-2D-1. Legislative findings.

§15-2D-2. Division established; purpose; continuation; appointment and qualifications of director.

§15-2D-3. Duties and powers of the director and members.

§15-2D-4. Oath of office.

§15-2D-5. Application of article.

§15-2D-1. Legislative findings.

1 The Legislature finds and declares that citizens, state
2 employees and visitors who park, attend functions, conduct
3 business or work at the capitol complex and other state facilities
4 should be safe and secure. The Legislature further finds and
5 declares that it is in the public interest to establish a division
6 within the department of military affairs and public safety for
7 the purpose of providing safety and security to individuals who
8 visit, conduct business or work at the capitol complex and other
9 state facilities.

§15-2D-2. Division established; purpose; continuation; appointment and qualifications of director.

1 (a) The state facilities protection division within the
2 department of military affairs and public safety shall hereafter
3 be designated the division of protective services. The purpose
4 of the division is to provide safety and security at the capitol
5 complex and other state facilities. Pursuant to the provisions of
6 article ten, chapter four of this code, the division shall continue
7 to exist until the first day of July, two thousand two.

8 (b) The governor shall appoint, with the advice and consent
9 of the Senate, the director of the division whose qualifications
10 shall include at least ten years of service as a law-enforcement
11 officer with at least three years in a supervisory law-enforce-
12 ment position, the successful completion of supervisory and
13 management training, and the professional training required for
14 police officers at the West Virginia state police academy or an
15 equivalent professional law-enforcement training at another
16 state, federal or United States military institution.

§15-2D-3. Duties and powers of the director and members.

1 (a) The director is responsible for the control and supervi-
2 sion of the division. The director and any member of the
3 division specified by the director may carry designated weapons
4 and have the same powers of arrest and law enforcement in
5 Kanawha county as members of the West Virginia state police
6 as set forth in subsections (b) and (d), section twelve, article
7 two of this chapter.

8 (b) The director may:

9 (1) Employ necessary personnel, all of whom shall be

10 classified exempt, assign them the duties necessary for the
11 efficient management and operation of the division, and specify
12 members who may carry, without license, weapons designated
13 by the director;

14 (2) Contract for security and other services;

15 (3) Purchase equipment as necessary to maintain security
16 at the capitol complex and other state facilities as may be
17 determined by the secretary of the department of military affairs
18 and public safety;

19 (4) Establish and provide standard uniforms, arms, weapons
20 and other enforcement equipment authorized for use by
21 members of the division and shall provide for the periodic
22 inspection of the uniforms and equipment. All uniforms, arms,
23 weapons and other property furnished to members of the
24 division by the state of West Virginia is and remains the
25 property of the state;

26 (5) Appoint security officers to provide security on pre-
27 mises owned or leased by the state of West Virginia;

28 (6) Upon request by the superintendent of the West Virginia
29 state police, provide security for the speaker of the West
30 Virginia House of Delegates, the president of the West Virginia
31 Senate, the governor, or a justice of the West Virginia supreme
32 court of appeals;

33 (7) Gather information from a broad base of employees at
34 and visitors to the capitol complex to determine their security
35 needs and develop a comprehensive plan to maintain and
36 improve security at the capitol complex based upon those
37 needs; and

38 (8) Assess safety and security needs and make recommen-
39 dations for safety and security at any proposed or existing state
40 facility as determined by the secretary of the department of
41 military affairs and public safety, upon request of the secretary
42 of the department to which the facility is or will be assigned.

43 (c) The director shall:

44 (1) On or before the first day of July, one thousand nine
45 hundred ninety-nine, propose legislative rules for promulgation
46 in accordance with the provisions of article three, chapter
47 twenty-nine-a of this code. The rules shall, at a minimum:

48 (A) Establish qualification, training and certification
49 requirements for members of the division, which shall include
50 the basic academy training standards established by the
51 governor's committee on crime, delinquency and prevention;

52 (B) Establish ranks and the duties of officers within the
53 membership of the division; and

54 (C) Establish a personnel policy and grievance procedure.

55 (2) On or before the first day of July, one thousand nine
56 hundred ninety-nine, enter into an interagency agreement with
57 the secretary of the department of military affairs and public
58 safety and the secretary of the department of administration,
59 which delineates their respective rights and authorities under
60 any contracts or subcontracts for security personnel. A copy of
61 the interagency agreement shall be delivered to the governor,
62 the president of the West Virginia Senate and the speaker of the
63 West Virginia House of Delegates, and a copy shall be filed in
64 the office of the secretary of state and shall be a public record.

65 (3) Deliver a monthly status report to the speaker of the
66 West Virginia House of Delegates and the president of the West
67 Virginia Senate.

§15-2D-4. Oath of office.

1 (a) The director and each member of the division shall take
2 and subscribe to an oath of office in conformity with article
3 four, section five of the Constitution of the state of West
4 Virginia.

5 (b) Any member serving on the effective date of this article
6 shall take and subscribe to the oath within thirty days of the
7 effective date of this section. Any member hired subsequent to
8 the effective date of this section shall take and subscribe to the
9 oath before entering upon the discharge of his or her duties. All
10 oaths shall be filed and preserved in the office of the division of
11 protective services.

§15-2D-5. Application of article.

1 (a) The provisions of this article shall not apply to the West
 2 Virginia Senate, the West Virginia House of Delegates, the
 3 West Virginia Legislature or the West Virginia supreme court
 4 of appeals, or to any part of the capitol complex under the
 5 supervision or control of the West Virginia Senate, the West
 6 Virginia House of Delegates, the West Virginia Legislature or
 7 the West Virginia supreme court of appeals, unless agreed to by
 8 the president of the West Virginia Senate, the speaker of the
 9 West Virginia House of Delegates, or jointly by the president
 10 of the West Virginia Senate and speaker of the West Virginia
 11 House of Delegates, or by order of the West Virginia supreme
 12 court of appeals, and then only to the extent that the president
 13 of the West Virginia Senate, the speaker of the West Virginia
 14 House of Delegates or the West Virginia supreme court of
 15 appeals agrees to such application, and then only to that part of
 16 the capitol complex under the supervision or control of the
 17 respective houses of the Legislature, individually or jointly, or
 18 of the court.

19 (b) The provisions of this article shall not limit or eliminate
 20 the jurisdiction of law-enforcement agencies at any state facility
 21 or the duty of law-enforcement agencies to respond to calls at
 22 any state facility.

**ARTICLE 10. COOPERATION BETWEEN LAW-ENFORCEMENT AGEN-
 CIES.**

§15-10-3. Definitions.

1 In this article, unless a different meaning plainly is re-
 2 quired:

3 (1) "Criminal justice enforcement personnel" means those
 4 persons within the state criminal justice system who are
 5 actually employed as members of the division of public safety,
 6 members of the division of protective services, state conserva-
 7 tion officers, chiefs of police and police of incorporated
 8 municipalities, and county sheriffs and their deputies, and
 9 whose primary duties are the investigation of crime and the
 10 apprehension of criminals.

11 (2) “Head of a law-enforcement agency” means the
12 superintendent of the division of public safety, the director of
13 the division of protective services, the chief conservation
14 officer of the division of natural resources, a chief of police of
15 an incorporated municipality or a county sheriff.

CHAPTER 43

(Com. Sub. for H. B. 2004 — By Delegate Amores, Spencer, Capito and Ashley)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections seven and eight; to amend and reenact section five, article five-b of said chapter; and to further amend said article by adding thereto a new section, designated section nineteen, all relating to cemetery contracts generally; itemization of costs and services in a cemetery contract; and abandoned interment rights.

Be it enacted by the Legislature of West Virginia:

That article five, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections seven and eight; that section five, article five-b of said chapter be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section nineteen, all to read as follows:

Article

5. Cemeteries.

5B. Preneed Cemetery Company Property, Goods and Services; Related Contracts.

ARTICLE 5. CEMETERIES.

§35-5-7. Requirements for cemetery company contracts.

§35-5-8. Abandoned interment rights.

§35-5-7. Requirements for cemetery company contracts.

1 (a) Any cemetery company contract shall:

2 (1) Be written in clear understandable language and printed
3 in easy-to-read type, size and style;

4 (2) Include the name and address of the seller, the contract
5 buyer and the person for whom the contract is bought if other
6 than the contract buyer;

7 (3) Contain a complete description of the property, goods
8 or services bought, including an itemization of the retail price
9 of the property, goods or services bought and, specifically, the
10 retail price of the monument, marker, installation, foundation,
11 the opening and closing of the grave site and any other charges.
12 Failure to provide this information is a violation of subsection
13 (f), section one hundred two, article six, chapter forty-six-a of
14 this code, relating to unfair methods of competition and unfair
15 or deceptive acts or practices;

16 (4) Clearly disclose whether the retail price of the property,
17 goods or services bought is guaranteed;

18 (5) Provide that when the particular property, goods or
19 services specified in the contract are unavailable at the time of
20 delivery, the seller shall furnish property, goods or services
21 similar in size, style and equal in quality of material and
22 workmanship, and that the representative of the deceased has
23 the right to reasonably choose the property, goods or services
24 to be substituted; and

25 (6) Be executed in duplicate and a signed copy given to the
26 buyer.

27 (b) For purposes of this article, the following words and
28 phrases have the following meanings:

29 (1) "Cemetery company" or "seller" means any person,
30 partnership, firm or corporation engaged in the business of
31 operating a cemetery or selling property, goods or services used
32 in connection with interring or disposing of the remains or
33 commemorating the memory of a deceased human being.

34 (2) "Cemetery company contract" means a contract for the
35 sale of real and personal property, goods or services used in
36 connection with interring or disposing of the remains or
37 commemorating the memory of a deceased human being.

§35-5-8. Abandoned interment rights.

1 (a) A cemetery company contract may include a provision
2 whereby interment rights that are not used for a period of
3 seventy-five years or more shall be deemed abandoned if
4 unclaimed and shall revert to the cemetery company if the
5 procedures in subsection (b) are followed.

6 (b) (1) Prior to deeming an owner's interment rights
7 abandoned, a cemetery company shall send notice of such intent
8 to the owner of record, his or her heirs or assigns or any next of
9 kin, by a registered letter, return receipt requested, at the
10 owner's last known address requesting the owner's current
11 address or the names and addresses of the heirs or assigns of the
12 owner of record. If a written response is received, then the
13 records of the cemetery company shall be amended accordingly
14 and the interment rights shall be maintained for seventy-five
15 years from the date the written response was received by the
16 cemetery company.

17 (2) If the registered letter is undeliverable or if no response
18 is received within thirty days after the registered letter was sent,
19 then the cemetery company shall advertise a notice of its intent
20 to declare the interment rights abandoned in a newspaper of
21 general circulation in the county where the cemetery is located
22 and also in the county of the last known address of the owner of
23 record, which notice shall contain the name and business
24 address of the cemetery and the name of the last owner of
25 record. If no response to the newspaper notice is made on
26 behalf of the owner of record or his or her heirs or assigns
27 within one hundred twenty days, then the interment rights shall
28 be deemed abandoned and shall revert to the cemetery com-
29 pany. Upon the reversion of interment rights to the cemetery
30 company, the cemetery company shall amend its records
31 accordingly and maintain these records for thirty years. If a

32 written response is received, then the records of the cemetery
33 company shall be amended accordingly and the interment rights
34 shall be maintained for seventy-five years from the date the
35 written response was received by the cemetery company.

36 (c) If, within thirty years after the interment rights have
37 been declared abandoned, the owner of record or his or her
38 heirs or assigns can prove to a cemetery company or a court of
39 competent jurisdiction that he or she would be entitled to the
40 interment rights of the owner of record if those rights had not
41 reverted to the cemetery company as provided for by this
42 section, then the cemetery company shall, at no cost, provide a
43 right of interment similar to the one that was deemed aban-
44 doned.

45 (d) The provisions of this section shall take effect on the
46 first day of July, one thousand nine hundred ninety-nine, and
47 shall not be construed to apply retroactively.

**ARTICLE 5B. PRENEED CEMETERY COMPANY PROPERTY, GOODS
AND SERVICES; RELATED CONTRACTS.**

§35-5B-5. Requirements for preneed cemetery company contracts.

§35-5B-19. Abandoned interment rights.

**§35-5B-5. Requirements for preneed cemetery company con-
tracts.**

1 A preneed cemetery company contract shall:

2 (1) Be written in clear understandable language and printed
3 in easy-to-read type, size and style;

4 (2) Include the name and address of the seller, the contract
5 buyer and the person for whom the contract is bought if other
6 than the contract buyer;

7 (3) Contain a complete description of the property, goods
8 or services bought, including an itemization of the retail price
9 of the property, goods or services bought and, specifically, the
10 retail price of the monument, marker, installation, foundation,
11 opening and closing of the grave site, and any other charges.
12 Failure to provide this information is a violation of subsection
13 (f), section one hundred two, article six, chapter forty-six-a of

14 this code, relating to unfair methods of competition and unfair
15 or deceptive acts or practices;

16 (4) Clearly disclose whether the price of the property, goods
17 or services bought is guaranteed;

18 (5) Provide that if the particular property, goods or services
19 specified in the contract are unavailable at the time of delivery,
20 the seller shall furnish property, goods or services similar in
21 size and style and equal in quality of material and workman-
22 ship, and that the representative of the deceased has the right to
23 reasonably choose the property, goods or services to be
24 substituted; and

25 (6) Be executed in duplicate and a signed copy given to the
26 buyer.

§35-5B-19. Abandoned interment rights.

1 (a) A preneed cemetery company contract may include a
2 provision whereby interment rights that are not used for a
3 period of seventy-five years or more shall be deemed aban-
4 doned if unclaimed and shall revert to the cemetery company if
5 the procedures in subsection (b) are followed.

6 (b) (1) Prior to deeming an owner's interment rights
7 abandoned, a cemetery company shall send notice of such intent
8 to the owner of record, his or her heirs or assigns or any next of
9 kin, by registered letter, return receipt requested, at the owner's
10 last known address requesting the owner's current address or
11 the names and addresses of the heirs or assigns of the owner of
12 record. If a written response is received, then the records of the
13 cemetery company shall be amended accordingly and the
14 interment rights shall be maintained for seventy-five years from
15 the date the written response was received by the cemetery
16 company.

17 (2) If the registered letter is undeliverable or if no response
18 is received within thirty days after the registered letter was sent,
19 then the cemetery company shall advertise a notice of its intent
20 to declare the interment rights abandoned in a newspaper of
21 general circulation in the county where the cemetery is located

22 and also in the county of the last known address of the owner of
23 record, which notice shall contain the name and business
24 address of the cemetery and the name of the last owner of
25 record. If no response to the newspaper notice is made on
26 behalf of the owner of record or his or her heirs or assigns
27 within one hundred twenty days, then the interment rights shall
28 be deemed abandoned and shall revert to the cemetery com-
29 pany. Upon the reversion of the interment rights to the cemetery
30 company, the cemetery company shall amend its records
31 accordingly and maintain these records for thirty years. If a
32 written response is received, then the records of the cemetery
33 company shall be amended accordingly and the interment rights
34 shall be maintained for seventy-five years from the date the
35 written response was received by the cemetery company.

36 (c) If, within thirty years after the interment rights have
37 been declared abandoned, the owner of record or his or her
38 heirs or assigns can prove to a cemetery company or a court of
39 competent jurisdiction that he or she would be entitled to the
40 interment rights of the owner of record if those rights had not
41 reverted to the cemetery company as provided for by this
42 section, then the cemetery company shall, at no cost, provide a
43 right of interment similar to the one that was deemed aban-
44 doned.

45 (d) The provisions of this section shall take effect on the
46 first day of July, one thousand nine hundred ninety-nine, and
47 shall not be construed to apply retroactively.

CHAPTER 44

(Com. Sub. for S. B. 600 — By Senator Plymale)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article one, chapter forty-two of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, relating to recognizing the right of a child born out of wedlock to inherit from his or her mother and father; means of establishing paternity; and exempting situations where the child has been adopted by another male or where the putative father has expressly disinherited the child.

Be it enacted by the Legislature of West Virginia:

That section five, article one, chapter forty-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. DESCENT.

§42-1-5. From whom children born out of wedlock inherit.

1 (a) Children born out of wedlock shall be capable of
2 inheriting and transmitting inheritance on the part of their
3 mother and father.

4 (b) Prior to the death of the father, paternity shall be
5 established by:

6 (1) Acknowledgment that he is the child's father;

7 (2) Adjudication on the merits pursuant to the provisions of
8 section four, article six, chapter forty-eight-a of this code; or

9 (3) By order of a court of competent jurisdiction issued in
10 another state.

11 (c) After the death of the father, paternity shall be estab-
12 lished if, after a hearing on the merits, the court shall find, by
13 clear and convincing evidence that the man is the father of the
14 child. The civil action shall be filed in the circuit court of the
15 county where the administration of the decedent's estate has
16 been filed or could be filed:

17 (1) Within six months of the date of the final order of the
18 county commission admitting the decedent's will to probate or
19 commencing intestate administration of the estate; or

20 (2) If none of the above apply, within six months from the
21 date of decedent's death.

22 (d) Any putative child who at the time of the decedent's
23 death is under the age of eighteen years, a convict or a mentally
24 incapacitated person may file such civil action within six
25 months after he or she becomes of age or the disability ceases.

26 (e) The provisions of this section do not apply where the
27 putative child has been lawfully adopted by another man and
28 stands to inherit property or assets through his adopted father.

29 (f) The provisions of this section do not apply where the
30 father or putative father has expressly disinherited the child in
31 a provision of his will.

CHAPTER 45

(Com. Sub. for S. B. 678 — By Senator Love)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to child welfare services; and redefining the term "legal guardianship" for purposes of abuse and neglect proceedings.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-3. Definitions relating to abuse and neglect.

1 (a) "Abused child" means a child whose health or welfare
2 is harmed or threatened by:

3 (1) A parent, guardian or custodian who knowingly or
4 intentionally inflicts, attempts to inflict or knowingly allows

5 another person to inflict, physical injury or mental or emotional
6 injury, upon the child or another child in the home; or

7 (2) Sexual abuse or sexual exploitation; or

8 (3) The sale or attempted sale of a child by a parent,
9 guardian or custodian in violation of section sixteen, article
10 four, chapter forty-eight of this code.

11 In addition to its broader meaning, physical injury may
12 include an injury to the child as a result of excessive corporal
13 punishment.

14 (b) "Abusing parent" means a parent, guardian or other
15 custodian, regardless of his or her age, whose conduct, as
16 alleged in the petition charging child abuse or neglect, has been
17 adjudged by the court to constitute child abuse or neglect.

18 (c) "Child abuse and neglect" or "child abuse or neglect"
19 means physical injury, mental or emotional injury, sexual
20 abuse, sexual exploitation, sale or attempted sale or negligent
21 treatment or maltreatment of a child by a parent, guardian or
22 custodian who is responsible for the child's welfare, under
23 circumstances which harm or threaten the health and welfare of
24 the child.

25 (d) "Child abuse and neglect services" means social
26 services which are directed toward:

27 (1) Protecting and promoting the welfare of children who
28 are abused or neglected;

29 (2) Identifying, preventing and remedying conditions which
30 cause child abuse and neglect;

31 (3) Preventing the unnecessary removal of children from
32 their families by identifying family problems and assisting
33 families in resolving problems which could lead to a removal
34 of children and a breakup of the family;

35 (4) In cases where children have been removed from their
36 families, providing services to the children and the families so
37 as to reunify such children with their families;

38 (5) Placing children in suitable adoptive homes when
39 reunifying the children with their families is not possible or
40 appropriate; and

41 (6) Assuring the adequate care of children who have been
42 placed in the custody of the department or third parties.

43 (e) "Imminent danger to the physical well-being of the
44 child" means an emergency situation in which the welfare or
45 the life of the child is threatened. Such emergency situation
46 exists when there is reasonable cause to believe that any child
47 in the home is or has been sexually abused or sexually ex-
48 ploited, or reasonable cause to believe that the following
49 conditions threaten the health or life of any child in the home:

50 (1) Nonaccidental trauma inflicted by a parent, guardian,
51 custodian, sibling or a babysitter or other caretaker;

52 (2) A combination of physical and other signs indicating a
53 pattern of abuse which may be medically diagnosed as battered
54 child syndrome;

55 (3) Nutritional deprivation;

56 (4) Abandonment by the parent, guardian or custodian;

57 (5) Inadequate treatment of serious illness or disease;

58 (6) Substantial emotional injury inflicted by a parent,
59 guardian or custodian; or

60 (7) Sale or attempted sale of the child by the parent,
61 guardian or custodian.

62 (f) "Legal guardianship" means the permanent relationship
63 between a child and caretaker, established by order of the
64 circuit court having jurisdiction over the child, pursuant to the
65 provisions of chapters forty-eight and forty-nine of this code.

66 (g) "Multidisciplinary team" means a group of profession-
67 als and paraprofessionals representing a variety of disciplines
68 who interact and coordinate their efforts to identify, diagnose
69 and treat specific cases of child abuse and neglect.
70 Multidisciplinary teams may include, but are not limited to,

71 medical, educational, child care and law-enforcement person-
72 nel, social workers, psychologists and psychiatrists. Their goal
73 is to pool their respective skills in order to formulate accurate
74 diagnoses and to provide comprehensive coordinated treatment
75 with continuity and follow-up for both parents and children.
76 “Community team” means a multidisciplinary group which
77 addresses the general problem of child abuse and neglect in a
78 given community and may consist of several multidisciplinary
79 teams with different functions.

80 (h) (1) “Neglected child” means a child:

81 (A) Whose physical or mental health is harmed or threat-
82 ened by a present refusal, failure or inability of the child’s
83 parent, guardian or custodian to supply the child with necessary
84 food, clothing, shelter, supervision, medical care or education,
85 when such refusal, failure or inability is not due primarily to a
86 lack of financial means on the part of the parent, guardian or
87 custodian; or

88 (B) Who is presently without necessary food, clothing,
89 shelter, medical care, education or supervision because of the
90 disappearance or absence of the child’s parent or custodian;

91 (2) “Neglected child” does not mean a child whose educa-
92 tion is conducted within the provisions of section one, article
93 eight, chapter eighteen of this code.

94 (i) “Parenting skills” means a parent’s competencies in
95 providing physical care, protection, supervision and psychologi-
96 cal support appropriate to a child’s age and state of develop-
97 ment.

98 (j) “Sexual abuse” means:

99 (A) As to a child who is less than sixteen years of age, any
100 of the following acts which a parent, guardian or custodian shall
101 engage in, attempt to engage in, or knowingly procure another
102 person to engage in, with such child, notwithstanding the fact
103 that the child may have willingly participated in such conduct
104 or the fact that the child may have suffered no apparent physical
105 injury or mental or emotional injury as a result of such conduct:

106 (i) Sexual intercourse;

107 (ii) Sexual intrusion; or

108 (iii) Sexual contact;

109 (B) As to a child who is sixteen years of age or older, any
110 of the following acts which a parent, guardian or custodian shall
111 engage in, attempt to engage in, or knowingly procure another
112 person to engage in, with such child, notwithstanding the fact
113 that the child may have consented to such conduct or the fact
114 that the child may have suffered no apparent physical injury or
115 mental or emotional injury as a result of such conduct:

116 (i) Sexual intercourse;

117 (ii) Sexual intrusion; or

118 (iii) Sexual contact;

119 (C) Any conduct whereby a parent, guardian or custodian
120 displays his or her sex organs to a child, or procures another
121 person to display his or her sex organs to a child, for the
122 purpose of gratifying the sexual desire of the parent, guardian
123 or custodian, of the person making such display, or of the child,
124 or for the purpose of affronting or alarming the child.

125 (k) "Sexual contact" means sexual contact as that term is
126 defined in section one, article eight-b, chapter sixty-one of this
127 code.

128 (l) "Sexual exploitation" means an act whereby:

129 (1) A parent, custodian or guardian, whether for financial
130 gain or not, persuades, induces, entices or coerces a child to
131 engage in sexually explicit conduct as that term is defined in
132 section one, article eight-c, chapter sixty-one of this code;

133 (2) A parent, guardian or custodian persuades, induces,
134 entices or coerces a child to display his or her sex organs for the
135 sexual gratification of the parent, guardian, custodian or a third
136 person, or to display his or her sex organs under circumstances
137 in which the parent, guardian or custodian knows such display
138 is likely to be observed by others who would be affronted or
139 alarmed.

140 (m) "Sexual intercourse" means sexual intercourse as that
141 term is defined in section one, article eight-b, chapter sixty-one
142 of this code.

143 (n) "Sexual intrusion" means sexual intrusion as that term
144 is defined in section one, article eight-b, chapter sixty-one of
145 this code.

146 (o) "Parental rights" means any and all rights and duties
147 regarding a parent to a minor child, including, but not limited
148 to, custodial rights and visitational rights and rights to partici-
149 pate in the decisions affecting a minor child.

150 (p) "Placement" means any temporary or permanent
151 placement of a child who is in the custody of the state in any
152 foster home, group home or other facility or residence.

153 (q) "Serious physical abuse" means bodily injury which
154 creates a substantial risk of death, which causes serious or
155 prolonged disfigurement, prolonged impairment of health or
156 prolonged loss or impairment of the function of any bodily
157 organ.

158 (r) "Siblings" means children who have at least one
159 biological parent in common or who have been legally adopted
160 by the same parents or parent.

161 (s) "Time-limited reunification services" means individual,
162 group, and family counseling, inpatient, residential or outpa-
163 tient substance abuse treatment services, mental health services,
164 assistance to address domestic violence, services designed to
165 provide temporary child care and therapeutic services for
166 families, including crisis nurseries and transportation to or from
167 any such services, provided during fifteen of the most recent
168 twenty-two months a child has been in foster care, as deter-
169 mined by the earlier date of the first judicial finding that the
170 child is subjected to abuse or neglect, or the date which is sixty
171 days after the child is removed from home.

CHAPTER 46

(Com. Sub. for S. B. 479 — By Senators Walker,
Bailey, Fanning and Kessler)

[Passed March 10, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five, relating to limiting judicial imposition to require acceptance of children by child welfare agencies in excess of the facility's licensed capacity; authorizing facilities to refuse a child under certain circumstances; and authorizing facilities to decline to make accommodations when at capacity.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-5. Limitation on out of home placement.

1 Before any child may be directed for placement in a
2 particular facility or for services of a child welfare agency
3 licensed by the department, a court shall make inquiry into the
4 bed space of the facility available to accommodate additional
5 children and the ability of the child welfare agency to meet the
6 particular needs of the child. A court shall not order the
7 placement of a child in a particular facility if it has reached its
8 licensed capacity. Further, a child welfare agency is not
9 required to accept placement of a child at a particular facility if
10 the facility remains at licensed capacity or is unable to meet the
11 particular needs of the child. A child welfare agency is not

- 12 required to make special dispensation or accommodation,
- 13 reorganize existing child placement, or initiate early release of
- 14 children in placement to reduce actual occupancy at the facility.

CHAPTER 47

(Com. Sub. for H. B. 2765 —By Delegates Warner and Pettit)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exemptions from the classified service and additions to the classified service; removing county road supervisors from positions exempted from coverage under the classified service and exempting present county road supervisors from testing and providing for retention of their positions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-4. Classified-exempt service; additions to classified service; exemptions.

- 1 (a) The classified-exempt service includes all positions
- 2 included in the classified-exempt service on the effective date
- 3 of this article.

- 4 (b) Except for the period commencing on the first day of
- 5 July, one thousand nine hundred ninety-two, and ending on the
- 6 first Monday after the second Wednesday of the following
- 7 January and except for the same periods commencing in the
- 8 year one thousand nine hundred ninety-six, and in each fourth

9 year thereafter, the governor may, by executive order, with the
10 written consent of the state personnel board and the appointing
11 authority concerned, add to the list of positions in the classified
12 service, but such additions shall not include any positions
13 specifically exempted from coverage as provided in this
14 section.

15 (c) The following offices and positions are exempt from
16 coverage under the classified service:

17 (1) All judges, officers and employees of the judiciary;

18 (2) All members, officers and employees of the Legislature;

19 (3) All officers elected by popular vote and employees of
20 the officer;

21 (4) All secretaries of departments and employees within the
22 office of a secretary;

23 (5) Members of boards and commissions and heads of
24 departments appointed by the governor or such heads of
25 departments selected by commissions or boards when expressly
26 exempt by law or board order;

27 (6) Excluding the policy-making positions in an agency,
28 one principal assistant or deputy and one private secretary for
29 each board or commission or head of a department elected or
30 appointed by the governor or Legislature;

31 (7) All policy-making positions;

32 (8) Patients or inmates employed in state institutions;

33 (9) Persons employed in a professional or scientific
34 capacity to make or conduct a temporary and special inquiry,
35 investigation or examination on behalf of the Legislature or a
36 committee thereof, an executive department or by authority of
37 the governor;

38 (10) All employees of the office of the governor, including
39 all employees assigned to the executive mansion;

40 (11) Part-time professional personnel engaged in profes-
41 sional services without administrative duties and personnel
42 employed for ninety days or less during a working year;

43 (12) Members and employees of the board of trustees and
44 board of directors or their successor agencies;

45 (13) Uniformed personnel of the state police; and

46 (14) Seasonal employees in the state forests, parks, and
47 recreational areas working less than 1,733 hours per calendar
48 year: *Provided*, That notwithstanding any provision of law to
49 the contrary, seasonal employees shall not be considered
50 full-time employees.

51 (d) The Legislature finds that the holding of political beliefs
52 and party commitments consistent or compatible with those of
53 the governor contributes in an essential way to the effective
54 performance of and is an appropriate requirement for occupying
55 certain offices or positions in state government, such as the
56 secretaries of departments and the employees within their
57 offices, the heads of agencies appointed by the governor and,
58 for each such head of agency, a private secretary and one
59 principal assistant or deputy, all employees of the office of the
60 governor including all employees assigned to the executive
61 mansion, as well as any persons appointed by the governor to
62 fill policy-making positions, in that such offices or positions are
63 confidential in character and require their holders to act as
64 advisors to the governor or the governor's appointees, to
65 formulate and implement the policies and goals of the governor
66 or the governor's appointees, or to help the governor or the
67 governor's appointees communicate with and explain their
68 policies and views to the public, the Legislature and the press.

69 (e) All county road supervisor positions shall be covered
70 under the classified service effective the first day of July, one
71 thousand nine hundred ninety-nine: *Provided*, That any person
72 employed as a county road supervisor on the effective date of
73 this section, shall not be required to take or pass a qualifying or
74 competitive examination upon or as a condition of becoming a
75 classified service employee. All county road supervisors who
76 become classified service employees pursuant to this subsection
77 who are severed, removed or terminated in his or her employ-
78 ment must be severed, removed or terminated as if the person
79 was a classified service employee.

CHAPTER 48

(Com. Sub. for H. B. 2262 —By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certain employee rights; qualifications for certain promotions; and payment of severance pay.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CIVIL SERVICE COMMISSION.

§29-6-10. Rules of division.

1 The board shall have the authority to promulgate, amend or
2 repeal rules, according to chapter twenty-nine-a of this code, to
3 implement the provisions of this article:

4 (1) For the preparation, maintenance and revision of a
5 position classification plan for all positions in the classified
6 service and a position classification plan for all positions in the
7 classified-exempt service, based upon similarity of duties
8 performed and responsibilities assumed, so that the same
9 qualifications may reasonably be required for and the same
10 schedule of pay may be equitably applied to all positions in the
11 same class. Except for persons employed by the governing
12 boards of higher education, all persons receiving compensation
13 as a wage or salary, funded either in part or in whole by the
14 state, are included in either the position classification plan for

15 classified service or classified-exempt service. After each such
16 classification plan has been approved by the board, the director
17 shall allocate the position of every employee in the classified
18 service to one of the classes in the classified plan and the
19 position of every employee in the classified-exempt service to
20 one of the positions in the classified-exempt plan. Any em-
21 ployee affected by the allocation of a position to a class shall,
22 after filing with the director of personnel a written request for
23 reconsideration thereof in such manner and form as the director
24 may prescribe, be given a reasonable opportunity to be heard
25 thereon by the director. The interested appointing authority
26 shall be given like opportunity to be heard.

27 (2) For a pay plan for all employees in the classified
28 service, after consultation with appointing authorities and the
29 state fiscal officers, and after a public hearing held by the
30 board. Such pay plan shall become effective only after it has
31 been approved by the governor after submission to him by the
32 board. Amendments to the pay plan may be made in the same
33 manner. Each employee shall be paid at one of the rates set
34 forth in the pay plan for the class of position in which he is
35 employed. The principle of equal pay for equal work in the
36 several agencies of the state government shall be followed in
37 the pay plan as established hereby.

38 (3) For open competitive examinations to test the relative
39 fitness of applicants for the respective positions in the classified
40 service. Such examinations need not be held until after the rules
41 have been adopted, the service classified and a pay plan
42 established, but shall be held not later than one year after this
43 article takes effect. Such examinations shall be announced
44 publicly at least fifteen days in advance of the date fixed for the
45 filing of applications therefor, and may be advertised through
46 the press, radio and other media. The director may, however, in
47 his or her discretion, continue to receive applications and
48 examine candidates long enough to assure a sufficient number
49 of eligibles to meet the needs of the service and may add the
50 names of successful candidates to existing eligible lists in
51 accordance with their respective ratings.

52 An additional five points shall be awarded to the score of
53 any examination successfully completed by a veteran. A
54 disabled veteran shall be entitled to an additional ten points,
55 rather than five points as aforesaid, upon successful completion
56 of any examination.

57 (4) For promotions within the classified service which shall
58 give appropriate consideration to the applicant's qualifications,
59 record of performance, seniority and his or her score on a
60 written examination, when such examination is practicable. An
61 advancement in rank or grade or an increase in salary beyond
62 the maximum fixed for the class shall constitute a promotion.
63 When any benefit such as a promotion, wage increase or
64 transfer is to be awarded, or when a withdrawal of a benefit
65 such as a reduction in pay, a layoff or job termination is to be
66 made, and a choice is required between two or more employees
67 in the classified service as to who will receive the benefit or
68 have the benefit withdrawn, and if some or all of the eligible
69 employees have substantially equal or similar qualifications,
70 consideration shall be given to the level of seniority of each of
71 the respective employees as a factor in determining which of
72 the employees will receive the benefit or have the benefit
73 withdrawn, as the case may be. When an employee classified in
74 a secretarial or clerical position has, irrespective of job classification,
75 actual job experience related to the qualifications for a
76 managerial or supervisory position, the division shall consider
77 the experience as qualifying experience for the position. The
78 division in its classification plan may, for designated classifications,
79 permit substitution of qualifying experience for specific
80 educational or training requirements at a rate determined by the
81 division.

82 (5) For layoffs by classification for reason of lack of funds
83 or work, or abolition of a position, or material changes in duties
84 or organization, or any loss of position because of the provisions
85 of this subdivision and for recall of employees so laid off,
86 consideration shall be given to an employee's seniority as
87 measured by permanent employment in the classified service or
88 a state agency. In the event that the agency wishes to lay off a
89 more senior employee, the agency must demonstrate that the

90 senior employee cannot perform any other job duties held by
91 less senior employees within that agency in the job class or any
92 other equivalent or lower job class for which the senior em-
93 ployee is qualified: *Provided*, That if an employee refuses to
94 accept a position in a lower job class, such employee shall
95 retain all rights of recall as hereinafter provided.

96 (6) For recall of employees, recall shall be by reverse order
97 of layoff to any job class that the employee has previously held
98 or a lower class in the series within the agency as that job class
99 becomes vacant. An employee will retain his or her place on the
100 recall list for the same period of time as his or her seniority on
101 the date of his or her layoff or for a period of two years,
102 whichever is less. No new employees shall be hired for any
103 vacancy in his or her job class or in a lower job class in the
104 series until all eligible employees on layoff are given the
105 opportunity to refuse that job class. An employee shall be
106 recalled onto jobs within the county wherein his or her last
107 place of employment is located or within a county contiguous
108 thereto. Any laid-off employee who is eligible for a vacant
109 position shall be notified by certified mail of the vacancy. It
110 shall be the responsibility of the employee to notify the agency
111 of any change in his or her address.

112 Notwithstanding any other provision of the code to the
113 contrary, except for the provisions of section seven, article two,
114 chapter five-b of this code, when filling vacancies at state
115 agencies the directors of state agencies shall, for a period of
116 twelve months after the layoff of a permanent classified
117 employee in another agency, give preference to qualified
118 permanent classified employees based on seniority and fitness
119 over all but existing employees of the agency or its facilities:
120 *Provided*, That employment of these persons who are qualified
121 and who were permanently employed immediately prior to their
122 layoff shall not supersede the recall rights of employees who
123 have been laid off in such agency or facility.

124 (7) For the establishment of eligible lists for appointment
125 and promotion within the classified service, upon which lists
126 shall be placed the names of successful candidates in the order

127 of their relative excellence in the respective examinations.
128 Eligibility for appointment from any such list shall continue not
129 longer than three years. An appointing authority shall make his
130 selection from the top ten names on the appropriate lists of
131 eligibles, or may choose any person scoring at or above the
132 ninetieth percentile on the examination.

133 For the establishment of eligible lists for preference as
134 provided in subdivision (6) of this section, a list shall be
135 provided according to seniority. An appointed authority shall
136 make the selection of the most senior qualified person: *Pro-*
137 *vided*, That eligibility for appointment from any such list shall
138 continue not longer than one year and shall cease immediately
139 upon appointment to a classified position.

140 (8) For the rejection of candidates or eligibles within the
141 classified service who fail to comply with reasonable require-
142 ments in regard to such factors as age, physical condition,
143 character, training and experience who are addicted to alcohol
144 or narcotics or who have attempted any deception or fraud in
145 connection with an examination.

146 (9) For a period of probation not to exceed one year before
147 appointment or promotion may be made complete within the
148 classified service.

149 (10) For provisional employment without competitive
150 examination within the classified service when there is no
151 appropriate eligible list available. No such provisional employ-
152 ment may continue longer than six months, nor shall successive
153 provisional appointments be allowed, except during the first
154 year after the effective date of this article, in order to avoid
155 stoppage of orderly conduct of the business of the state.

156 (11) For keeping records of performance of all employees
157 in the classified service, which service records may be consid-
158 ered in determining salary increases and decreases provided in
159 the pay plan; as a factor in promotion tests; as a factor in
160 determining the order of layoffs because of lack of funds or
161 work and in reinstatement; and as a factor in demotions,
162 discharges and transfers.

163 (12) For discharge or reduction in rank or grade only for
164 cause of employees in the classified service. Discharge or
165 reduction of these employees shall take place only after the
166 person to be discharged or reduced has been presented with the
167 reasons for such discharge or reduction stated in writing, and
168 has been allowed a reasonable time to reply thereto in writing,
169 or upon request to appear personally and reply to the appointing
170 authority or his or her deputy: *Provided*, That upon an involun-
171 tary discharge for cause, the employer may require immediate
172 separation from the workplace, or the employee may elect
173 immediate separation. If separation is required by the employer
174 in lieu of any advance notice of discharge, or if immediate
175 separation is elected by an employee who receives notice of an
176 involuntary discharge for cause, the employee is entitled to
177 receive severance pay attributable to time the employee
178 otherwise would have worked, up to a maximum of fifteen
179 calendar days following separation. Receipt of severance pay
180 does not affect any other right to which the employee is entitled
181 with respect to the discharge. The statement of reasons and the
182 reply shall be filed as a public record with the director. Not-
183 withstanding the foregoing provisions of this subdivision, no
184 permanent employee shall be discharged from the classified
185 service for absenteeism upon using all entitlement to annual
186 leave and sick leave when such use has been due to illness or
187 injury as verified by a physician's certification or for other
188 extenuating circumstances beyond the employee's control
189 unless his or her disability is of such a nature as to permanently
190 incapacitate him or her from the performance of the duties of
191 his or her position. Upon exhaustion of annual leave and sick
192 leave credits for the reasons specified herein and with certifica-
193 tion by a physician that the employee is unable to perform his
194 or her duties, a permanent employee shall be granted a leave of
195 absence without pay for a period not to exceed six months if
196 such employee is not permanently unable to satisfactorily
197 perform the duties of his or her position.

198 (13) For such other rules and administrative regulations, not
199 inconsistent with this article, as may be proper and necessary
200 for its enforcement.

201 (14) The board shall review and approve by rules the
202 establishment of all classified-exempt positions to assure
203 consistent interpretation of the provisions of this article.

204 The provisions of this section are subject to any modifica-
205 tions contained in chapter five-f of this code. The board may
206 include in the rules provided for in this article such provisions
207 as are necessary to conform to regulations and standards of any
208 federal agency governing the receipt and use of federal
209 grants-in-aid by any state agency, anything in this article to the
210 contrary notwithstanding. The board and the director shall see
211 that rules and practices meeting such standards are in effect
212 continuously after the effective date of this article.

CHAPTER 49

(Com. Sub. for H. B. 2682 — By Delegates Kelley,
Beane, Evans, Compton and Hall)

[Passed March 12, 1999; 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 adjutant general; board of directors of the state college system; board of trustees of the university system of West Virginia; department of agriculture; department of health and human resources; division of corrections; division of environmental protection; division of highways; division of juvenile services; division of labor; division of motor vehicles; division of natural resources; public service commission; regional jail and correctional facility authority; state rail authority; supreme court of appeals; and West Virginia racing commission 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 concern-
 3 ing various claims against the state and agencies thereof, and in
 4 respect to each of the following claims the Legislature adopts
 5 those findings of fact as its own, and in respect of certain claims
 6 herein, the Legislature has independently made findings of fact
 7 and determinations of award and hereby declares it to be the
 8 moral obligation of the state to pay each such claim in the
 9 amount specified below, and directs the auditor to issue
 10 warrants for the payment thereof out of any fund appropriated
 11 and available for the purpose.

12 (a) *Claims against the Adjutant General:*

13 (TO BE PAID FROM GENERAL REVENUE FUND)

14 (1) Steven Charles Adkins \$ 510.00

15 (2) Bernard T. Corley \$ 1,400.00

16 (3) James B. Ramsey \$ 1,400.00

17 (b) *Claim against the Board of Directors of the State College*
 18 *System:*

19 (TO BE PAID FROM SPECIAL REVENUE FUND-
 20 ACCOUNT NO. 4423)

21 (1) Louis I. Bonasso, dba Colonial Village \$ 14,935.99

22 (c) *Claim against the Board of Trustees of the University*
 23 *System of WV:*

24 (TO BE PAID FROM SPECIAL REVENUE FUND)

25 (1) Nick Hunter \$ 200.00

26 (d) *Claim against the Department of Agriculture:*

27 (TO BE PAID FROM GENERAL REVENUE FUND)

28 (1) US Department of Agriculture \$ 17,453.78

29 (e) *Claims against the Department of Health and Human*
 30 *Resources:*

31 (TO BE PAID FROM SPECIAL REVENUE FUND)

32 (1) Laboratory Corporation of America
 33 Holdings \$ 129,900.00

34	(2) Network Six, Inc.	\$ 19,175.00
35	(TO BE PAID FROM GENERAL REVENUE FUND)	
36	(3) Olympic Center - Preston, Inc.	\$ 19,611.50
37	(f) <i>Claims against the Division of Corrections:</i>	
38	(TO BE PAID FROM GENERAL REVENUE FUND)	
39	(1) Alloy Welding Centre Limited	\$ 1,384.80
40	(2) Samuel R. Anstey	\$ 73.84
41	(3) Barbour County Commission	\$ 8,450.00
42	(4) Boll Medical, Inc.	\$ 462.00
43	(5) Boone County Commission	\$ 190.00
44	(6) Cabell County Commission	\$ 123,773.93
45	(7) Cheryl Chandler	\$ 168.00
46	(8) Ronald R. Cloud	\$ 73.45
47	(9) Danny Garrison	\$ 20.00
48	(10) Green Acres Regional Center, Inc . . .	\$ 539.65
49	(11) Harrison County Commission	\$ 26,400.00
50	(12) Hervis Leasing	\$ 2,685.69
51	(13) Dewaine C. King	\$ 8.48
52	(14) Marion County Commission	\$ 54,629.66
53	(15) Marsico Brothers, Inc.	\$ 234.23
54	(16) Mason County Commission	\$ 2,500.00
55	(17) McDowell County Commission	\$ 65,766.30
56	(18) Mineral County Commission	\$ 5,350.00
57	(19) Modern Equipment Company, Inc. . .	\$ 76.34
58	(20) Olsten Corporation	\$ 479.04
59	(21) Howard H. Painter	\$ 160.00

280

CLAIMS

[Ch. 49

60	(22) Pendleton County Commission	\$ 12,750.00
61	(23) Phillips Supply Company	\$ 403.68
62	(24) Michael Wayne Ratliff	\$ 250.00
63	(25) Ritchie County Commission	\$ 14,684.07
64	(26) Roentgen Diagnostics, Inc.	\$ 25.00
65	(27) Taylor County Commission	\$ 30,000.00
66	(28) Tyler County Commission	\$ 3,476.88
67	(29) WV Regional Jail and Correctional	
68	Facility Authority	\$1,968,970.00
69	(30) David Welch	\$ 15.00
70	(31) Wood County Commission	\$ 38,275.00
71	(g) <i>Claim against the Division of Environmental Protection:</i>	
72	(TO BE PAID FROM SPECIAL REVENUE FUND-	
73	ACCOUNT NO. 3326)	
74	(1) CT & E Environmental Services, Inc.	\$ 980.00
75	(h) <i>Claims against the Division of Highways:</i>	
76	(TO BE PAID FROM STATE ROAD FUND)	
77	(1) Michael L. and Cheryl J. Acree	\$ 500.00
78	(2) David Joseph and Linda Jean Bailey	\$ 5,800.00
79	(3) Ernest L. Baughman	\$ 100.00
80	(4) Kenneth R. Bell	\$ 75.00
81	(5) Ricky A. Carr	\$ 137.80
82	(6) Roger G. and Connie G. Chaney	\$ 200.00
83	(7) Scott D. and Connie Davidson	\$ 126.96
84	(8) Sue F. Davis	\$ 7,514.58
85	(9) Daniel A. Dimmick	\$40,000.00
86	(10) Tama Dimmick	\$10,000.00

87	(11) Carolyn S. Escue	\$ 57.00
88	(12) Christine Fisher	\$ 1,760.25
89	(13) Jerry and Melinda Joe Fletcher	\$ 398.75
90	(14) James Garrison	\$ 300.00
91	(15) Wendy and Donnie Lynn Hardman	\$ 179.85
92	(16) Okey and Wilma Hurlow	\$ 50.88
93	(17) Jeremiah A. Jasper	\$ 52.46
94	(18) Shirley Johnson	\$ 200.00
95	(19) Drayton R. Justus	\$ 137.80
96	(20) Debra A. Kesecker	\$ 99.11
97	(21) Donel J. Kinnard	\$ 645.00
98	(22) Richard M. and Barbara Klug	\$ 250.00
99	(23) Carlo Marcantonio	\$ 1,262.67
100	(24) Elizabeth Matheny	\$ 48.74
101	(25) Arthur and Charlotte Meade	\$ 2,000.00
102	(26) Charles and Crystal Meade	\$ 4,500.00
103	(27) Wendi Morris	\$ 250.00
104	(28) Norma and Lon Ooten	\$ 8,000.00
105	(29) Allen D. Pancake	\$ 500.00
106	(30) Charles F. Parsons	\$ 900.00
107	(31) Deloris Perry	\$ 1,232.48
108	(32) Shirley Perry	\$ 4,630.00
109	(33) Victoria J. and Joel R. Ponedel	\$ 250.00
110	(34) James A. Roberts	\$ 455.50
111	(35) Carolyn E. Rogers	\$ 1,322.00
112	(36) Rose Hill Farms, Inc.	\$ 2,850.00

282	CLAIMS	[Ch. 49
113	(37) Roger K. and Geraldine S. Ross	\$ 500.00
114	(38) Daniel T. Savino	\$ 312.71
115	(39) Sheri L. Sayre	\$ 545.28
116	(40) Juanita Sharp	\$ 3,011.44
117	(41) Judy and Jason Sheppard	\$ 343.23
118	(42) Larry Slate	\$ 250.00
119	(43) Dina Smoot	\$ 67.84
120	(44) Aaron W. Stover	\$ 1,054.01
121	(45) Joseph and Nancy Swihart	\$ 124.60
122	(46) Cindy Terry	\$ 63.58
123	(47) James R. Toothman	\$ 583.44
124	(48) Geraldine Whitman	\$ 3,844.17
125	(49) John G. and Carol L. Wolfe	\$ 188.27
126	(50) Karen Sue Wymer	\$ 100.00
127	(51) Randy E. Yost	\$ 1,000.00
128	(52) David N. Dickens and	
129	Jennifer L. Dickens	\$ 282.59
130	(TO BE PAID FROM INDUSTRIAL ACCESS ROAD FUND-	
131	ACCOUNT NO. 9040 0803 1999 099 025)	
132	(53) WV Development Office	\$39,601.00
133	(i) <i>Claims against the Division of Juvenile Services:</i>	
134	(TO BE PAID FROM GENERAL REVENUE FUND)	
135	(1) Benwood Medical Clinic	\$ 45.00
136	(2) Bluefield Regional Medical Center	\$ 130.00
137	(3) Camden Clark Memorial Hospital	\$ 921.50
138	(4) City Hospital, Inc.	\$ 372.66
139	(5) Fred J. Krieg and Associates	\$ 74.14

140	(6) J.D. Hissem, DDS	\$ 611.25
141	(7) Kanawha Valley Radiologists, Inc.	\$ 29.00
142	(8) Martinsburg Internal Medicine	
143	Associates, Inc.	\$ 360.00
144	(9) Martinsburg Radiology Associates	\$ 58.00
145	(10) Parkersburg Radiology Services, Inc. ..	\$ 22.00
146	(11) Pitney Bowes	\$ 82.59
147	(12) Superior Medical Equipment	\$ 21.00
148	(13) Brian L. Vanpelt, M.D.	\$ 35.00
149	(j) <i>Claims against the Division of Labor:</i>	
150	(TO BE PAID FROM GENERAL REVENUE FUND)	
151	(1) Bell Atlantic-West Virginia, Inc.	\$ 3,392.86
152	(2) Charleston Foto 1, Inc.	\$ 5.18
153	(k) <i>Claims against the Division of Motor Vehicles:</i>	
154	(TO BE PAID FROM STATE ROAD FUND)	
155	(1) Bernard C. Gantzer	\$ 2,750.00
156	(2) David M. Starkey	\$ 554.07
157	(3) William Waybright dba Franklin Motors	\$ 2,300.00
158	(l) <i>Claim against the Division of Natural Resources:</i>	
159	(TO BE PAID FROM SPECIAL REVENUE FUND-	
160	ACCOUNT NO. 3200)	
161	(1) University of Georgia Research	
162	Foundation, Inc.	\$ 2,418.75
163	(m) <i>Claims against the Public Service Commission:</i>	
164	(TO BE PAID FROM SPECIAL REVENUE FUND-	
165	ACCOUNT NO. 8623)	
166	(1) Commonwealth Associates, Inc.	\$ 318.85
167	(2) Connie D. DeMuth & Associates	\$ 199.92
168	(3) John Skidmore Development, Inc.	\$ 1,487.50

169	(4) Kimball Intern'l, Inc., dba National		
170	Office Furniture	\$	381.60
171	(5) Parkersburg Sentinel Company	\$	99.94
172	(TO BE PAID FROM SPECIAL REVENUE FUND-		
173	ACCOUNT NO. 8625)		
174	(6) Goodyear Tire & Rubber Company, Inc.	\$	527.24
175	(n) <i>Claims against Regional Jail and Correctional Facility</i>		
176	<i>Authority:</i>		
177	(TO BE PAID FROM SPECIAL REVENUE FUND)		
178	(1) Dave Hinkle Electric, Inc.	\$	100,000.00
179	(2) William Estes Harris, III	\$	50.00
180	(3) Earl Saxton	\$	2,000.00
181	(o) <i>Claims against the State Rail Authority:</i>		
182	(TO BE PAID FROM GENERAL REVENUE FUND)		
183	(1) Gary W. Cosner, Sr.	\$	500.00
184	(2) Lindsey Poling	\$	585.00
185	(p) <i>Claims against the Supreme Court of Appeals:</i>		
186	(TO BE PAID FROM GENERAL REVENUE FUND)		
187	(1) Sue Hedstrom	\$	595.22
188	(2) Lisa F. White	\$	2,401.94
189	(q) <i>Claim against the WV Racing Commission:</i>		
190	(TO BE PAID FROM SPECIAL REVENUE FUND)		
191	(1) Bell Atlantic-West Virginia, Inc.	\$	405.18

192 The Legislature finds that the above moral obligations and
 193 the appropriations made in satisfaction thereof shall be the full
 194 compensation for all claimants, and that prior to the payments
 195 to any claimant provided for in this bill, the court of claims
 196 shall receive a release from said claimant releasing any and all
 197 claims for moral obligations arising from the matters consid-
 198 ered by the Legislature in the finding of the moral obligations
 199 and the making of the appropriations for said claimant. The
 200 court of claims shall deliver all releases obtained from claim-
 201 ants to the department against which the claim was allowed.

CHAPTER 50

(S. B. 488 — By Senators Love, Helmick, Sharpe, Edgell and Minear)

[Passed March 8, 1999; 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 education; division of corrections; and division of labor; to be moral obligations of the state and directing payments thereof.

1 The Legislature has heretofore made findings of fact that
2 the state has received the benefit of the commodities received
3 and/or services rendered by certain claimants herein and has
4 considered these claims against the state, and agencies thereof,
5 which have arisen due to overexpenditures of the departmental
6 appropriations by officers of such state spending units, such
7 claims having been previously considered by the court of
8 claims which also found that the state has received the benefit
9 of the commodities received and/or services rendered by the
10 claimants, but were denied by the court of claims on the purely
11 statutory grounds that to allow such claims would be condoning
12 illegal acts contrary to the laws of the state. The Legislature
13 pursuant to its findings of fact and also by the adoption of the
14 findings of fact by the court of claims as its own, and, while not
15 condoning such illegal acts, hereby declares it to be the moral
16 obligation of the state to pay these claims in the amounts
17 specified below, and directs the auditor to issue warrants upon
18 receipt of properly executed requisitions supported by itemized
19 invoices, statements or other satisfactory documents as required

20 by section ten, article three, chapter twelve of the code of West
 21 Virginia, one thousand nine hundred thirty-one, as amended, for
 22 the payments thereof out of any fund appropriated and available
 23 for the purpose.

24 (a) *Claim against the Department of Education:*

25 (TO BE PAID FROM GENERAL REVENUE FUND)

26 (1) Elizabeth Jane Burger \$ 408.00

27 (b) *Claims against the Division of Corrections:*

28 (TO BE PAID FROM GENERAL REVENUE FUND)

29 (1) Alderman's Pharmacy \$ 1,716.64

30 (2) Anthony Creek Rescue Squad \$ 478.00

31 (3) Associated Emergency Physicians . . \$ 110.00

32 (4) Baird Physical Therapy \$ 405.00

33 (5) Camden Clark Memorial Hospital . . \$ 9,377.15

34 (6) Charleston Area Medical Center, Inc. \$ 209,516.21

35 (7) Correctional Medical Services, Inc. . \$ 274,304.58

36 (8) G. Y. Dagher, M.D. \$ 303.00

37 (9) Haven N. Wall, Jr., M.D., Inc. \$ 258.00

38 (10) C. Stephen High, M.D. \$ 478.00

39 (11) Jan Care Ambulance Service, Inc. . . \$ 9,008.00

40 (12) Mammen Kovoov, M.D. \$ 200.00

41 (13) Laboratory Corporation of
 42 America Holdings \$ 424.75

43 (14) Medbrook Medical Associates, Inc. . \$ 130.00

44 (15) Midtown Dental Lab, Inc. \$ 9,295.27

45 (16) F. G. Powderly, M.D. \$ 387.00

46 (17) Radiological Physicians Associates . \$ 966.00

47 (18) Robert Rose, M.D. \$ 1,450.00

48	(19) St. Joseph's Hospital/Columbia	\$ 3,632.48
49	(20) Joseph J. Talavera, M.D., Inc.	\$ 3,250.00
50	(21) United Hospital Center	\$ 2,792.80
51	(22) University Health Associates	\$ 71,530.20
52	(23) Welch Emergency Hospital	\$ 893.55
53	(24) West Virginia University	
54	Hospitals, Inc.	\$ 119,102.58
55	(25) Wexford Health Sources	\$ 26,731.46
56	(c) <i>Claim against the Division of Labor:</i>	
57	(TO BE PAID FROM GENERAL REVENUE FUND)	
58	(1) Bell Atlantic-West Virginia, Inc. . . .	\$ 248.19

CHAPTER 51

(H. B. 2699 — By Delegate Williams)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section forty-six-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to Class M nonresident commercial shooting preserve licenses.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of section relating to Class M nonresident commercial shooting preserve licenses.

1 Section forty-six-a, article two, chapter twenty of the code
 2 of West Virginia, one thousand nine hundred thirty-one, as
 3 amended, is hereby repealed.

CHAPTER 52

(H. B. 2307 — By Mr. Speaker, Mr. Kiss, and Delegates Douglas and Michael)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections seventeen-a and seventeen-b, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the apprenticeship program for state employees.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of the sections relating to establishment of the apprenticeship program and its advisory board.

- 1 Sections seventeen-a and seventeen-b, article six, chapter
- 2 twenty-nine of the code of West Virginia, one thousand nine
- 3 hundred thirty-one, as amended, are hereby repealed.

CHAPTER 53

(Com. Sub. for H. B. 2996 — By Delegates Spencer and Mahan)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article three, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing access to information contained in the Legislature's computer system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. JOINT COMMITTEE ON GOVERNMENT AND FINANCE.**§4-3-5. Computer subscriber system.**

1 (a) The joint committee on government and finance is
2 authorized to provide information from portions of the Legisla-
3 ture's computer data to persons through the internet, or through
4 other means approved by the committee, for noncommercial
5 use, with or without charge. The committee may charge and
6 collect fees for providing or licensing portions of the data
7 maintained in the Legislature's computer databases to persons
8 requesting the data.

9 (b) The joint committee on government and finance shall,
10 prior to the twelfth day of January, two thousand, consider how
11 best to provide, through the internet or other means, free public-
12 access to appropriate information maintained in the Legisla-
13 ture's computer databases. The committee shall consider
14 providing free public access through the internet, or other
15 appropriate means, to bill status information, the text of
16 pending bills, the daily journals of the House of Delegates and
17 the Senate, the West Virginia Code, and any other information
18 determined appropriate by the committee, all as maintained by
19 the Legislature in its computer databases. In determining what
20 information to which to provide free access, the committee
21 shall consider how the access may affect the integrity, security
22 and functionality of the Legislature's computer system and its
23 primary use of supporting its legislative functions.

24 (c) No part of the information contained in the Legislature's
25 computer system databases in its magnetic or electronic form
26 is a public record as that term is defined in section two, article
27 one, chapter twenty-nine-b of this code. Notwithstanding any
28 provisions of section three, article one, chapter twenty-nine-b
29 of this code to the contrary, the Legislature may not be required
30 or compelled to allow access to all or a portion of its databases
31 for inspection and copying and may not be required to make
32 available copies of all or a portion of its databases on magnetic
33 or electronic media.

CHAPTER 54

**(H. B. 2919 — By Delegates Mezzatesta, Williams, Stemple,
Ennis, Romine, Shelton and Fletcher)**

[Passed March 10, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four-b, relating to the powers and duties of the state auditor; legislative findings; the continued use by public schools, juvenile detention centers, and municipal and county public safety offices of certain computers, telecommunications devices and other technological equipment following their use by the state auditor's office; creation of the computer donation program; program administration; and legislative rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4B. COMPUTER DONATION PROGRAM.

§12-4B-1. Legislative findings.

§12-4B-2. Computer donation program created.

§12-4B-3. Legislative rules.

§12-4B-4. Severability.

§12-4B-1. Legislative findings.

1 The Legislature finds that:

2 (a) Public schools, juvenile detention centers, and municipi-
3 pal and county public safety offices are always in need of
4 computers, telecommunications devices and other technological
5 equipment, while the acquisition of such is a costly enterprise;

6 (b) The state auditor must frequently purchase such
7 computers, telecommunications devices and other technological

8 equipment as is necessary for their interaction with national and
9 international financial services industries;

10 (c) The purchase by the state auditor of modern computers,
11 telecommunications devices and other technological equipment
12 frequently results in the surplus of such existing equipment;

13 (d) Surplus equipment is generally obsolete and as such
14 may no longer be used effectively by agency employees;

15 (e) Although the computers, telecommunications devices or
16 other technological equipment is no longer useful in interacting
17 with the financial services industry, they may still be useful
18 items for a less complex and less high-speed dependent use;

19 (f) Heretofore, the state auditor has stripped the equipment
20 for spare parts for other machines, and that this continued
21 practice does not necessarily result in the equipment's highest
22 and best remaining use; and

23 (g) Rather than break down the equipment for spare parts
24 or send obsolete machines to the surplus property unit of the
25 state purchasing division where they may languish with lack of
26 use, it would be in the best interest of the state that any obsolete
27 computers, telecommunications devices or technological
28 equipment be donated by the state auditor's office to public
29 schools, juvenile detention centers, and municipal and county
30 public safety offices.

§12-4B-2. Computer donation program created.

1 (a) Notwithstanding any other provision of this code to the
2 contrary, the state auditor is hereby authorized within his or her
3 agency to create a computer donation program for public
4 schools, juvenile detention centers, and municipal and county
5 public safety offices in this state. This program authorizes the
6 state auditor's office to donate equipment to those entities
7 which would otherwise be transferred to the surplus property
8 unit of the purchasing division.

9 (b) The program shall be administered by a director as
10 appointed or employed by the state auditor. The auditor may

11 either appoint the director from existing staff from his or her
12 office, or may employ a director from existing funds.

13 (c) The director shall keep records and accounts that
14 indicate the equipment donated, the age of the equipment, the
15 reasons for declaring it obsolete, and to which public school,
16 juvenile detention center, or municipal or county public safety
17 office the equipment was donated.

§12-4B-3. Legislative rules.

1 The state auditor shall propose legislative rules in accor-
2 dance with the provisions of article three-a, chapter twenty-
3 nine-a of this code which shall detail the regulations for the
4 public notice of the program, the method of receiving requests
5 for participation in the program, any compliance and reporting
6 information required of participants in the program, and the
7 method of selecting recipients of equipment. The rules shall
8 provide for fair and impartial selection of equipment recipients.
9 The rules shall be presented for approval to the legislative
10 oversight commission on education accountability by the first
11 day of July, one thousand nine hundred ninety-nine.

§12-4B-4. Severability.

1 If any provision or application of this article is held invalid,
2 the invalidity does not affect any other provision or application
3 of this article which can be given effect without the invalid
4 provision or application, and to this end the provisions of this
5 chapter are severable.

CHAPTER 55

(H. B. 2293 — By Delegates Jenkins, Hubbard,
Campbell, J. Smith, Williams, Hall and Harrison)

[Passed February 16, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article ten-d, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the number which constitutes a quorum for the consolidated retirement board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-3. Board meetings; quorum; vote; proceedings; compensation.

1 (a) The board shall hold a meeting at least once each three
2 months, and shall designate the time and place thereof. Seven
3 voting trustees constitute a quorum at any meeting of the board.
4 Each member is entitled to one vote on each question before the
5 board. The board shall adopt its own rules of procedure and
6 shall keep a record of its proceedings. All meetings of the board
7 shall be public.

8 (b) The members shall serve as members without compen-
9 sation for their services as such: *Provided*, That each member
10 shall be reimbursed, upon approval of the board, for any
11 necessary expenses actually incurred by him or her in carrying
12 out his or her duties. No public employee member may suffer
13 any loss of salary or wages on account of his or her service as
14 trustee.

CHAPTER 56

(H. B. 2358 — By Delegate Thompson)

[Passed February 18, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred ten-a, article four, chapter forty-six-a of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to prohibited conduct of regulated consumer lenders.

Be it enacted by the Legislature of West Virginia:

That section one hundred ten-a, article four, 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 4. REGULATED CONSUMER LENDERS.

§46A-4-110a. Prohibited conduct.

1 (1) A regulated consumer lender shall not:

2 (a) Accept or receive deposits or sell or offer for sale its
3 secured or unsecured evidences or certificates of indebtedness;

4 (b) Pay any fees, bonuses, commissions, rewards or other
5 consideration to any person, firm or corporation for the privi-
6 lege of using any plan of operation, scheme or device for the
7 organization or carrying on of business under this article, or the
8 use of any name, trademark or copyright to be so used: *Pro-*
9 *vided*, That nothing herein prevents a regulated consumer
10 lender from agreeing in connection with a loan to pay a broker
11 fee, finders fee or dealer participation fee, or to split the
12 origination fee or points paid: *Provided, however*, That the fee
13 or fee split is disclosed to the borrower and where proper is
14 included in the finance charge; or

15 (c) Fail to disclose the amount of a payoff of an existing
16 loan within three business days of receiving a request for such
17 information from either the borrower or an agent acting on
18 behalf of the borrower.

19 (2) Unless preempted by federal law, no consumer loan by
20 a regulated consumer lender may contain any scheduled balloon
21 payment as set forth in this chapter. Nor may any regulated
22 consumer lender loan contain terms of repayment which result
23 in negative amortization: *Provided*, That nothing herein
24 prevents unequal payment schedules resulting from a variable
25 rate loan or a revolving line of credit.

26 (3) A regulated consumer lender may not make revolving
27 loans for the retail purchase of consumer goods and services by
28 use of a lender credit card.

CHAPTER 57

(Com. Sub. for S. B. 18 — By Senators Bowman and Kessler)

[Passed March 13, 1999; 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-h, relating to companies that purchase the right to receive a person's future payments from an annuity, court settlement, lottery payoff, sweepstakes payoff or other similar payment arrangement; defining terms; setting forth disclosure requirements; establishing a threshold amount for the applicability of the article; requiring court approval for certain transfers; prohibiting transfers that are otherwise prohibited by law; restricting transfers where the structured settlement contains a provision limiting the right to assign or transfer; providing for a right to rescision; establishing operative date and remedies; prohibiting waiver; limiting liability to consumer; and requiring companies to register with the secretary of state.

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-h, to read as follows:

ARTICLE 6H. TRANSFERS OF RIGHT TO RECEIVE FUTURE PAYMENTS.

§46A-6H-1. Definitions.

§46A-6H-2. Disclosure requirements prior to transfer.

§46A-6H-3. Requirement of court approval for certain structured settlement transfers.

§46A-6H-4. Prohibiting transfer agreements of worker's compensation claims and other transfer agreements that contravene law.

§46A-6H-5. Right of rescision.

§46A-6H-6. Remedies; effective date; nonwaiver.

§46A-6H-7. Protection from liability to consumer.

§46A-6H-8. Registration with the secretary of state.

§46A-6H-1. Definitions.

1 For the purposes of this article:

2 (1) "Closing date" means the date the transfer agreement is
3 executed by the consumer and the transferee, and shall be at
4 least fourteen days after the requisite disclosures have been
5 provided to the consumer and interested parties.

6 (2) "Consumer" means any person entitled to receive
7 periodic future payments from an annuity issuer, settlement
8 obligor or any other party as the result of an annuity, settlement,
9 lottery winnings, sweepstakes payoff or other future payment
10 arrangement.

11 (3) "Discounted present value" means the fair present value
12 of future payments, as determined by discounting such pay-
13 ments to the present using the most recently published applica-
14 ble federal rate for determining the present value of an annuity,
15 as issued by the United States Internal Revenue Service.

16 (4) "Favorable tax determination" means, with respect to a
17 proposed transfer of structured settlement payment rights, any
18 of the following authorities that are applicable to the parties to
19 such transfer and on the parties to the structured settlement
20 agreement and any qualified assignment agreement and
21 establish that the federal income tax treatment of the structured
22 settlement for the parties to the structured settlement agreement
23 and any qualified assignment agreement, other than the
24 consumer, will not be adversely affected by such transfer:

25 (i) A United States Treasury regulation;

26 (ii) A published ruling by the United States Internal
27 Revenue Service;

28 (iii) A private letter ruling by the United States Internal
29 Revenue Service with respect to such transfer; or

30 (iv) Other applicable legal authority that is binding on the
31 United States Internal Revenue Service.

32 (5) "Interested party" means an insurance company, an
33 annuity issuer, a structured settlement obligor, a lottery, a

34 beneficiary irrevocably designated in an agreement to receive
35 future payments following the consumer's death or other entity
36 obligated to pay to a consumer any future payments or any
37 other party that has continuing rights or obligations under the
38 structured settlement agreement.

39 (6) "Qualified assignment agreement" means an agreement
40 providing for a qualified assignment within the meaning of
41 section 130 of the United States Internal Revenue Code, United
42 States Code Title 26, as amended from time to time.

43 (7) "Structured settlement" means an arrangement whereby
44 a settlement obligor, an annuity issuer or other person agrees to
45 make future payments to a consumer in resolution of a personal
46 injury or other claim.

47 (8) "Structured settlement payment rights" means the right
48 to receive periodic payments, including lump sum payments,
49 under a structured settlement from a settlement obligor, annuity
50 issuer, or other person.

51 (9) "Transfer" means any sale, assignment or other convey-
52 ance of future payment rights by a consumer to a transferee for
53 consideration.

54 (10) "Transfer agreement" means an agreement providing
55 for the transfer of future payment rights from a consumer to a
56 transferee.

57 (11) "Transferee" means any person or entity that becomes
58 entitled to receive a consumer's future payments as a result of
59 a transfer agreement and includes companies in the business of
60 purchasing future payments.

§46A-6H-2. Disclosure requirements prior to transfer.

1 (a) In order for any transfer by a consumer to a transferee
2 to be effective, the transferee shall provide the following
3 disclosures in writing, in bold, twelve point type, to the
4 consumer at least fourteen days prior to the earlier of the
5 closing date or the hearing on the transfer when court approval
6 is required by the provisions of this article:

- 7 (1) The amount of each future payment to be transferred by
8 the consumer and the date such payments were due to the
9 consumer;
- 10 (2) The aggregate amount of the future payments to be
11 transferred by the consumer;
- 12 (3) The discounted present value of the future payments to
13 be transferred by the consumer and the discount rate used in the
14 calculation, as determined by discounting the payments to the
15 present using the most recently published applicable federal
16 rate for determining the present value of an annuity as issued by
17 the United States Internal Revenue Service;
- 18 (4) The discount rate used in subdivision (3) of this section
19 stated in terms of an annual percentage rate;
- 20 (5) The lump sum payable to the consumer in exchange for
21 transferring the future payments;
- 22 (6) A good faith estimate of all commissions, fees, rebates,
23 service charges, application fees, processing fees, closing costs,
24 filing fees, administrative charges and other commissions, fees,
25 costs, expenses and charges to be paid by the consumer or
26 deducted from the lump sum in connection with the transfer;
- 27 (7) The net amount payable to the consumer after the
28 deduction of all commissions, fees, costs, expenses and charges
29 described in subdivision (6) of this section; and
- 30 (8) A statement that there may be adverse tax consequences
31 affecting the consumer as a result of the transfer and that the
32 consumer is advised to seek the advice of an attorney or
33 accountant.
- 34 (b) The transferee shall also provide written notice to all
35 interested parties at least fourteen days prior to the earlier of the
36 closing date of the transfer or the hearing when court approval
37 is required including:
- 38 (1) The closing date of the transfer, or the date, time and
39 place of the hearing;
- 40 (2) A copy of the disclosure statement required by subsec-
41 tion (a) of this section; and

42 (3) The name, address and taxpayer identification number
43 of the transferee.

44 (c) If the transfer requires court approval pursuant to
45 section three of this article, then the transferee shall also
46 provide the disclosure statement required by subsection (a) of
47 this section to the court and the guardian ad litem, if one is
48 named by the court.

**§46A-6H-3. Requirement of court approval for certain structured
settlement transfers.**

1 (a) In addition to the requirements of this article, the
2 transfer agreement shall be approved by the circuit court of the
3 county wherein the consumer resides or where the structured
4 settlement agreement was executed when:

5 (1) The structured settlement payment rights belong to an
6 infant or an incompetent person; or

7 (2) The structured settlement payment rights arise from a
8 personal injury or other claim and:

9 (i) The aggregate of the structured settlement payment
10 rights exceeds forty thousand dollars; or

11 (ii) The structured settlement agreement contains a provi-
12 sion restricting the right of the consumer to assign or transfer
13 the consumer's future payment rights.

14 (b) The transferee shall commence the action by filing a
15 petition with the court seeking approval of the transfer, and
16 providing to the court the disclosure statement required by
17 subsection (a), section two of this article.

18 (c) The circuit court shall set a time and date for a hearing
19 on the matter within twenty-one days of the date of the filing of
20 the petition. The transferee shall notify the consumer and all
21 interested parties of the date and time of the hearing and
22 provide them with a copy of the petition.

23 (d) The court shall appoint a guardian ad litem in cases
24 where the structured settlement payment rights belong to an
25 infant, an incompetent person or a ward of the court. The

26 guardian ad litem shall review the requisite disclosures and
27 make an independent inquiry to determine whether the pro-
28 posed transfer is fair, reasonable and in the best interests of the
29 consumer. Such information shall be reported to the court
30 during the hearing on the matter.

31 (e) An interested party has the right to appear and contest
32 the proposed transfer at the time of the hearing. If, after proper
33 notice, the interested party does not make an appearance, then
34 the interested party shall be bound by the court's ruling.

35 (f) After a hearing or upon its own motion, the court may
36 approve the transfer if the court finds that:

37 (1) The consumer has demonstrated that: (A) He or she, or
38 his or her family, is facing a financial hardship and that the
39 transfer would not subject the consumer or the consumer's
40 family to undue financial hardship in the future; or (B) the
41 transfer is in the best interest of the consumer: *Provided*, That
42 the judge shall disclose the possible adverse tax consequence to
43 the consumer;

44 (2) The transferee is in compliance with the provisions of
45 section two of this article; and

46 (3) The transfer agreement does not contravene the terms of
47 the structured settlement agreement, including any restrictions
48 on the right of the consumer to transfer his or her structured
49 settlement payment rights, unless the annuity issuer and
50 structured settlement obligor have consented to the transfer.
51 However, the approval of the annuity issuer and the structured
52 settlement obligor shall not be required if, at the time the
53 consumer and the transferee entered into the transfer agreement,
54 a favorable tax determination was in effect.

55 (g) The court shall award the guardian ad litem reasonable
56 fees for representing the consumer. Such fees shall be paid by
57 the transferee.

58 (h) A consumer may request court approval for a transfer
59 that does not mandate court approval under this section. Such
60 voluntary petition by the consumer shall then become subject

61 to the provisions of this section. The transferee shall be
62 responsible for filing the action pursuant to subsection (b) of
63 this section, and the consumer shall be responsible for attor-
64 ney's fees or guardian ad litem fees.

§46A-6H-4. Prohibiting transfer agreements of workers' compensation claims and other transfer agreements that contravene law.

1 Any agreement to transfer future payments arising under a
2 workers' compensation claim is prohibited as is any other
3 agreement to transfer future payments that would contravene
4 existing law.

§46A-6H-5. Right of rescision.

1 (a) Any consumer who enters into a transfer agreement
2 shall have an absolute, nonwaiveable right of rescision for five
3 business days following the closing date of the transfer. During
4 the five-day rescision period, the consumer may rescind the
5 transfer agreement by phone, mail or facsimile, effective upon
6 receipt, without penalty or further obligation to the transferee,
7 except that any amounts advanced by the transferee to the
8 consumer in contemplation of the transfer shall be immediately
9 refunded to the transferee.

10 (b) When a transfer requires court approval, the consumer
11 may rescind without penalty until the court order is entered
12 appointing a guardian ad litem. When the consumer dismisses
13 the action after the appointment of a guardian ad litem or
14 rescinds the transfer agreement within five business days of
15 court approval of the transfer, the consumer shall be responsible
16 for the filing fee and any guardian ad litem fees.

17 (c) Notice of the right of rescision shall be provided to the
18 consumer in writing by the transferee prior to the time of
19 closing.

§46A-6H-6. Remedies; effective date; nonwaiver.

1 (a) This article shall apply to transfer agreements of future
2 payment rights executed after the effective date of this article.
3 Nothing in this article shall be construed to impair, limit, affect

4 or otherwise apply to any transfer agreement executed prior to
5 the effective date of this article.

6 (b) A violation of a provision of this article by the trans-
7 feree is an unfair or deceptive act or practice in the conduct of
8 commerce pursuant to the provisions of article six, section one
9 hundred four of this chapter. The remedy provided for in this
10 section is in addition to other remedies provided for by law.

11 (c) The provisions of this article may not be waived.

§46A-6H-7. Protection from liability to consumer.

1 When an interested party makes payments to the transferee
2 pursuant to a court order of approval or a transfer agreement
3 executed in accordance with the provisions of this article, the
4 interested party and the transferee are not liable to the consumer
5 or other interested party for the transfer of the consumer's
6 future payments.

§46A-6H-8. Registration with the secretary of state.

1 (a) A transferee or other person in the business of soliciting
2 or purchasing future payments shall file a registration statement
3 with the secretary of state before advertising or arranging
4 transfers of consumer's future payment rights in this state. The
5 registration statement shall contain:

6 (1) The name and address of the transferee;

7 (2) The name and address of the transferee's agent for
8 service of process within the state, or if the company does not
9 have one within the state, a statement that the secretary of state
10 will serve as the agent for service of process; and

11 (3) A full and complete disclosure of any prior or pending
12 litigation involving alleged violations of this article's provi-
13 sions or consumer complaints filed with the attorney general's
14 office of this state that allege violations of this article's provi-
15 sions, or a notarized statement that there has been no such
16 litigation or unresolved complaint relating to the operations of
17 the transferee.

18 (b) The transferee shall update the statement within thirty
19 days after a change of information occurs.

20 (c) Each transferee registering pursuant to the provisions of
21 this section shall maintain a copy of the registration statement.
22 The transferee shall allow a consumer, interested party or court
23 to inspect the registration statement on request.

24 (d) The secretary of state may charge each transferee that
25 files a registration statement with the secretary of state a
26 reasonable fee not to exceed one hundred dollars to cover the
27 cost of filing.

CHAPTER 58

(H. B. 2689 — By Delegates Amores, Doyle, Manuel, Ashley and Rowe)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred eleven, article seven, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for a civil penalty of not more than five thousand dollars for each violation of chapter forty-six-a involving consumer fraud.

Be it enacted by the Legislature of West Virginia:

That section one hundred eleven, article seven, 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 7. ADMINISTRATION.

§46A-7-111. Civil actions by attorney general.

1 (1) After demand, the attorney general may bring a civil
2 action against a creditor for making or collecting charges in
3 excess of those permitted by this chapter. If it is found that an
4 excess charge has been made, the court shall order the respon-
5 dent to refund to the consumer the amount of the excess charge.
6 If a creditor has made an excess charge in a deliberate violation

7 of or in reckless disregard for this chapter, or if a creditor has
8 refused to refund an excess charge within a reasonable time
9 after demand by the consumer or the attorney general, the court
10 may also order the respondent to pay to the consumer a civil
11 penalty in an amount determined by the court not in excess of
12 the greater of either the amount of the sales finance charge or
13 loan finance charge or ten times the amount of the excess
14 charge. Refunds and penalties to which the consumer is entitled
15 pursuant to this subsection may be set off against the con-
16 sumer's obligation. If a consumer brings an action against a
17 creditor to recover an excess charge or civil penalty, an action
18 by the attorney general to recover for the same excess charge
19 shall be stayed while the consumer's action is pending and shall
20 be dismissed if the consumer's action is dismissed with
21 prejudice or results in a final judgment granting or denying the
22 consumer's claim. With respect to excess charges arising from
23 consumer credit sales made pursuant to revolving charge
24 accounts or from consumer loans made pursuant to revolving
25 loan accounts, no action pursuant to this subsection may be
26 brought more than four years after the time the excess charge
27 was made. With respect to excess charges arising from other
28 consumer credit sales or consumer loans, no action pursuant to
29 this subsection may be brought more than one year after the due
30 date of the last scheduled payment of the agreement pursuant to
31 which the charge was made. If the creditor establishes by a
32 preponderance of evidence that a violation is unintentional or
33 the result of a bona fide error, no liability to pay a penalty shall
34 be imposed under this subsection.

35 (2) The attorney general may bring a civil action against a
36 creditor or other person to recover a civil penalty for willfully
37 violating this chapter, and if the court finds that the defendant
38 has engaged in a course of repeated and willful violations of
39 this chapter, it may assess a civil penalty of no more than five
40 thousand dollars for each violation of this chapter. No civil
41 penalty pursuant to this subsection may be imposed for viola-
42 tions of this chapter occurring more than four years before the
43 action is brought.

CHAPTER 59

(H. B. 2347 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed February 24, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring state law-enforcement and corrections agencies to deliver persons who signed a waiver of extradition prior to their release and who have violated the terms of their probation, parole, bail or other conditional release to the demanding state without the requirement of a governor's warrant; setting forth the documentation required of the demanding state before the person is delivered to the demanding state; and clarifying the governor's authority to refuse a demand at his or her instance where a waiver has been executed.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. THE GOVERNOR.

§5-1-11. Immunity from service of civil process; waiver of extradition proceedings; nonwaiver of rights of state; trial on other charges after return.

- 1 (a) A person brought into this state by, or after waiver of,
- 2 extradition based on a criminal charge, shall not be subject to
- 3 service of personal process in civil actions until he has been
- 4 convicted in the criminal proceedings, or, if acquitted, until he
- 5 has had reasonable opportunity to return to the state from which
- 6 he was extradited.

7 (b) Any person arrested in this state charged with having
8 committed any crime in another state or alleged to have escaped
9 from confinement, or broken the terms of his bail, probation or
10 parole may waive the issuance and service of the warrant
11 provided for in subsections (a) and (d), section eight of this
12 article, and all other procedure incidental to extradition pro-
13 ceedings, by executing or subscribing in the presence of a judge
14 of any court of record, within this state a writing which states
15 that he consents to return to the demanding state: *Provided*,
16 That before such waiver shall be executed or subscribed by
17 such person it shall be the duty of such judge to inform such
18 person of his rights with respect to the issuance and service of
19 a warrant of extradition and with respect to obtaining a writ of
20 habeas corpus as provided for in subsection (a), section nine of
21 this article.

22 If and when such consent has been duly executed it shall
23 forthwith be forwarded to the office of the governor of this state
24 and be filed by him in the office of the secretary of state. The
25 judge shall direct the officer having such person in custody to
26 deliver forthwith such person to the duly accredited agent or
27 agents of the demanding state, and shall deliver or cause to be
28 delivered to such agent or agents a copy of such consent:
29 *Provided*, That nothing in this subdivision shall be deemed to
30 limit the rights of the accused person to return voluntarily and
31 without formality to the demanding state, nor shall this waiver
32 procedure be deemed to be an exclusive procedure or to limit
33 the powers, rights, or duties of the officers of the demanding
34 state or of this state.

35 (c) Prior Waiver of Extradition. Notwithstanding any other
36 provision of this code, a law-enforcement or correction agency
37 in the state of West Virginia holding a person who is charged
38 by another jurisdiction with a violation of his or her terms of
39 probation, parole, bail or other form of conditional release in
40 another jurisdiction which is demanding the return of such
41 person shall immediately deliver the person to the duly autho-
42 rized agent of the demanding state, and without the requirement
43 of a governor's warrant, if such person has previously executed
44 a waiver of extradition as a condition of his or her current terms

45 of probation, parole, bail or other form of conditional release in
46 the demanding state and upon receipt of the following docu-
47 mentation from the demanding state:

48 (1) A certified copy of the previously executed waiver of
49 extradition being held by the officials in the demanding state or
50 an electronically or electromagnetically transmitted facsimile
51 thereof;

52 (2) A certified copy of an order or warrant from the
53 demanding state seeking the return of the person or an electron-
54 ically or electromagnetically transmitted facsimile thereof; and

55 (3) A photograph, fingerprints or other evidence which
56 identifies the person held by the law-enforcement or correction
57 agency as the person who signed the waiver of extradition and
58 who is named in the order or warrant, or an electronically or
59 electromagnetically transmitted facsimile thereof.

60 (d) Nothing in this article contained shall be deemed to
61 constitute a waiver by this state of its right, power or privilege
62 to try such demanded person for an offense committed within
63 this state, or of its right, power or privilege to regain custody of
64 such person by extradition proceedings or otherwise for the
65 purpose of trial, sentence or punishment for any offense
66 committed within this state, nor shall any proceedings had
67 under this article which result in, or fail to result in, extradition,
68 be deemed a waiver by this state of any of its rights, privileges
69 or jurisdiction in any way whatsoever.

70 (e) After a person has been brought back to this state by, or
71 after waiver of, extradition proceedings, he may be tried in this
72 state for any offense which he may be charged with having
73 committed here as well as that specified in the requisition for
74 his extradition.

75 (f) Nothing in this section shall be construed to limit the
76 authority of the governor, at his or her own instance, to refuse
77 to honor an extradition demand from another jurisdiction.

CHAPTER 60

(Com. Sub. for H. B. 2339 — By Mr. Speaker, Mr. Kiss, and
Delegates Martin, Varner, Michael, Staton, Douglas and Trump)

[Passed February 24, 1999; in effect from passage. Approved by the Governor.]

AN ACT to repeal section four, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section six of said article, relating to authority over state institutions; authorizing the commissioner of the West Virginia division of corrections to lease the West Virginia penitentiary in Moundsville.

Be it enacted by the Legislature of West Virginia:

That section four, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section six of said article be amended and reenacted to read as follows:

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-6. Title to property of state institutions; custody of deeds and other muniments of title; authority of commissioner.

1 The title to all property constituting or belonging to the
2 several institutions named in section three of this article is
3 vested in the state. The commissioner of corrections is custo-
4 dian of all deeds and other muniments of title and shall cause
5 such as are susceptible of recordation to be recorded in the
6 proper offices. The commissioner is authorized, as lessor, to
7 lease the West Virginia penitentiary in Moundsville, title to
8 which is vested in the state by prior enactment of this article,
9 for a term of not more than twenty-five years.

CHAPTER 61

(Com. Sub. for S. B. 552 — By Senators Love,
Helmick, Schoonover, Hunter and Ross)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections three, four and five, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section six, article thirteen, chapter sixty-two of said code; to amend and reenact section eleven, article one, chapter twenty-five of said code; and to further amend said article by adding thereto four new sections, designated sections eleven-a, eleven-b, eleven-c and eleven-d, all relating to the administration and personnel of the division of corrections; requiring preemployment drug testing; allowing designated employees to carry concealed deadly weapons; and allowing the commissioner to designate employees as correctional peace officers.

Be it enacted by the Legislature of West Virginia:

That sections three, four and five, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section six, article thirteen, chapter sixty-two of said code be repealed; that section eleven, article one, chapter twenty-five of said code be amended and reenacted; and that said article be further amended by adding thereto four new sections, designated sections eleven-a, eleven-b, eleven-c and eleven-d, all to read as follows:

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

- §25-1-11. Officers and employees of corrections institutions.
- §25-1-11a. Duties of wardens and administrators; bond; residence.
- §25-1-11b. Appointment of deputy warden; duties; bond.
- §25-1-11c. Hiring of other assistants and employees; duties of correctional employees; right to carry weapons; powers of correctional peace officers.
- §25-1-11d. Compensation of employees approved by commissioner; traveling and other expenses; payment of salaries.

§25-1-11. Officers and employees of corrections institutions.

1 The commissioner of corrections shall appoint a warden for
2 each institution under the control of the division of corrections.
3 The commissioner of corrections, or his or her designee, has the
4 authority to manage and administer the finances, business,
5 operations, security and personnel affairs of correctional units
6 under the jurisdiction of the division of corrections. All persons
7 employed at a state-operated correctional institution or correc-
8 tional unit are subject to the supervision and approval of the
9 chief executive officer and the authority of the commissioner of
10 corrections, or his or her designee, except those persons
11 employed by the state board of education, pursuant to section
12 thirteen-f, article two, chapter eighteen of this code.

13 The warden or administrator of each institution or correc-
14 tional unit has the power to hire all assistants and employees
15 required for the management of the institution in his or her
16 charge; but the number of the assistants and employees, and
17 their compensation, shall first be approved by the state commis-
18 sioner of corrections. All prospective correctional employees
19 shall pass a preemployment drug screening prior to being hired.
20 It is the duty of the commissioner of corrections to investigate
21 any complaint made against the warden or administrator of any
22 institution, and also against any other officer or employee
23 thereof, if the same has not been investigated.

**§25-1-11a. Duties of wardens and administrators; bond; resi-
dence.**

1 The warden or administrator is the chief executive officer
2 of his or her assigned correctional institution and has the
3 responsibility for the overall management of all operations
4 within his or her assigned institution. He or she is in charge of
5 its internal police and management, and shall provide for
6 feeding, clothing, working and taking care of the inmates,
7 subject to the control of the state commissioner of corrections.
8 The warden or administrator shall promptly enforce all orders
9 and rules made by the commissioner. He or she shall protect
10 and preserve the property of the state and may for that purpose
11 punish the inmates in the manner authorized by the commis-

12 sioner of corrections. The warden or administrator shall have
13 the custody and control of all the real and personal property at
14 the correctional institution, subject to the orders of the commis-
15 sioner of corrections. The warden or administrator shall be
16 bonded by the board of risk and insurance management. The
17 warden shall reside in the warden's residence at the correctional
18 institution or in another residence approved by the commis-
19 sioner of corrections.

§25-1-11b. Appointment of deputy warden; duties; bond.

1 The warden of a correctional institution, with the approval
2 of the commissioner, shall hire a deputy warden. The deputy
3 warden's duties shall be fixed by the warden, as approved by
4 the commissioner. In the absence of the warden the deputy
5 warden shall perform all the duties required of the warden. The
6 deputy warden shall be bonded by the board of risk and
7 insurance management.

**§25-1-11c. Hiring of other assistants and employees; duties of
correctional employees; right to carry weapons;
powers of correctional peace officers.**

1 (a) The warden or administrator of the correctional institu-
2 tions or units shall, in the manner provided in section eleven of
3 this article, hire all assistants and employees required for the
4 management of the correctional institutions or units, including
5 a sufficient number of correctional employees to preserve order
6 and enforce discipline among the inmates, to prevent escapes
7 and to remove all persons convicted and sentenced to the
8 custody of the division of corrections, from the place confined
9 to a correctional institution, all of whom shall be under the
10 control of the warden. The commissioner may issue a certificate
11 authorizing any correctional employee who has successfully
12 completed the division's training program for firearms certifi-
13 cation, which shall be the equivalent of that required of deputy
14 sheriffs, to carry firearms and concealed weapons while on
15 duty. Any correctional employee authorized by the commis-
16 sioner has the right, without a state license, to carry firearms
17 and concealed weapons while on duty. Each correctional
18 employee, authorized by the commissioner, shall carry with him

19 or her a certificate, authorizing him or her to carry a firearm or
20 concealed weapon when performing his or her official duties as
21 a correctional employee, bearing the official signature of the
22 commissioner and warden or administrator. The right is
23 extended to a correctional employee during the time the
24 employee travels from place to place within the state for the
25 purpose of removing prisoners from jails to a correctional
26 institution of the division of corrections, and during the time the
27 employee is pursuing and apprehending escaped inmates, and
28 during any other time the employee is performing official duties
29 as a correctional employee. No correctional employee shall
30 have the right to carry a firearm or concealed weapon for any
31 other purpose or during any other time, including when
32 traveling to and from the employee's residence and a correc-
33 tional institution, unless the employee has obtained a state
34 license in the manner prescribed in article seven, chapter sixty-
35 one of this code.

36 (b) The commissioner of corrections may designate
37 correctional employees as correctional peace officers who have
38 the following powers:

39 (1) To enforce rules and laws necessary for the control and
40 management of correctional units and the maintenance of public
41 safety that is within the scope of responsibilities of the division
42 of corrections;

43 (2) To detain persons for violations of state law committed
44 on the property of any state correctional institution;

45 (3) To conduct investigations, pursue and apprehend
46 escapees from the custody of the commissioner or any state
47 correctional institution; and

48 (4) To execute criminal process on persons in the custody
49 of the commissioner, or who surrender themselves at any state
50 correctional institution.

**§25-1-11d. Compensation of employees approved by commis-
sioner; traveling and other expenses; payment of
salaries.**

1 The commissioner of corrections shall approve the salaries
2 of all employees of the division of corrections. Salaries shall be
3 commensurate with their duties and responsibilities, but no
4 meals or other emoluments of any kind shall be furnished,
5 given or paid to the employee as all or part of their salary. The
6 employees may be provided meals, household facilities and
7 supplies as may be necessary for them to perform their duties,
8 if the employees agree to pay the reasonable cost as established
9 by the commissioner of corrections. In the event of an emer-
10 gency, such as a riot or other disturbance, the commissioner
11 may authorize meals be provided to employees at no cost.
12 Additionally, the commissioner may establish a procedure to
13 reimburse employees reasonable costs in the event the em-
14 ployee's personal property is stolen or damaged by an inmate.
15 All persons employed under this article are entitled to be
16 reimbursed for necessary traveling and other expenses. The
17 salaries, expenses and appropriations provided for the employ-
18 ees under the commissioner's jurisdiction shall be paid in the
19 same manner as are those of other state employees and agencies
20 and on a payment schedule set forth by the state auditor.

CHAPTER 62

(S. B. 171 — By Senators Wooton, Ball, Dittmar, Fanning, Hunter,
Kessler, Minard, Redd, Ross, Schoonover, Snyder and McKenzie)

[Passed March 1, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eighteen, all relating to the circumstances under which the contents of inmate's monitored telephone calls may be disclosed; authorizing the division of corrections to monitor and copy an inmate's mail under specified circumstances; setting forth the requisite condi-

tions that justify monitoring of an inmate's outgoing mail; authorizing the disclosure of the contents of mail under certain circumstances; requiring that an inmate's outgoing mail be properly identified; excepting attorney-client correspondence; and requiring that the commissioner of corrections propose legislative rules setting forth procedures to effectuate the provisions of these sections.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-17. Monitoring of inmate telephone calls; procedures and restrictions; calls to or from attorneys excepted.

§25-1-18. Monitoring inmate mail; procedures and restrictions identifying mail from a state correctional institution; mail to or from attorneys excepted.

§25-1-17. Monitoring of inmate telephone calls; procedures and restrictions; calls to or from attorneys excepted.

1 (a) The commissioner of corrections or his or her designee
2 is authorized to monitor, intercept, record and disclose tele-
3 phone calls to or from adult inmates of state correctional
4 institutions in accordance with the following provisions:

5 (1) All adult inmates of state correctional institutions shall
6 be notified in writing that their telephone conversations may be
7 monitored, intercepted, recorded and disclosed;

8 (2) Only the commissioner and his or her designee shall
9 have access to recordings of inmates' telephone calls unless
10 disclosed pursuant to subdivision (4) of this subsection;

11 (3) Notice shall be prominently placed on or immediately
12 near every telephone that may be monitored;

13 (4) The contents of inmates' telephone calls may be
14 disclosed to the appropriate law-enforcement agency only if the
15 disclosure is:

16 (A) Necessary to safeguard the orderly operation of the
17 correctional institution;

18 (B) Necessary for the investigation of a crime;

19 (C) Necessary for the prevention of a crime;

20 (D) Necessary for the prosecution of a crime;

21 (E) Required by an order of a court of competent jurisdic-
22 tion; or

23 (F) Necessary to protect persons from physical harm or the
24 threat of physical harm;

25 (5) All recordings of telephone calls must be destroyed
26 within twelve months unless disclosed pursuant to subdivision
27 (4) of this subsection; and

28 (6) To safeguard the sanctity of the attorney-client privi-
29 lege, a telephone line that is not monitored shall be made
30 available for telephone calls to or from an attorney. Such calls
31 shall not be monitored, intercepted, recorded or disclosed in any
32 matter.

33 (b) The commissioner shall propose legislative rules in
34 accordance with the provisions of article three, chapter twenty-
35 nine-a of this code to effectuate the provisions of this section.

36 (c) The provisions of this section shall apply only to those
37 persons serving a sentence of incarceration in the custody of the
38 commissioner of corrections.

**§25-1-18. Monitoring inmate mail; procedures and restrictions
identifying mail from a state correctional institu-
tion; mail to or from attorneys excepted.**

1 (a) The commissioner of corrections or his or her designee
2 is authorized to monitor, open, review, copy and disclose mail
3 to adult inmates of state correctional institutions in accordance
4 with the following provisions:

5 (1) All adult inmates of state correctional institutions shall
6 be notified in writing that their mail may be monitored, opened,
7 reviewed, copied and disclosed;

8 (2) Only the commissioner and his or her designee shall
9 have access to copies of inmates' mail unless disclosed pursu-
10 ant to subdivision (4) of this subsection;

11 (3) Notice that the mail may be monitored shall be promi-
12 nently placed on or immediately near every mail receptacle or
13 other designated area for the collection or delivery of mail;

14 (4) The contents of inmates' mail may be disclosed to
15 appropriate law-enforcement authorities only if the disclosure
16 is:

17 (A) Necessary to safeguard the orderly operation of the
18 correctional institution;

19 (B) Necessary for the investigation of a crime;

20 (C) Necessary for the prevention of a crime;

21 (D) Necessary for the prosecution of a crime;

22 (E) Required by an order of a court of competent jurisdic-
23 tion; or

24 (F) Necessary to protect persons from physical harm or the
25 threat of physical harm;

26 (5) All copies of mail must be destroyed within twelve
27 months unless disclosed pursuant to subdivision (4) of this
28 subsection;

29 (6) The inmate whose mail has been copied and disclosed
30 under this section shall be given a copy of all such mail.

31 (b) To safeguard the sanctity of the attorney-client privi-
32 lege, mail to or from an inmate's attorney shall not be moni-
33 tored, reviewed, copied or disclosed in any manner unless
34 required by an order of a court of competent jurisdiction.
35 However, such mail may be checked for weapons, drugs and
36 other contraband provided it is done in the presence of the
37 inmate and there is a reasonable basis to believe that any
38 weapon, drug or other contraband exists in the mail.

39 (c) All inmate's outgoing mail must be clearly identified
40 as being sent from an inmate at a state correctional institution

41 and must include on the face of the envelope the name and full
42 address of the institution.

43 (d) The commissioner of corrections or his or her designee
44 is authorized to open, monitor, review, copy and disclose an
45 inmate's outgoing mail in accordance with the following
46 provisions:

47 (1) The inmate has previously sent mail that was threaten-
48 ing to the recipient or that would facilitate physical violence or
49 other criminal activity; and

50 (2) Such correspondence has come to the attention of the
51 commissioner of corrections or the warden or administrator of
52 the correctional institution;

53 (3) The contents of any inmate's outgoing mail may be
54 copied and disclosed to appropriate law-enforcement authorities
55 where the commissioner or his or her designee has reasonable
56 cause to believe that it is necessary for the prevention, investi-
57 gation, or prosecution of a crime or where necessary to protect
58 persons from physical harm or the threat of physical harm;

59 (4) Only the commissioner and his or her designee shall
60 have access to copies of inmate's outgoing mail unless dis-
61 closed pursuant to subdivision (3) of this subsection;

62 (5) All copies of mail must be destroyed within twelve
63 months unless disclosed pursuant to subdivision (3) of this
64 subsection;

65 (6) The inmate whose mail has been copied and disclosed
66 under this section shall be given a copy of all such mail; and

67 (7) The provisions of this subsection do not apply to mail
68 that an inmate sends to his or her attorney. Such mail may only
69 be monitored or checked according to subsection (b).

70 (e) The commissioner shall propose legislative rules in
71 accordance with the provisions of article three, chapter twenty-
72 nine-a of this code to effectuate the provisions of this section.

73 (f) The provisions of this section shall apply only to those
74 persons serving a sentence of incarceration in the custody of the
75 commissioner of corrections.

CHAPTER 63

(Com. Sub. for S. B. 466 — By Senators Love, Helmick,
Schoonover, Hunter, Ross and Snyder)

[Passed March 13, 1999; 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 twenty-two, relating to providing a criminal penalty for a division of corrections employee or contractor to engage in sexual intercourse or sexual intrusion with an incarcerated person; providing a criminal penalty for an incarcerated individual to engage in sexual intercourse or sexual intrusion with a division of corrections employee or contractor.

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 twenty-two, to read as follows:

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-22. Imposition of sexual intercourse or sexual intrusion on inmate; penalty.

- 1 (a) Any person employed by the division of corrections or
- 2 any person working at a correctional facility managed by the
- 3 commissioner of corrections pursuant to contract, who engages
- 4 in sexual intercourse or sexual intrusion with a person who is
- 5 incarcerated in this state shall be guilty of a misdemeanor and,
- 6 upon conviction thereof, shall be confined in the county or
- 7 regional jail not more than twelve months or fined not more
- 8 than five hundred dollars, or both.

9 (b) Any individual incarcerated in this state who volun-
10 tarily engages in sexual intercourse or sexual intrusion with any
11 person employed by the division of corrections or any person
12 working at a correctional facility managed by the commissioner
13 of corrections pursuant to contract shall be guilty of a misde-
14 meanor and, upon conviction thereof, shall be confined in the
15 county or regional jail not more than twelve months or fined not
16 more than five hundred dollars, or both.

17 (c) As used in this section, the terms "sexual intercourse"
18 and "sexual intrusion" shall have the same meaning as ascribed
19 to those terms by the provisions of section one, article eight-b,
20 chapter sixty-one of this code.

CHAPTER 64

(S. B. 606 — By Senators Love, Schoonover, Helmick and Ross)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section five, article four, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three, four, six, seven, eight, nine and ten of said article, all relating to the operation of centers for housing young adult offenders.

Be it enacted by the Legislature of West Virginia:

That section five, article four, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two, three, four, six, seven, eight, nine and ten of said article, be amended and reenacted, all to read as follows:

ARTICLE 4. CENTERS FOR HOUSING YOUNG ADULT OFFENDERS.

§25-4-1. Purpose of article.

§25-4-2. Establishment of centers.

- §25-4-3. Authority of commissioner of corrections.
- §25-4-4. Warden.
- §25-4-6. Assignment of offenders to center; period of center confinement; return to court; sentence or probation; revocation of probation.
- §25-4-7. Physical, educational and psychological examinations; transfer and placement.
- §25-4-8. Labor, study or activities may be required.
- §25-4-9. Wages of offenders.
- §25-4-10. Authority to arrest inmates.

§25-4-1. Purpose of article.

1 The purpose of this article is to provide appropriate
2 facilities for the housing of young adult offenders convicted of
3 or pleading guilty to violation of law before courts with original
4 jurisdiction, who are amenable to discipline other than in close
5 confinement, and to give better opportunity to young adult
6 offenders for reformation and encouragement of self-discipline.

§25-4-2. Establishment of centers.

1 The West Virginia commissioner of corrections is autho-
2 rized to establish, operate and maintain centers to be operated
3 in connection with the state correctional system as provided in
4 this article.

§25-4-3. Authority of commissioner of corrections.

1 The West Virginia commissioner of corrections has the
2 authority to acquire land and other property by purchase, grant,
3 gift or otherwise in connection with the establishment of centers
4 and to construct buildings, fences and other facilities, and to
5 acquire personal property necessary for the maintenance and
6 operation of the centers; to direct all needed improvements and
7 repairs necessary for the proper upkeep of the centers, and to
8 provide for the necessary food, medical treatment and safekeep-
9 ing of persons confined in the centers; and to employ personnel
10 to operate the centers and to provide the necessary work and
11 other programs for the offenders assigned to the centers.

§25-4-4. Warden.

1 Each center shall be under the direction of a warden, who
2 shall have the minimum qualification of a college degree with

3 a major in criminal justice or a related field. The warden shall
4 be paid an annual salary to be fixed by the commissioner of
5 corrections. The warden, subject to the authority of the commis-
6 sioner, has the responsibility for the overall operation of the
7 center.

8 At each center the warden shall administer programming
9 which shall include the following components: (1) A work
10 program; (2) an educational program in accordance with section
11 thirteen-f, article two, chapter eighteen of this code; (3) a
12 recreational program; and (4) a counseling program with an
13 emphasis on substance abuse and life skills.

**§25-4-6. Assignment of offenders to center; period of center
confinement; return to court; sentence or probation;
revocation of probation.**

1 The judge of any court with original criminal jurisdiction
2 may suspend the imposition of sentence of any young adult, as
3 defined in this section, convicted of or pleading guilty to a
4 criminal offense, other than an offense punishable by life
5 imprisonment, who has attained his or her eighteenth birthday
6 but has not reached his or her twenty-first birthday at the time
7 of the commission of the crime, and commit the young adult to
8 the custody of the West Virginia commissioner of corrections
9 to be assigned to a center. Young adult offenders who have
10 previously been committed to a young adult offender center are
11 not eligible for commitment to this program. The period of
12 confinement in the center shall be for a period of not less than
13 six months, or longer if it is deemed advisable by the center
14 warden, but in any event the period of confinement may not
15 exceed two years. The court shall provide the warden with a
16 copy of the presentence investigation report, along with the
17 commitment order.

18 If, in the opinion of the warden, the young adult offender
19 proves to be an unfit person to remain in the center, the
20 offender shall be returned to the committing court to be dealt
21 with further according to law. In that event, the court may
22 sentence the offender for the crime for which the offender was

23 convicted. In his or her discretion, the judge may allow the
24 defendant credit on the sentence for time the offender spent in
25 the center.

26 A young adult offender shall be returned to the jurisdiction
27 of the court which originally committed the offender when, in
28 the opinion of the warden, the young adult offender has
29 satisfactorily completed the center training program. The
30 offender is then eligible for probation for the offense with
31 which the offender is charged, and the judge of the court shall
32 immediately place the offender on probation. In the event the
33 offender's probation is subsequently revoked, the judge shall
34 impose the sentence the young adult offender would have
35 originally received had the offender not been committed to the
36 center and subsequently placed on probation. The court shall,
37 however, give the offender credit on his or her sentence for the
38 time spent in the center.

**§25-4-7. Physical, educational and psychological examinations;
transfer and placement.**

1 Every young adult offender committed under this article
2 shall be given complete physical, educational and psychological
3 examinations in the same manner and under the same
4 protections and requirements of subsections (b) and (c), section
5 two, article one, chapter twenty-eight of this code. In addition
6 to those requirements, all admission, transfer and placement
7 requirements and authority provided to the commissioner in
8 subsections (d) and (e), section two, article one, chapter twenty-
9 eight of this code are applicable.

§25-4-8. Labor, study or activities may be required.

1 Offenders assigned to centers may be required to labor on
2 the buildings and grounds of the center, in the making of forest
3 roads, for fire prevention and fire fighting, on forestation and
4 reforestation of public lands, on the making of fire trails and
5 firebreaks, on fire suppression, on building or improving public
6 parks or lands, or engage in any studies or activities prescribed
7 or permitted by the warden, subject to the approval of the
8 commissioner of corrections.

§25-4-9. Wages of offenders.

- 1 The West Virginia commissioner of corrections may
- 2 provide for the payment of wages to the offenders assigned to
- 3 centers for the work they perform.

§25-4-10. Authority to arrest inmates.

- 1 All officers and employees of a center have the power of
- 2 peace officers so far as necessary to take into custody center
- 3 inmates.

CHAPTER 65

(Com. Sub. for H. B. 2703 — By Delegates Givens and Ennis)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article eleven-b, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to home incarceration; permitting home incarceration to be ordered by a magistrate when the offender is convicted of a crime of violence except when the victim of the crime resides in the same home.

Be it enacted by the Legislature of West Virginia:

That section six, article eleven-b, 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 11B. HOME INCARCERATION ACT.**§62-11B-6. Circumstances under which home incarceration may not be ordered.**

- 1 (a) A circuit court or magistrate may not order home
- 2 incarceration for an offender unless the offender agrees to abide
- 3 by all of the requirements set forth in the court's order issued
- 4 under this article.

5 (b) A circuit court or magistrate may not order home
6 incarceration for an offender who is being held under a
7 detainer, warrant or process issued by a court of another
8 jurisdiction.

9 (c) A magistrate may order home incarceration for an
10 offender only with electronic monitoring and only if the county
11 of the offender's home has an established program of electronic
12 monitoring that is equipped, operated and staffed by the county
13 supervisor or sheriff for the purpose of supervising participants
14 in a home incarceration program: *Provided*, That electronic
15 monitoring may not be required in a specific case if a circuit
16 court upon petition thereto finds by order that electronic
17 monitoring is not necessary.

18 (d) A magistrate may order home incarceration for an
19 offender convicted of a crime of violence against the person:
20 *Provided*, That the offender does not occupy the same home as
21 the victim of the crime.

22 (e) Home incarceration shall not be available as a sentence
23 if the language of a criminal statute expressly prohibits its
24 application.

CHAPTER 66

(Com. Sub. for S. B. 539 — By Senators Love,
Helmick, Schoonover, Hunter, Ross and Ball)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article thirteen, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the incarceration of criminals and the authority of the commissioner of the division of corrections; and authorizing the commissioner of the division of corrections to contract with certain other facilities for incarceration and care of inmates.

Be it enacted by the Legislature of West Virginia:

That section five, article thirteen, 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 13. CORRECTIONS MANAGEMENT.

§62-13-5. Commitments; transfers.

1 All adult persons sentenced by a court to serve a sentence
2 of incarceration in a penitentiary, prison or a correctional
3 institution under the jurisdiction of the commissioner of
4 corrections shall be deemed to be sentenced to the custody of
5 the commissioner of the division of corrections. The commis-
6 sioner, or his or her designee, has the authority to and may
7 order the transfer of any such adult to any appropriate institu-
8 tion within the division of corrections or within the department
9 of military affairs and public safety. The commissioner has full
10 discretionary authority to contract with any county jail, regional
11 jail or other appropriate facility or institution for the incarceration
12 tion and care of adult inmates.

13 The commissioner, or his or her designee, may transfer any
14 adult prisoner or inmate who is mentally disturbed and who
15 would more appropriately be treated in an institution under the
16 jurisdiction of the division of health, to the division, subject to
17 the approval of the director of health; and may transfer any
18 adult prisoner or inmate to an appropriate mental facility for
19 specialized medical treatment.

CHAPTER 67

(Com. Sub. for H. B. 2468 — By Delegates Manuel, Michael, Pino and Leach)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eight, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by

adding thereto a new section, designated section thirteen, relating to imposing a processing fee on persons committed to county or regional jails.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. JAIL AND JAILER.

§7-8-13. Jail processing fee.

1 (a) A person committed to be housed in a regional or
2 county jail by order of magistrate, circuit judge or by temporary
3 commitment order shall, at the time of booking into the jail, pay
4 a processing fee of twenty dollars. If the person is unable to pay
5 at the time of booking, the fee shall be deducted, at a rate of
6 fifty percent, from any new deposits made into the person's jail
7 trust account until the jail processing fee is paid in full. The fee
8 shall be credited, as appropriate, to the regional jail authority's
9 or county jail's operating budget.

10 (b) A refund of a fee collected under this section shall be
11 made to a person who has paid the fee if the person is not
12 convicted of the offense for which the person was booked. In
13 the case of multiple offenses, if the person is convicted of any
14 of the offenses the fee may not be refunded. If the person is
15 convicted of a lesser included offense or a related offense, no
16 refund may be made.

CHAPTER 68

(Com. Sub. for H. B. 2744 — By Delegates Trump and Faircloth)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections ten and seventeen, article fifteen, chapter seven of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, all relating to the powers and duties of emergency ambulance service authorities; and special emergency ambulance service fees imposed by county commissions and the ability of ambulance authorities and companies to transport nonemergency users.

Be it enacted by the Legislature of West Virginia:

That sections ten and seventeen, article fifteen, 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 15. EMERGENCY AMBULANCE SERVICE ACT OF 1975.

§7-15-10. Powers and duties of authorities generally.

§7-15-17. Imposition and collection of special emergency ambulance service fee by county commission.

§7-15-10. Powers and duties of authorities generally.

1 Each authority is hereby given the power:

2 (a) To sue and be sued, implead and be impleaded;

3 (b) To have and use a seal and alter the same at pleasure;

4 (c) To make and adopt all rules and regulations and bylaws
5 as may be necessary or desirable to enable it to exercise the
6 powers and perform the duties conferred or imposed upon it by
7 the provisions of this article;

8 (d) To provide emergency ambulance service, maintain and
9 operate such service, and employ, in its discretion, planning
10 consultants, attorneys, accountants, superintendents, managers
11 and such other employees and agents as may be necessary in its
12 judgment and fix their compensation;

13 (e) To acquire by grant, purchase, gift, devise or lease and
14 to hold, use, sell, lease or otherwise dispose of real and personal
15 property of every kind and nature whatsoever, licenses,
16 franchises, rights and interests necessary for the full exercise of
17 its powers pursuant to the provisions of this article or which
18 may be convenient or useful for the carrying out of such
19 powers;

20 (f) To enter into contracts and agreements which are
21 necessary, convenient or useful to carry out the purposes of this
22 article with any person, public corporation, state or any agency
23 or political subdivision thereof and the federal government and
24 any department or agency thereof, including, without limitation,
25 contracts and agreements for the joint use of any property and
26 rights by the authority and any person or authority operating
27 any system, whether within or without the service area of the
28 authority, and contracts and agreements with any person or
29 authority for the maintenance, servicing, storage, operation or
30 use of any system or part thereof, facility or equipment on such
31 basis as shall seem proper to its board;

32 (g) To enter into contracts and agreements for superinten-
33 dence and management services with any person, who has
34 executive personnel with experience and skill applicable to the
35 superintendence and management of any system, for the
36 furnishing of its services and the services of experienced and
37 qualified personnel for the superintendence and management of
38 any system or any part thereof, including, without limitation,
39 superintendence over personnel, purchases, properties and
40 operations and all matters relating thereto, and any revenue
41 bond trust indenture may require such contract or agreement,
42 but the personnel whose services are to be so furnished under
43 any such contract or agreement shall not include any member
44 of the board, any member of the immediate family of a member
45 of the board or any agents or employees of the authority;

46 (h) To execute security agreements, contracts, leases,
47 equipment trust certificates and any other forms of contract or
48 agreement, granting or creating a lien, security interest,
49 encumbrance or other security in, on or to facilities and
50 equipment, containing such terms and provisions as the board
51 considers necessary;

52 (i) To apply for, receive and use grants, grants-in-aid,
53 donations and contributions from any source or sources,
54 including, but not limited to, the federal government and any
55 agency or department thereof, and a state government whose
56 constitution does not prohibit such grants, grants-in-aid,
57 donations and contributions, and any agency or department

58 thereof, and to accept and use bequests, devises, gifts and
59 donations from any person;

60 (j) To encumber or mortgage all or any part of its facilities
61 and equipment;

62 (k) To render all services permitted pursuant to article four-
63 c, chapter sixteen of this code, including, but not limited to,
64 emergency and nonemergency transportation; and

65 (l) To do any and all things necessary or convenient to carry
66 out the powers given in this article unless otherwise forbidden
67 by law.

**§7-15-17. Imposition and collection of special emergency
ambulance service fee by county commission.**

1 A county commission may, by ordinance, impose upon and
2 collect from the users of emergency ambulance service within
3 the county a special service fee, which shall be known as the
4 "special emergency ambulance service fee." The proceeds from
5 the imposition and collection of any special service fee shall be
6 deposited in a special fund and used only to pay reasonable and
7 necessary expenses actually incurred and the cost of buildings
8 and equipment used in providing emergency ambulance service
9 to residents of the county. The proceeds may be used to pay for,
10 in whole or in part, the establishment, maintenance and
11 operation of an authority, as provided for in this article:
12 *Provided*, That an ambulance company or authority receiving
13 funds from the special emergency ambulance fees collected
14 pursuant to this section may not be precluded from making
15 nonemergency transports.



CHAPTER 69

**(H. B. 2312 — By Delegates Hunt, Ashley, Rowe,
J. Smith, Staton, Faircloth and Kelley)**

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article one, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the size designation of legal paper to eight and one-half inches by fourteen inches.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-10. Fees to be charged by clerk of county commission.

- 1 For the purpose of this section, the word "page" is defined
- 2 as being a paper writing of not more than legal size, 8 1/2" x 14".
- 3 The clerk of the county commission shall charge and collect
- 4 the following fees:
- 5 When a writing is admitted to record, for receiving
- 6 proof of acknowledgment thereof, entering an
- 7 order in connection therewith, endorsing clerk's
- 8 certificate of recordation thereon and indexing in
- 9 a proper index, where the writing is a deed of
- 10 conveyance, trust deed, lease, or power of attorney concerning real estate \$ 2.00
- 11
- 12 If such writing contains more than two pages, for
- 13 each additional page, in counties where recording
- 14 is done by photograph, fifty cents; and in
- 15 counties where recording is done by typewriter,
- 16 and such writing contains more than one thousand
- 17 words, three cents for each additional
- 18 twenty words.
- 19 For recording a plat accompanying a deed or other
- 20 writing 2.00
- 21 If such plat contains more than one hundred twenty
- 22 square inches, for each additional square inch010
- 23 For recording and indexing a map to be placed in
- 24 map book 3.00

25	If such map contains more than one hundred twenty	
26	square inches, for each additional square inch010
27	For recording and indexing assignment	2.00
28	If such assignment contains more than one reference	
29	to the record of property assigned, for each	
30	reference	1.00
31	If such assignment does not give the reference to the	
32	record of property assigned, for search of record	
33	to determine such book and page50
34	If such assignment contains more than two pages, for	
35	each additional page	1.00
36	For recording and indexing and noting release	
37	of lien	2.00
38	If such release contains more than one reference to	
39	lien released, for each lien released thereby	2.00
40	If book and page reference to lien released is omit-	
41	ted, for search of record to determine such book	
42	and page50
43	For filing or refiling and entering conditional sales	
44	contract	2.00
45	For recording and indexing a satisfaction of a condi-	
46	tional sales contract	2.00
47	For filing each financing, continuation or termination	
48	statement or other statement or writing permitted	
49	to be filed under chapter forty-six of the code . . .	2.00
50	For filing, preserving and indexing a security agree-	
51	ment filed under chapter forty-six of the code . . .	3.00
52	For recording and indexing a certificate of incorpora-	
53	tion	2.00
54	If such certificate contains more than two pages, for	
55	each additional page	1.00
56	For filing and indexing a certificate showing the	
57	name or names of a person or persons conducting	
58	business under an assumed name	2.00

59	For certifying to the assessor a transfer of real estate	
60	under section eight, article four, chapter eleven	
61	of the code	1.00
62	For swearing the witnesses and entering in the order	
63	or minute book, all orders in relation to the proof	
64	of a will which is admitted to record without	
65	contest, and copying such order on the will or on	
66	a paper annexed thereto, when fully proved and	
67	but one order	3.00
68	If the will be but partially proved on one day, for the	
69	order and entering the same on the will or paper	
70	annexed thereto	1.00
71	For each subsequent order and entering the same on	
72	the will or paper annexed thereto	1.00
73	For the same services where there is a contest	8.00
74	For preparing notices in connection with contest, or	
75	any hearing, each notice	1.00
76	For recording a will and the matter recorded there-	
77	with in the will book	2.00
78	If will and matter recorded therewith contains more	
79	than two pages, for each additional page	1.00
80	For entering orders and transmitting papers in case of	
81	appeal	3.00
82	If such order and transmittal contains more than five	
83	pages, for each additional page	1.00
84	If any personal representative or guardian qualify for	
85	administering necessary oaths, notating the	
86	bond, entering and copying on the will, order	
87	granting probate or administration, making out	
88	copy of such order for personal representative or	
89	guardian, entering and copying orders of ap-	
90	praisement	2.00
91	For each additional copy of qualification order	1.00

92	If several personal representatives qualify on the	
93	same estate at the same time or term the same fee	
94	shall be charged as if one had qualified, to wit . . .	2.00
95	For entering and copying an order granting a license	
96	under provisions of article twelve, chapter eleven	
97	of the code	1.00
98	For certificate for a license or endorsing assignment	
99	thereof	1.00
100	For issuance of marriage license, for preparing the	
101	application and administering the oath, for	
102	registering and recording the license, for mailing	
103	acknowledgment of minister's return to one of	
104	licensees, for notifying one of licensees after	
105	sixty days of the nonreceipt of the minister's	
106	return	8.00
107	One dollar of the latter fee shall be paid by the	
108	county clerk into the state treasury as a state	
109	registration fee, in the same manner that license	
110	taxes are paid into the treasury under article	
111	twelve, chapter eleven of the code.	
112	For search of anything in his or her office of over a	
113	year's standing, unless otherwise required by	
114	statute50
115	For recording certificates and posting a copy thereof	
116	under the provisions of section two, article one,	
117	chapter thirty-four of the code	1.50
118	For docketing or redocketing under article three,	
119	chapter thirty-eight of the code, a judgment,	
120	decree, bond or recognizance	1.00
121	If such writing contains more than one page, for each	
122	additional page	1.00
123	For recording and indexing an execution noting the	
124	date of issuance and the date of filing of same	
125	upon the judgment record	1.50

126	For making out a transcript of the record and pro-	
127	ceedings in any case in due form so that the same	
128	may be used in appellate court, such fee shall be	
129	the same as specified herein for recording.	
130	For making out, in any other manner than copying,	
131	any paper to go out of the office which is not	
132	otherwise provided for	1.50
133	If such paper contains more than two pages, for each	
134	additional page	1.00
135	For any copy, if it be not otherwise provided for	1.50
136	If such copy contains more than two pages, for each	
137	additional page	1.00
138	For annexing the seal of the court to any paper,	
139	writing certificates of clerk accompanying it	1.00
140	For writing a certificate of the president of the court	
141	or judge, when the clerk be required to do so . . .	1.00
142	For recording and indexing an inventory or sale bill . .	1.50
143	If such writing contains more than two pages, for	
144	each additional page	1.00
145	For entering an order confirming the report of a	
146	fiduciary	1.00
147	For recording and indexing such report and matter	
148	recorded therewith	3.00
149	If such report contains more than four pages, for each	
150	additional page	1.00
151	For recording and indexing any bond required by law	
152	to be recorded, including the certificate or other	
153	evidence of its execution	1.50
154	If such bond and certificate contains more than two	
155	pages, for each additional page	1.00
156	For recording and indexing a notice of mechanic's	
157	lien	1.50

158	If such notice contains more than two pages, for each	
159	additional page	1.00
160	For recording contract limiting liability of owner and	
161	bond of contractor to be filed therewith, as	
162	prescribed in article two, chapter thirty-eight of	
163	the code	2.00
164	If such contract and bond contains more than two	
165	pages, for each additional page	1.00
166	For recording and indexing a notice of lis pendens . .	1.50
167	If such notice contains more than two pages, for each	
168	additional page	1.00
169	For recording a certificate of real estate claimed as a	
170	homestead	1.00
171	For administering an oath not herein provided for,	
172	and writing a certificate thereof where the case	
173	requires one	1.00
174	For recording a writing containing pages in excess of	
175	legal size, 8 ½" x 14", additional fee for each	
176	page, where recording is by photograph50
177	For recording and indexing instruments not specifi-	
178	cally provided for herein	1.50
179	If such instrument contains more than two pages, for	
180	each additional page	1.00
181	For recording anew any will, deed or other paper, the	
182	same fees herein provided for the original re-	
183	cording.	
184	For any service other than recording and indexing	
185	not specifically provided for, the same fee as a	
186	clerk of the circuit court for similar services.	
187	All acts or parts of acts in conflict herewith are hereby repealed.	

CHAPTER 70

(Com. Sub. for S. B. 155 — By Senators Wooton, Ball,
Dittmar, Kessler, Mitchell, Oliverio, Ross, Snyder and McKenzie)

[Passed March 10, 1999; in effect July 1, 1999. Approved by the Governor.]

AN ACT to amend and reenact section eight, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the per diem compensation and expenses of judges of the court of claims.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CLAIMS AGAINST THE STATE.

§14-2-8. Compensation of judges; expenses.

1 Each judge of the court shall receive one hundred sixty
 2 dollars for each day actually served and expenses incurred in
 3 the performance of his or her duties paid at the same per diem
 4 rate as members of the Legislature. In addition to the expense
 5 per diem, each judge may, when using his or her own vehicle,
 6 be reimbursed for mileage at the mileage rate equal to the
 7 amount paid by the travel management office of the department
 8 of administration. The number of days served by each judge
 9 shall not exceed one hundred in any fiscal year, except by
 10 authority of the joint committee on government and finance:
 11 *Provided*, That in computing the number of days served, days
 12 utilized solely for the exercise of duties assigned to judges and
 13 commissioners by the provisions of article two-a of this chapter
 14 shall be disregarded. For the purpose of this section, time
 15 served shall include time spent in the hearing of claims, in the
 16 consideration of the record, in the preparation of opinions and
 17 in necessary travel.

CHAPTER 71

(S. B. 483 — By Senators Wooton, Ball, Dittmar, Fanning, Hunter, Kessler, McCabe, Minard, Mitchell, Redd, Ross, Snyder and Deem)

[Passed February 26, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article one, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to duties of director of supreme court of appeals; and eliminating time reporting requirements for circuit judges.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. SUPREME COURT OF APPEALS.

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

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

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

11 (b) Examining the state of the dockets of the various courts
12 and securing information as to their needs for assistance, if any,
13 and the preparation of statistical data and reports of the business
14 transacted by the courts;

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

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

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

27 (f) *Annual report of activities and estimates of expendi-*
28 *tures.* — The director, when required to do so by the supreme
29 court of appeals, shall submit annually to the court a report of
30 the activities of the administrative office and of the state of
31 business of the courts, together with the statistical data com-
32 piled by him, with his recommendations;

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

CHAPTER 72

(Com. Sub. for H. B. 2324 — By Delegates Johnson,
Fleischauer, Hutchins, Riggs and Trump)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the division of judicial circuits; realigning certain circuits; clarifying terms of offices; addressing judge residency in certain circumstances; and making certain technical revisions.

Be it enacted by the Legislature of West Virginia:

That section one, article two, chapter fifty-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. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.

1 (a) The state shall be divided into the following judicial
2 circuits with the following number of judges:

3 The counties of Brooke, Hancock and Ohio shall constitute
4 the first circuit and shall have four judges; the counties of
5 Marshall, Tyler and Wetzel shall constitute the second circuit
6 and shall have two judges; the counties of Doddridge, Pleasants
7 and Ritchie shall constitute the third circuit and shall have one
8 judge; the counties of Wood and Wirt shall constitute the fourth
9 circuit and shall have three judges; the counties of Calhoun,
10 Jackson, Mason and Roane shall constitute the fifth circuit and
11 shall have two judges; the county of Cabell shall constitute the
12 sixth circuit and shall have four judges; the county of Logan
13 shall constitute the seventh circuit and shall have two judges;
14 the county of McDowell shall constitute the eighth circuit and
15 shall have two judges; the county of Mercer shall constitute the
16 ninth circuit and shall have two judges; the county of Raleigh
17 shall constitute the tenth circuit and shall have three judges; the
18 counties of Greenbrier and Pocahontas shall constitute the
19 eleventh circuit and shall have two judges; the county of
20 Fayette shall constitute the twelfth circuit and shall have two
21 judges; the county of Kanawha shall constitute the thirteenth
22 circuit and shall have seven judges; the counties of Braxton,
23 Clay, Gilmer and Webster shall constitute the fourteenth circuit
24 and shall have two judges; the county of Harrison shall consti-
25 tute the fifteenth circuit and shall have three judges; the county
26 of Marion shall constitute the sixteenth circuit and shall have
27 two judges; the county of Monongalia shall constitute the
28 seventeenth circuit and shall have two judges; the county of
29 Preston shall constitute the eighteenth circuit and shall have one
30 judge; the counties of Barbour and Taylor shall constitute the

31 nineteenth circuit and shall have one judge; the county of
32 Randolph shall constitute the twentieth circuit and shall have
33 one judge; the counties of Grant, Mineral and Tucker shall
34 constitute the twenty-first circuit and shall have two judges; the
35 counties of Hampshire, Hardy and Pendleton shall constitute
36 the twenty-second circuit and shall have one judge; the counties
37 of Berkeley, Jefferson and Morgan shall constitute the twenty-
38 third circuit and shall have four judges; the county of Wayne
39 shall constitute the twenty-fourth circuit and shall have one
40 judge; the counties of Lincoln and Boone shall constitute the
41 twenty-fifth circuit and shall have two judges; the counties of
42 Lewis and Upshur shall constitute the twenty-sixth circuit and
43 shall have one judge; the county of Wyoming shall constitute
44 the twenty-seventh circuit and shall have one judge; the county
45 of Nicholas shall constitute the twenty-eighth circuit and shall
46 have one judge; the county of Putnam shall constitute the
47 twenty-ninth circuit and shall have two judges; the county of
48 Mingo shall constitute the thirtieth circuit and shall have one
49 judge; and the counties of Monroe and Summers shall consti-
50 tute the thirty-first circuit and shall have one judge: *Provided*,
51 That the Kanawha County circuit court shall be a court of
52 concurrent jurisdiction with each single judge circuit where the
53 sitting judge in such single judge circuit is unavailable by
54 reason of sickness, vacation or other reason.

55 (b) Any judge in office on the effective date of the
56 reenactment of this section shall continue as a judge of the
57 circuit as constituted under prior enactments of this section,
58 unless sooner removed or retired as provided by law, until the
59 thirty-first day of December, two thousand.

60 (c) The term of office of all circuit court judges shall be for
61 eight years. The term of office for all circuit court judges
62 elected during the general election conducted in the year two
63 thousand shall commence on the first day of January, two
64 thousand one and end on the thirty-first day of December, two
65 thousand eight.

66 (d) Beginning with the primary and general elections to be
67 conducted in the year one thousand nine hundred ninety-two, in

68 all judicial circuits having two or more judges there shall be, for
69 election purposes, numbered divisions corresponding to the
70 number of circuit judges in each circuit. Each judge shall be
71 elected at large from the entire circuit. In each numbered
72 division of a judicial circuit, the candidates for nomination or
73 election shall be voted upon and the votes cast for the candi-
74 dates in each division shall be tallied separately from the votes
75 cast for candidates in other numbered divisions within the
76 circuit. The candidate receiving the highest number of the votes
77 cast within a numbered division shall be nominated or elected,
78 as the case may be: *Provided*, That beginning with the primary
79 and general elections to be conducted in the year two thousand,
80 judges serving a judicial circuit comprised of four or more
81 counties with two or more judges, shall not be residents of the
82 same county.

83 (e) The supreme court shall, by rule, establish the terms of
84 court of circuit judges.

CHAPTER 73

(Com. Sub. for S. B. 507 — By Senators McCabe, Mitchell, Walker, Sprouse,
Kessler, Redd, Deem, Oliverio, Hunter, Sharpe, Ross, Schoonover, Ball,
McKenzie, Unger, Anderson, Bowman, Plymale and Prezioso)

[Passed March 8, 1999; 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 criminal assault and battery on certain classes of public employees; adding assault on employees of urban mass transportation systems to listed offenses; and penalties therefor.

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 bodily
3 injury with intent to maim, disfigure, disable or kill a police
4 officer, conservation officer, humane officer, emergency
5 medical service personnel, firefighter, state fire marshal or
6 employee, county correctional employee, state correctional
7 employee, employee of an urban mass transportation system
8 acting in his or her official capacity and the person committing
9 the malicious assault knows or has reason to know that the
10 victim is a police officer, conservation officer, humane officer,
11 emergency medical service personnel, firefighter, state fire
12 marshal or employee, county correctional employee, state
13 correctional employee, employee of an urban mass transporta-
14 tion system acting in his or her official capacity, is guilty of a
15 felony and, upon conviction, shall be confined in a correctional
16 facility for not less than three nor more than fifteen years.

17 (b) *Unlawful assault.* — Any person who unlawfully but
18 not maliciously shoots, stabs, cuts or wounds or by any means
19 causes a police officer, conservation officer, humane officer,
20 emergency medical service personnel, firefighter, state fire
21 marshal or employee, county correctional employee, state
22 correctional employee, employee of an urban mass transporta-
23 tion system acting in his or her official capacity, bodily injury
24 with intent to maim, disfigure, disable or kill said person and
25 the person committing the unlawful assault knows or has reason
26 to know that the victim is a police officer, conservation officer,
27 humane officer, emergency medical service personnel,
28 firefighter, state fire marshal or employee, county correctional
29 employee, state correctional employee, employee of an urban
30 mass transportation system acting in his or her official capacity,
31 is guilty of a felony and, upon conviction, shall be confined in

32 a correctional facility for not less than two nor more than five
33 years.

34 (c) *Battery*. — Any person who unlawfully, knowingly and
35 intentionally makes physical contact of an insulting or provok-
36 ing nature with a police officer, conservation officer, humane
37 officer, emergency medical service personnel, firefighter, state
38 fire marshal or employee, county correctional employee, state
39 correctional employee, employee of an urban mass transporta-
40 tion system acting in his or her official capacity, or unlawfully
41 and intentionally causes physical harm to a police officer,
42 conservation officer, humane officer, emergency medical
43 service personnel, firefighter, state fire marshal or employee,
44 county correctional employee, state correctional employee,
45 employee of an urban mass transportation system acting in such
46 capacity, is guilty of a misdemeanor and, upon conviction
47 thereof, shall be confined in the county or regional jail for not
48 less than one month nor more than twelve months, fined the
49 sum of five hundred dollars, or both. If any person commits a
50 second such offense, he or she is guilty of a felony and, upon
51 conviction thereof, shall be confined in a correctional facility
52 for not less than one year nor more than three years or fined the
53 sum of one thousand dollars or both fined and confined. Any
54 person who commits a third violation of this subsection is
55 guilty of a felony and, upon conviction, shall be confined in a
56 correctional facility not less than two years nor more than five
57 years or fined not more than two thousand dollars or both fined
58 and confined.

59 (d) *Assault*. — Any person who unlawfully attempts to
60 commit a violent injury to the person of a police officer,
61 conservation officer, humane officer, emergency medical
62 service personnel, firefighter, state fire marshal or employee,
63 county correctional employee, state correctional employee,
64 employee of an urban mass transportation system acting in his
65 or her official capacity, or unlawfully commits an act which
66 places a police officer, conservation officer, humane officer,
67 emergency medical service personnel, firefighter, county
68 correctional employee, state correctional employee, employee
69 of an urban mass transportation system acting in his or her

70 official capacity in reasonable apprehension of immediately
71 receiving a violent injury, is guilty of a misdemeanor and, upon
72 conviction, shall be confined in the county or regional jail for
73 not less than twenty-four hours nor more than six months, fined
74 not more than two hundred dollars, or both fined and impris-
75 oned.

76 (e) For purposes of this section:

77 (1) "Police officer" means any person employed by the
78 state police, any person employed by the state to perform law-
79 enforcement duties, any person employed by a political
80 subdivision of this state who is responsible for the prevention
81 or detection of crime and the enforcement of the penal, traffic
82 or highway laws of this state or employed as a special police
83 officer as such is defined in section forty-one, article three,
84 chapter sixty-one of this code.

85 (2) "Employee of an urban mass transportation system"
86 means any person employed by an urban mass transportation
87 system as such is defined in section three, article twenty-seven,
88 chapter eight of this code or by a system that receives federal
89 transit administration funding under 49 U. S. C. §§ 5307 or
90 5311.

CHAPTER 74

**(Com. Sub. for H. B. 2348 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen-a, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to holding a person hostage; defining terms; establishing penalties; and relating to the applicability of the statute under certain circumstances involving a family member who kidnaps or holds his or her child hostage

for nonmonetary reasons believing he or she is acting in the child's interest; and penalties.

Be it enacted by the Legislature of West Virginia:

That section fourteen-a, 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.

§61-2-14a. Penalty for enticing away, kidnapping or holding hostage any person.

1 (a) Any person who, by force, threat, duress, fraud or
2 enticement take, confine, conceal, or decoy, inveigle or entice
3 away, or transport into or out of this state or within this state, or
4 otherwise kidnap any other person, or hold hostage any other
5 person for the purpose or with the intent of taking, receiving,
6 demanding or extorting from such person, or from any other
7 person or persons, any ransom, money or other thing, or any
8 concession or advantage of any sort, or for the purpose or with
9 the intent of shielding or protecting himself, herself or others
10 from bodily harm or of evading capture or arrest after he or she
11 or they have committed a crime shall be guilty of a felony and,
12 upon conviction, shall be punished by confinement by the
13 division of corrections for life, and, notwithstanding the
14 provisions of article twelve, chapter sixty-two of this code, shall
15 not be eligible for parole: *Provided*, That the following excep-
16 tions shall apply: (1) A jury may, in their discretion, recom-
17 mend mercy, and if such recommendation is added to their
18 verdict, such person shall be eligible for parole in accordance
19 with the provisions of said article twelve; (2) if such person
20 pleads guilty, the court may, in its discretion, provide that such
21 person shall be eligible for parole in accordance with the
22 provisions of said article twelve, and, if the court so provides,
23 such person shall be eligible for parole in accordance with the
24 provisions of said article twelve in the same manner and with
25 like effect as if such person had been found guilty by the verdict
26 of a jury and the jury had recommended mercy; (3) in all cases
27 where the person against whom the offense is committed is

28 returned, or is permitted to return, alive, without bodily harm
29 having been inflicted upon him, but after ransom, money or
30 other thing, or any concession or advantage of any sort has been
31 paid or yielded, the punishment shall be confinement by the
32 division of corrections for a definite term of years not less than
33 twenty nor more than fifty; (4) in all cases where the person
34 against whom the offense is committed is returned, or is
35 permitted to return, alive, without bodily harm having been
36 inflicted upon him or her, but without ransom, money or other
37 thing, or any concession or advantage of any sort having been
38 paid or yielded, the punishment shall be confinement by the
39 division of corrections for a definite term of years not less than
40 ten nor more than thirty.

41 (b) For purposes of this section, the terms "to hold hostage"
42 means to seize or detain and threaten to kill or injure another in
43 order to compel, a third person or a governmental organization
44 to do or abstain from doing any legal act as an explicit or
45 implicit condition for the release of the person detained.

46 (c) Notwithstanding any other provision of this section, if
47 a violation of this section is committed by a family member of
48 a minor abducted or held hostage and he or she is not motivated
49 by monetary purposes, but rather intends to conceal, take,
50 remove the child or refuse to return the child to his or her
51 lawful guardian in the belief, mistaken or not, that it is in the
52 child's interest to do so, he or she shall be guilty of a felony
53 and, upon conviction thereof, be confined in a correctional
54 facility for not less than one or more than five years or fined not
55 more than one thousand dollars, or both.

56 (d) Notwithstanding any provision of this code to the
57 contrary, where a law-enforcement agency of this state or a
58 political subdivision thereof receives a complaint that a
59 violation of the provisions of this section has occurred, the
60 receiving law-enforcement agency shall notify any other law-
61 enforcement agency with jurisdiction over the offense, includ-
62 ing, but not limited to, the state police and each agency so
63 notified, shall cooperate in the investigation forthwith.

CHAPTER 75

(Com. Sub. for H. B. 2475 — By Delegates C. White,
Hubbard, Dempsey and Davis)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to assault or battery of a school employee; and adding assault or battery of an off duty school employee when the motive for the assault or battery is retaliation for an action taken by the employee to supervise or discipline one or more pupils.

Be it enacted by the Legislature of West Virginia:

That section fifteen, 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.

§61-2-15. Assault, battery on school employees; penalties.

1 (a) If any person commits an assault: (1) By unlawfully
2 attempting to commit a violent injury to the person of a school
3 employee while he or she is engaged in the performance of his
4 or her duties, is commuting to or from his or her place of
5 employment or if the motive for the assault is retaliation for
6 some action taken by the employee to supervise or discipline
7 one or more pupils pursuant to sections one or one-a, article
8 five, chapter eighteen-a of this code; or (2) by unlawfully
9 committing an act which places a school employee in reason-
10 able apprehension of immediately receiving a violent injury
11 while the employee is engaged in the performance of his or her

12 duties, is commuting to or from his or her place of employment
13 or if the motive for the assault is retaliation for some action
14 taken by the employee to supervise or discipline one or more
15 pupils pursuant to sections one or one-a, article five, chapter
16 eighteen-a of this code, he or she is guilty of a misdemeanor
17 and, upon conviction thereof, shall be confined in the county or
18 regional jail not less than five days nor more than six months
19 and fined not less than fifty dollars nor more than one hundred
20 dollars.

21 (b) If any person commits a battery: (1) By unlawfully and
22 intentionally making physical contact of an insulting or
23 provoking nature with the person of a school employee while he
24 or she is engaged in the performance of his or her duties, is
25 commuting to or from his or her place of employment or if the
26 motive for the battery is retaliation for some action taken by the
27 employee to supervise or discipline one or more pupils pursuant
28 to sections one or one-a, article five, chapter eighteen-a of this
29 code; or (2) by unlawfully and intentionally causing physical
30 harm to a school employee while he or she is engaged in the
31 performance of his or her duties, is commuting to or from his or
32 her place of employment or if the motive for the battery is
33 retaliation for some action taken by the employee to supervise
34 or discipline one or more pupils pursuant to sections one or
35 one-a, article five, chapter eighteen-a of this code, he or she is
36 guilty of a misdemeanor and, upon conviction thereof, shall be
37 confined in the county or regional jail not less than ten days nor
38 more than twelve months and fined not less than one hundred
39 dollars nor more than five hundred dollars.

40 (c) For the purposes of this section, "school employee"
41 means a person employed by a county board of education
42 whether employed on a regular full-time basis, an hourly basis
43 or otherwise. For the purposes of this section, a "school
44 employee" includes a student teacher.

CHAPTER 76

(Com. Sub. for H. B. 2364 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article six, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to false reports concerning bombs or other explosive devices; creating offense of false reports concerning bombs creating serious bodily injury; and penalties.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article six, 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 6. CRIMES AGAINST THE PEACE.

§61-6-17. False reports concerning bombs or other explosive devices; penalties.

1 (a) Any person who shall impart or convey or cause to be
2 imparted or conveyed any false information, knowing or having
3 reasonable cause to believe such information to be false,
4 concerning the presence of any bomb or other explosive device
5 in, at, on, near, under or against any dwelling house, structure,
6 improvement, building, bridge, motor vehicle, vessel, boat,
7 railroad car, airplane or other place, or concerning an attempt
8 or alleged attempt being made or to be made to so place or
9 explode any such bomb or other explosive device, shall be
10 guilty of a misdemeanor and, upon conviction thereof, shall be
11 punished by a fine of not less than one hundred dollars nor
12 more than one thousand dollars, or by confinement in the
13 county jail for not more than one year, or both.

14 (b) Any person violating any provision of subsection (a) of
15 this section shall, for the second or any subsequent offense
16 under this section, be guilty of a felony and, upon conviction
17 thereof, shall be punished by a fine of not less than one hundred
18 dollars nor more than one thousand dollars, or by imprisonment
19 in the state penitentiary for not less than one year nor more than
20 five years, or both, or, in the discretion of the court, shall be
21 punished by a fine of not less than one hundred dollars nor
22 more than one thousand dollars and by confinement in the
23 county jail for not more than one year.

24 (c) Notwithstanding any provision of this section to the
25 contrary, any person violating the provisions of subsection (a)
26 of this section whose violation of the subsection results in
27 another suffering serious bodily injury shall be guilty of a
28 felony and, upon conviction thereof, shall be confined in a
29 correctional facility for not less than one nor more than five
30 years or fined not more than ten thousand dollars, or both. Each
31 such injury covered by a violation of subsection (a) shall
32 constitute a separate offense.

CHAPTER 77

(Com. Sub. for H. B. 2084 — By Mr. Speaker, Mr. Kiss,
and Delegates Amores, Capito, Evans and Flanigan)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, 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 fifteen, relating to providing for the felony offense of wearing body armor while committing a violent crime; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That article seven, 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 fifteen, to read as follows:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-15. Persons prohibited from committing violent crime while wearing body armor; penalties.

1 (a) A person who wears or is otherwise equipped with body
2 armor while committing a felony offense, an element of which
3 is force, the threat of force, physical harm to another or the use
4 or presentment of a firearm or other deadly weapon, is guilty of
5 a felony and, upon conviction thereof, shall be confined in a
6 correctional facility for not less than two nor more than ten
7 years or fined not more than ten thousand dollars, or both.

8 (b) As used in this section, "body armor" means a jacket,
9 vest, or other similar apparel or device constructed to provide
10 ballistic resistance to penetration and deformation and intended
11 to protect the human torso against gunfire. The term may
12 include, but is not limited to, apparel that incorporates inserts,
13 or variations in construction of the ballistic panel over small
14 areas of the torso, for the purpose of increasing the basic level
15 of protection of the armor (whether ballistic or blunt trauma) on
16 localized areas. Body armor may be constructed of Kevlar or
17 other similar fabric and may be reinforced with other materials.
18 Body armor may incorporate "threat" or "trauma" plates (which
19 are inserts that fit into the vest that will stop more powerful
20 rounds) or may, as "threat armor", incorporate hard panels.

CHAPTER 78

(Com. Sub. for S. B. 82 — By Senator Wooton)

[Passed February 23, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eight-d, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-a,

relating to criminal child abuse; prohibiting the practice of female genital mutilation; and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8D. CHILD ABUSE.

§61-8D-3a. Female genital mutilation; penalties; definitions.

1 (a) Except as otherwise provided in subsection (b) of this
2 section, any person who circumcises, excises or infibulates, in
3 whole or in part, the labia majora, labia minora or clitoris of a
4 female under the age of eighteen, or any parent, guardian or
5 custodian of a female under the age of eighteen who allows the
6 circumcision, excision or infibulation, in whole or in part, of
7 such female's labia majora, labia minora or clitoris, shall be
8 guilty of a felony and, upon conviction thereof, shall be
9 imprisoned in a state correctional facility for not less than two
10 nor more than ten years and fined not less than one thousand
11 dollars nor more than five thousand dollars.

12 (b) A surgical procedure is not a violation of this section if
13 the procedure:

14 (1) Is necessary to preserve the health of the child on whom
15 it is performed and is performed by a licensed medical profes-
16 sional authorized to practice medicine in this state; or

17 (2) The procedure is performed on a child who is in labor
18 or has just given birth and is performed for legitimate medical
19 purposes connected with that labor or birth by a licensed
20 medical professional authorized to practice medicine in this
21 state.

22 (c) A person's belief that the conduct described in subsec-
23 tion (a) of this section (i) is required as a matter of custom,
24 ritual or standard practice or (ii) was consented to by the female
25 on which the circumcision, excision or infibulation was
26 performed shall not constitute a defense to criminal prosecution
27 under subsection (a) of this section.

CHAPTER 79

(H. B. 2758 — By Mr. Speaker, Mr. Kiss, and Delegate Martin)

[Passed March 2, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, four and twenty, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to crime victims compensation; defining terms; providing that a lost scholarship is included as an economic loss; modifying budgetary and payment process; eliminating economic loss claim payment fund and transferring funds to crime victims fund; submission of anticipated budget by legislative auditor; requiring governor to include amounts submitted in proposed budget bill and revenue estimates; and providing auditor may only review claims for sufficiency of funds.

Be it enacted by the Legislature of West Virginia:

That sections three, four and twenty, article two-a, 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 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-3. Definitions.

§14-2A-4. Creation of crime victims compensation fund.

§14-2A-20. Budget preparation; procedure for payment of claims.

§14-2A-3. Definitions.

1 As used in this article, the term:

2 (a) "Claimant" means any of the following persons,
3 whether residents or nonresidents of this state, who claim an
4 award of compensation under this article:

5 (1) A victim: *Provided*, That the term victim does not
6 include a nonresident of this state where the criminally injuri-
7 ous act did not occur in this state;

8 (2) A dependent, spouse or minor child of a deceased
9 victim; or in the event that the deceased victim is a minor, the
10 parents, legal guardians and siblings of the victim;

11 (3) A third person other than a collateral source who legally
12 assumes or voluntarily pays the obligations of a victim, or of a
13 dependent of a victim, which obligations are incurred as a result
14 of the criminally injurious conduct that is the subject of the
15 claim; and

16 (4) A person who is authorized to act on behalf of a victim,
17 dependent or a third person who is not a collateral source; and,
18 in the event that the victim, dependent or third person who is
19 not a collateral source is a minor or other legally incompetent
20 person, the duly qualified fiduciary of the minor.

21 (b) "Collateral source" means a source of benefits or
22 advantages for economic loss otherwise compensable that the
23 victim or claimant has received, or that is readily available to
24 him, from any of the following sources:

25 (1) The offender, including any restitution received from
26 the offender pursuant to an order by a court of law sentencing
27 the offender or placing him on probation following a conviction
28 in a criminal case arising from the criminally injurious act for
29 which a claim for compensation is made;

30 (2) The government of the United States or any of its
31 agencies, a state or any of its political subdivisions, or an
32 instrumentality of two or more states;

33 (3) Social security, medicare and medicaid;

34 (4) State-required, temporary, nonoccupational disability
35 insurance; other disability insurance;

36 (5) Workers' compensation;

37 (6) Wage continuation programs of any employer;

38 (7) Proceeds of a contract of insurance payable to the
39 victim or claimant for loss that was sustained because of the
40 criminally injurious conduct;

41 (8) A contract providing prepaid hospital and other health
42 care services or benefits for disability; and

43 (9) That portion of the proceeds of all contracts of insur-
44 ance payable to the claimant on account of the death of the
45 victim which exceeds twenty-five thousand dollars.

46 (c) "Criminally injurious conduct" means conduct that
47 occurs or is attempted in this state or in any state not having a
48 victim compensation program which by its nature poses a
49 substantial threat of personal injury or death, and is punishable
50 by fine or imprisonment or death, or would be so punishable but
51 for the fact that the person engaging in the conduct lacked
52 capacity to commit the crime under the laws of this state.
53 Criminally injurious conduct also includes an act of terrorism,
54 as defined in 18 U.S.C. §2331, committed outside of the United
55 States against a resident of this state. Criminally injurious
56 conduct does not include conduct arising out of the ownership,
57 maintenance or use of a motor vehicle, except when the person
58 engaging in the conduct intended to cause personal injury or
59 death, or except when the person engaging in the conduct
60 committed negligent homicide, driving under the influence of
61 alcohol, controlled substances or drugs, or reckless driving.

62 (d) "Dependent" means an individual who received over
63 half of his or her support from the victim. For the purpose of
64 determining whether an individual received over half of his or
65 her support from the victim, there shall be taken into account
66 the amount of support received from the victim as compared to
67 the entire amount of support which the individual received from
68 all sources, including support which the individual himself or
69 herself supplied. The term "support" includes, but is not limited
70 to, food, shelter, clothing, medical and dental care and educa-
71 tion. The term "dependent" includes a child of the victim born
72 after his or her death.

73 (e) "Economic loss" means economic detriment consisting
74 only of allowable expense, work loss and replacement services
75 loss. If criminally injurious conduct causes death, economic
76 loss includes a dependent's economic loss and a dependent's

77 replacement services loss. Noneconomic detriment is not
78 economic loss; however, economic loss may be caused by pain
79 and suffering or physical impairment. For purposes of this
80 article, the term “economic loss” includes a lost scholarship as
81 defined in this section.

82 (f) “Allowable expense” means reasonable charges incurred
83 or to be incurred for reasonably needed products, services and
84 accommodations, including those for medical care, prosthetic
85 devices, eye glasses, dentures, rehabilitation and other remedial
86 treatment and care.

87 Allowable expense includes a total charge not in excess of
88 four thousand dollars for expenses in any way related to
89 funeral, cremation and burial. It does not include that portion of
90 a charge for a room in a hospital, clinic, convalescent home,
91 nursing home or any other institution engaged in providing
92 nursing care and related services in excess of a reasonable and
93 customary charge for semiprivate accommodations, unless
94 accommodations other than semiprivate accommodations are
95 medically required.

96 (g) “Work loss” means loss of income from work that the
97 injured person would have performed if he or she had not been
98 injured and expenses reasonably incurred or to be incurred by
99 him or her to obtain services in lieu of those he or she would
100 have performed for income, reduced by any income from
101 substitute work actually performed or to be performed by him
102 or her, or by income he or she would have earned in available
103 appropriate substitute work that he or she was capable of
104 performing but unreasonably failed to undertake.

105 (h) “Replacement services loss” means expenses reasonably
106 incurred or to be incurred in obtaining ordinary and necessary
107 services in lieu of those the injured person would have per-
108 formed, not for income but for the benefit of himself or herself
109 or his or her family, if he or she had not been injured.

110 (i) “Dependent’s economic loss” means loss after a victim’s
111 death of contributions or things of economic value to his or her
112 dependents, not including services they would have received

113 from the victim if he or she had not suffered the fatal injury,
114 less expenses of the dependents avoided by reason of the
115 victim's death.

116 (j) "Dependent's replacement service loss" means loss
117 reasonably incurred or to be incurred by dependents after a
118 victim's death in obtaining ordinary and necessary services in
119 lieu of those the victim would have performed for their benefit
120 if he or she had not suffered the fatal injury, less expenses of
121 the dependents avoided by reason of the victim's death and not
122 subtracted in calculating dependent's economic loss.

123 (k) "Victim" means a person who suffers personal injury or
124 death as a result of any one of the following: (1) Criminally
125 injurious conduct; (2) the good faith effort of the person to
126 prevent criminally injurious conduct; or (3) the good faith effort
127 of the person to apprehend a person that the injured person has
128 observed engaging in criminally injurious conduct, or who the
129 injured person has reasonable cause to believe has engaged in
130 criminally injurious conduct immediately prior to the attempted
131 apprehension.

132 (l) "Contributory misconduct" means any conduct of the
133 claimant, or of the victim through whom the claimant claims an
134 award, that is unlawful or intentionally tortious and that,
135 without regard to the conduct's proximity in time or space to
136 the criminally injurious conduct, has causal relationship to the
137 criminally injurious conduct that is the basis of the claim and
138 shall also include the voluntary intoxication of the claimant,
139 either by the consumption of alcohol or the use of any con-
140 trolled substance when the intoxication has a causal connection
141 or relationship to the injury sustained. The voluntary intoxica-
142 tion of a victim is not a defense against the estate of a deceased
143 victim.

144 (m) "Lost scholarship" means a scholarship, academic
145 award, stipend or other monetary scholastic assistance which
146 had been awarded or conferred upon a victim in conjunction
147 with a postsecondary school educational program and, which
148 the victim is unable to receive or use, in whole or in part, due
149 to injuries received from criminally injurious conduct.

§14-2A-4. Creation of crime victims compensation fund.

1 (a) Every person within the state who is convicted of or
2 pleads guilty to a misdemeanor offense, other than a traffic
3 offense that is not a moving violation, in any magistrate court
4 or circuit court, shall pay the sum of ten dollars as costs in the
5 case, in addition to any other court costs that the court is
6 required by law to impose upon the convicted person. Every
7 person within the state who is convicted of or pleads guilty to
8 a misdemeanor offense, other than a traffic offense that is not
9 a moving violation, in any municipal court, shall pay the sum
10 of eight dollars as costs in the case, in addition to any other
11 court costs that the court is required by law to impose upon the
12 convicted person. In addition to any other costs previously
13 specified, every person within the state who is convicted of or
14 pleads guilty to a violation of section two, article five, chapter
15 seventeen-c of this code, shall pay a fee in the amount of twenty
16 percent of any fine imposed under that section. This is in
17 addition to any other court costs required by this section or
18 which may be required by law.

19 (b) The clerk of the circuit court, magistrate court or
20 municipal court where the additional costs are imposed under
21 the provisions of subsection (a) of this section shall, on or
22 before the last day of each month, transmit all costs received
23 under this article to the state treasurer for deposit in the state
24 treasury to the credit of a special revenue fund to be known as
25 the "Crime Victims Compensation Fund". All moneys col-
26 lected and received under this article and paid into the state
27 treasury and credited to the crime victims compensation fund in
28 the manner prescribed in section two, article two, chapter
29 twelve of this code, shall be kept and maintained for the
30 specific purposes of this article, and may not be treated by the
31 auditor and treasurer as part of the general revenue of the state.

32 (c) Expenditure of moneys in the crime victims compensa-
33 tion fund is authorized from collections.

34 (d) Moneys in the crime victims compensation fund may be
35 expended for:

36 (1) The payment of the costs of administration of this
37 article;

38 (2) The payment of economic loss awards approved by the
39 court; and

40 (3) The payment of attorney and witness fees, allowed
41 pursuant to section nineteen of this article.

42 (e) The services of the office of the attorney general, as
43 may be required or authorized by any of the provisions of this
44 article, shall be rendered without charge to the fund.

45 (f) Any moneys in the crime victims compensation fund
46 may be invested as provided in article six, chapter twelve of this
47 code, with the interest income credited to the crime victims
48 compensation fund.

49 (g) All funds in the special economic loss claim payment
50 fund created under the provisions of section twenty of this
51 article prior to the amendments made in that section enacted in
52 the year one thousand nine hundred ninety-nine shall be
53 transferred to the crime victims compensation fund within a
54 reasonable time from the effective date of the amendments.

55 (h) All gifts that are received to be used for the purposes of
56 this article shall be deposited into the crime victims compensa-
57 tion fund.

§14-2A-20. Budget preparation; procedure for payment of claims.

1 (a) The legislative auditor shall submit to the department of
2 administration, on or before the twentieth day of November of
3 each year, an anticipated budget for the crime victims compen-
4 sation program provided in this article for the next fiscal year,
5 which shall include:

6 (1) An estimate of the balance and receipts anticipated in
7 the crime victims compensation fund;

8 (2) Amounts anticipated to be sufficient for the payment of
9 all administrative expenses necessary for the administration of
10 this article; and

11 (3) Amounts anticipated to be sufficient for the payment of
12 awards, attorney fees, witness fees and other authorized fees,
13 costs or expenses that may arise under this article during the
14 next fiscal year.

15 (b) The governor shall include in his or her proposed budget
16 bill and revenue estimates the amounts submitted by the
17 legislative auditor under subsection (a) of this section.

18 (c) The clerk shall certify each authorized award and the
19 amount of the award and make requisition upon the crime
20 victims compensation fund to the auditor. Notwithstanding any
21 provision of chapter twelve of this code to the contrary, the
22 auditor shall issue a warrant to the treasurer without further
23 examination or review of the claim if there is a sufficient
24 unexpended balance in the crime victims compensation fund.

25 (d) The court may provide that payment be made to a
26 claimant or to a third party for economic losses of the claimant
27 and the order may provide an award for the payment for actual
28 economic losses which are prospective as well as those which
29 have already been incurred.

CHAPTER 80

(Com. Sub. for H. B. 2777 — By Delegates Amores,
Hunt, Rowe, Hutchins, Tillis, Smirl and Schadler)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article eleven-b, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the home incarceration services fund; and authorizing county commissions to expend surplus amounts in the home incarceration service fund to defray the cost of housing county inmates.

Be it enacted by the Legislature of West Virginia:

That section seven, article eleven-b, 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 11B. HOME INCARCERATION ACT.

§62-11B-7. Home incarceration fees; special fund.

1 All home incarceration fees ordered by the circuit court
2 shall be paid to the circuit clerk, who shall monthly remit the
3 fees to the sheriff. All home incarceration fees ordered by a
4 magistrate shall be paid to the magistrate court clerk, who shall
5 monthly remit the fees to the county sheriff. The county sheriff
6 shall establish a special fund designated the home incarceration
7 services fund, in which the sheriff shall deposit all home
8 incarceration fees remitted by the clerks. The county commis-
9 sion shall appropriate money from the fund to administer a
10 home incarceration program, including the purchase of elec-
11 tronic monitoring devices and other supervision expenses, and
12 may as necessary supplement the fund with additional appropri-
13 ations. The county commission may also appropriate any excess
14 money from the fund to defray the costs of housing county
15 inmates, if the sheriff or other person designated to administer
16 the fund certifies in writing to the county commission that a
17 surplus exists in the fund at the end of the fiscal year.

CHAPTER 81

(Com. Sub. for H. B. 2263 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to parole; and authorizing the video conferencing of parole hearings before a majority of the board or videotaping of a hearing before a single board member for subsequent review by two other board members.

Be it enacted by the Legislature of West Virginia:

That section thirteen, 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.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

1 (a) The board of parole, whenever it is of the opinion that
2 the best interests of the state and of the inmate will be served,
3 and subject to the limitations hereinafter provided, shall release
4 any inmate on parole for terms and upon conditions as are
5 provided by this article.

6 (b) Any inmate of a state correctional center, is eligible for
7 parole if he or she:

8 (1) (A) Has served the minimum term of his or her indeter-
9 minate sentence, or has served one fourth of his or her definite
10 term sentence, as the case may be, except that in no case is any
11 person who committed, or attempted to commit a felony with
12 the use, presentment or brandishing of a firearm, eligible for
13 parole prior to serving a minimum of three years of his or her
14 sentence or the maximum sentence imposed by the court,
15 whichever is less: *Provided*, That any person who committed,
16 or attempted to commit, any violation of section twelve, article
17 two, chapter sixty-one of this code, with the use, presentment
18 or brandishing of a firearm, is not eligible for parole prior to
19 serving a minimum of five years of his or her sentence or one
20 third of his or her definite term sentence, whichever is greater.
21 Nothing in this section applies to an accessory before the fact
22 or a principal in the second degree who has been convicted as
23 if he or she were a principal in the first degree if, in the com-
24 mission of or in the attempted commission of the felony, only
25 the principal in the first degree used, presented or brandished a
26 firearm. No person is ineligible for parole under the provisions
27 of this subdivision because of the commission or attempted
28 commission of a felony with the use, presentment or brandish-
29 ing of a firearm unless such fact is clearly stated and included

30 in the indictment or presentment by which the person was
31 charged and was either: (i) Found by the court at the time of
32 trial upon a plea of guilty or nolo contendere; or (ii) found by
33 the jury, upon submitting to the jury a special interrogatory for
34 such purpose if the matter was tried before a jury; or (iii) found
35 by the court, if the matter was tried by the court without a jury.

36 For the purpose of this section, the term "firearm" means
37 any instrument which will, or is designed to, or may readily be
38 converted to, expel a projectile by the action of an explosive,
39 gunpowder or any other similar means.

40 (B) The amendments to this subsection adopted in the year
41 one thousand nine hundred eighty-one:

42 (i) Apply to all applicable offenses occurring on or after the
43 first day of August of that year;

44 (ii) Apply with respect to the contents of any indictment or
45 presentment returned on or after the first day of August of that
46 year irrespective of when the offense occurred;

47 (iii) Apply with respect to the submission of a special
48 interrogatory to the jury and the finding to be made thereon in
49 any case submitted to the jury on or after the first day of August
50 of that year or to the requisite findings of the court upon a plea
51 of guilty or in any case tried without a jury: *Provided*, That the
52 state gives notice in writing of its intent to seek such finding by
53 the jury or court, as the case may be, which notice shall state
54 with particularity the grounds upon which the finding will be
55 sought as fully as such grounds are otherwise required to be
56 stated in an indictment, unless the grounds therefor are alleged
57 in the indictment or presentment upon which the matter is being
58 tried; and

59 (iv) Does not apply with respect to cases not affected by the
60 amendments and in such cases the prior provisions of this
61 section apply and are construed without reference to the
62 amendments.

63 Insofar as the amendments relate to mandatory sentences
64 restricting the eligibility for parole, all matters requiring a

65 mandatory sentence shall be proved beyond a reasonable doubt
66 in all cases tried by the jury or the court.

67 (2) Is not in punitive segregation or administrative segrega-
68 tion as a result of disciplinary action;

69 (3) Has maintained a record of good conduct in prison for
70 a period of at least three months immediately preceding the date
71 of his or her release on parole;

72 (4) Has submitted to the board a written parole release plan
73 setting forth proposed plans for his or her place of residence,
74 employment and, if appropriate, his or her plans regarding
75 education and postrelease counseling and treatment, the parole
76 release plan having been approved by the commissioner of
77 corrections or his or her authorized representative; and

78 (5) Has satisfied the board that if released on parole he or
79 she will not constitute a danger to the community.

80 (c) Except in the case of a person serving a life sentence, no
81 person who has been previously twice convicted of a felony
82 may be released on parole until he or she has served the
83 minimum term provided by law for the crime for which he or
84 she was convicted. No person sentenced for life may be paroled
85 until he or she has served ten years, and no person sentenced for
86 life who has been previously twice convicted of a felony may
87 be paroled until he or she has served fifteen years: *Provided*,
88 That no person convicted of first degree murder for an offense
89 committed on or after the tenth day of June, one thousand nine
90 hundred ninety-four, is eligible for parole until he or she has
91 served fifteen years.

92 (d) In the case of a person sentenced to any state correc-
93 tional center, it is the duty of the board, as soon as a person
94 becomes eligible, to consider the advisability of his or her
95 release on parole.

96 (e) If, upon consideration, parole is denied, the board shall
97 promptly notify the inmate of the denial. The board shall, at the
98 time of denial, notify the person of the month and year he or she
99 may apply for reconsideration and review. The board shall at
100 least once a year reconsider and review the case of every inmate

101 who was denied parole and is still eligible: *Provided*, That the
102 board may reconsider and review parole eligibility any time
103 within three years following the denial of parole of a person
104 serving a life sentence.

105 (f) Any person serving a sentence on a felony conviction
106 who becomes eligible for parole consideration prior to being
107 transferred to a state correctional center may make written
108 application for parole. The terms and conditions for parole
109 consideration established by this article apply to such inmates.

110 (g) The board shall, with the approval of the governor,
111 adopt rules governing the procedure in the granting of parole.
112 No provision of this article and none of the rules adopted
113 hereunder are intended or may be construed to contravene, limit
114 or otherwise interfere with or affect the authority of the
115 governor to grant pardons and reprieves, commute sentences,
116 remit fines or otherwise exercise his or her constitutional
117 powers of executive clemency.

118 (h) The department of corrections is charged with the duty
119 of supervising all probationers and parolees whose supervision
120 may have been undertaken by this state by reason of any
121 interstate compact entered into pursuant to the uniform act for
122 out-of-state parolee supervision.

123 (i)(1) When considering an inmate of a state correctional
124 center for release on parole, the parole board is to have before
125 it an authentic copy of or report on the inmate's current
126 criminal record as provided through the West Virginia state
127 police, the United States department of justice or other reliable
128 criminal information sources and written reports of the warden
129 or superintendent of the state correctional center to which such
130 inmate is sentenced:

131 (i) On the inmate's conduct record while in custody,
132 including a detailed statement showing any and all infractions
133 of disciplinary rules by the inmate and the nature and extent of
134 discipline administered therefor;

135 (ii) On improvement or other changes noted in the inmate's
136 mental and moral condition while in custody, including a

137 statement expressive of the inmate's current attitude toward
138 society in general, toward the judge who sentenced him or her,
139 toward the prosecuting attorney who prosecuted him or her,
140 toward the policeman or other officer who arrested the inmate
141 and toward the crime for which he or she is under sentence and
142 his or her previous criminal record;

143 (iii) On the inmate's industrial record while in custody
144 which shall include: The nature of his or her work, occupation
145 or education, the average number of hours per day he or she has
146 been employed or in class while in custody and a recommenda-
147 tion as to the nature and kinds of employment which he or she
148 is best fitted to perform and in which the inmate is most likely
149 to succeed when he or she leaves prison;

150 (iv) On physical, mental and psychiatric examinations of
151 the inmate conducted, insofar as practicable, within the two
152 months next preceding parole consideration by the board.

153 (2) The board may waive the requirement of any report
154 when not available or not applicable as to any inmate consid-
155 ered for parole but, in every such case, shall enter in the record
156 thereof its reason for the waiver: *Provided*, That in the case of
157 an inmate who is incarcerated because the inmate has been
158 found guilty of, or has pleaded guilty to a felony under the
159 provisions of section twelve, article eight, chapter sixty-one of
160 this code or under the provisions of article eight-b or eight-c,
161 chapter sixty-one of this code, the board may not waive the
162 report required by this subsection and the report is to include a
163 study and diagnosis including an on-going treatment plan
164 requiring active participation in sexual abuse counseling at an
165 approved mental health facility or through some other approved
166 program: *Provided, however*, That nothing disclosed by the
167 person during the study or diagnosis may be made available to
168 any law-enforcement agency, or other party without that
169 person's consent, or admissible in any court of this state, unless
170 the information disclosed indicates the intention or plans of the
171 parolee to do harm to any person, animal, institution or to
172 property. Progress reports of outpatient treatment are to be
173 made at least every six months to the parole officer supervising

174 the person. In addition, in such cases, the parole board shall
175 inform the prosecuting attorney of the county in which the
176 person was convicted of the parole hearing and shall request
177 that the prosecuting attorney inform the parole board of the
178 circumstances surrounding a conviction or plea of guilty, plea
179 bargaining and other background information that might be
180 useful in its deliberations.

181 (j) Before releasing any inmate on parole, the board of
182 parole shall arrange for the inmate to appear in person, before
183 at least three members of the board and the board may examine
184 and interrogate him or her on any matters pertaining to his or
185 her parole, including reports before the board made pursuant to
186 the provisions hereof: *Provided*, That an inmate may appear by
187 video teleconference if the members of the parole board
188 conducting the examination are able to contemporaneously see
189 the inmate and hear all of his or her remarks and if the inmate
190 is able to contemporaneously see each of the members of the
191 parole board conducting the examination and hear all of the
192 members' remarks. The board shall reach its own written
193 conclusions as to the desirability of releasing the inmate on
194 parole and the majority of the board members considering the
195 release shall concur in the decision. The warden or superinten-
196 dent shall furnish all necessary assistance and cooperate to the
197 fullest extent with the parole board. All information, records
198 and reports received by the board are to be kept on permanent
199 file.

200 (k) The board and its designated agents are at all times to
201 have access to inmates imprisoned in any state correctional
202 center or in any city, county or regional jail in this state, and
203 shall have the power to obtain any information or aid necessary
204 to the performance of its duties from other departments and
205 agencies of the state or from any political subdivision thereof.

206 (l) The board shall, if so requested by the governor,
207 investigate and consider all applications for pardon, reprieve or
208 commutation and shall make recommendation thereon to the
209 governor.

210 (m) Prior to making a recommendation for pardon, reprieve
211 or commutation and prior to releasing any inmate on parole, the

212 board shall notify the sentencing judge and prosecuting attorney
213 at least ten days before the recommendation or parole.

214 (n) Any person released on parole shall participate as a
215 condition of parole in the litter control program of the county to
216 the extent directed by the board, unless the board specifically
217 finds that this alternative service would be inappropriate.

CHAPTER 82

(Com. Sub. for S. B. 178 — Senators Ball,
Dittmar, Redd, Oliverio, Love and Anderson)

[Passed March 1, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-four, relating to requiring an inmate to make written motion to support a request for a continuance of a parole hearing; designation of person to whom motion given; notice requirements; promulgation of rules for exception; waiver of hearing for one year for noncompliance; and discretion of board to set hearings where waiver has occurred.

Be it enacted by the Legislature of West Virginia:

That article twelve, chapter sixty-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 twenty-four, to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-24. Request to continue for good cause and timely notice required.

- 1 (a) Any inmate scheduled for a parole interview shall, if he
- 2 or she desires to continue the interview, file with the institu-
- 3 tional parole officer a written waiver of his or her right to an

4 interview on the date set on a form provided by the commis-
5 sioner of corrections at least thirty days prior to the interview
6 date. A copy of the waiver shall be supplied to the board of
7 parole.

8 (b) The board shall propose for promulgation a legislative
9 rule pursuant to article thirty, chapter twenty-nine-a of this
10 code, setting forth criteria constituting emergency circum-
11 stances where a waiver of interview filed less than thirty days
12 prior to the scheduled interview shall constitute good cause for
13 a continuance.

14 (c) Any inmate failing to appear for his or her scheduled
15 parole interview who has not waived his or her interview
16 pursuant to subsection (a) or (b) of this section shall be deemed
17 to have waived his or her right to a parole interview for a period
18 of twelve months from the date of the interview at which he or
19 she failed to appear. The board of parole shall have discretion
20 to reset the interview with notice to the inmate and any other
21 person or persons entitled by law to notice, prior to the expira-
22 tion of the twelve-month waiver period.

CHAPTER 83

(S. B. 149 — By Senators Wooton, Ball,
Dittmar, Kessler, Mitchell, Ross and Snyder)

[Passed February 25, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen-a, relating to expungement of criminal records of persons receiving a full, unconditional pardon from the governor; establishing the procedure for petitioning for an order of expungement; requiring service on the prosecuting attorney; requiring publication; requiring verification of pardon, a hearing and a showing of good

cause; restricting the consideration of an expunged record in applications for educational institutions or professional organizations; and limiting the eligibility of those who may petition for an order of expungement.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. THE GOVERNOR.

§5-1-16a. Expungement of criminal record upon full and unconditional pardon.

1 (a) Any person who has received a full and unconditional
2 pardon from the governor, pursuant to the provisions of section
3 eleven, article VII of the constitution of West Virginia and
4 section sixteen of this article, may petition the circuit court in
5 the county where the conviction was had to have the record of
6 such conviction expunged. The petition shall be served upon the
7 prosecuting attorney of the county where the petition was filed.
8 Any person petitioning the court for an order of expungement
9 shall publish a notice of the time and place that such petition
10 will be made, which notice shall be published as a Class I legal
11 advertisement in compliance with the provisions of article
12 three, chapter fifty-nine of this code, and the publication area
13 for such publication shall be the county where the petition is
14 filed. The circuit court, upon verification of the act of pardon
15 and after a hearing to determine that good cause exists, may
16 enter an order directing that all public record of the petitioner's
17 conviction be expunged.

18 (b) The record expunged pursuant to the provisions of this
19 section may not be considered in an application to any educa-
20 tional institution in this state or an application for any licensure
21 required by any professional organization in this state.

22 (c) No person shall be eligible for expungement pursuant to
23 this section until two years after having been pardoned.

24 (d) No person shall be eligible for expungement pursuant to
25 this section until twenty years after the discharge of his or her
26 sentence upon the conviction for which he or she was pardoned.

27 (e) No person shall be eligible for expungement of a record
28 of conviction of first degree murder, as defined in section one,
29 article two, chapter sixty-one of this code; treason, as defined
30 in section one, article one of said chapter; kidnaping, as defined
31 in section fourteen-a, article two of said chapter; or any felony
32 defined in article eight-b of said chapter.

CHAPTER 84

(S. B. 369 — By Senators Helmick, Minard, Dittmar and Ross)

[Passed February 22, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, twenty-four and twenty-five, article two, chapter thirty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the licensing of currency transporters; adding exemptions to licensing requirements; clarifying confidentiality provisions; and allowing the commissioner to appoint a hearing examiner in contested cases suspending or revoking a license.

Be it enacted by the Legislature of West Virginia:

That sections three, twenty-four and twenty-five, article two, chapter thirty-two-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. CHECKS AND MONEY ORDER SALES, MONEY TRANSMISSION SERVICES, TRANSPORTATION AND CURRENCY EXCHANGE.

§32A-2-3. Exemptions.

§32A-2-24. Confidential information.

§32A-2-25. Hearing on suspension or revocation of license.

§32A-2-3. Exemptions.

1 (a) The following are exempt from the provisions of this
2 article:

3 (1) Banks, trust companies, foreign bank agencies, credit
4 unions, savings banks and savings and loan associations
5 authorized to do business in the state or which qualify as
6 federally insured depository institutions, whether organized
7 under the laws of this state, any other state or the United States;

8 (2) The United States and any department or agency of the
9 United States;

10 (3) The United States post office;

11 (4) This state and any political subdivision of this state;

12 (5) The provision of electronic transfer of government
13 benefits for any federal, state or county governmental agency
14 as defined in Federal Reserve Board Regulation E, by a
15 contractor for and on behalf of the United States or any depart-
16 ment, agency or instrumentality of the United States or any
17 state or any political subdivisions of a state;

18 (6) Persons engaged solely in the business of currency
19 transportation who operate an armored car service in this state
20 pursuant to licensure under article eighteen, chapter thirty of
21 this code: *Provided*, That the net worth of the licensee exceeds
22 five million dollars. The term "armored car service" as used in
23 this article means a service provided by a person transporting
24 or offering to transport, under armed security guard, currency
25 or other things of value in a motor vehicle specially equipped
26 to offer a high degree of security. Persons seeking to claim this
27 exemption shall notify the commissioner of their intent to do so
28 and demonstrate that they qualify for its use. Persons seeking an
29 exemption under this subdivision are not exempt from the
30 provisions of this article if they also engage in currency
31 exchange or currency transmission;

32 (7) Persons engaged in the business of currency transporta-
33 tion whose activities are limited exclusively to providing
34 services to federally insured depository institutions, or to any
35 federal, state or local governmental entities; and

36 (8) Persons engaged solely in the business of removing
37 currency from vending machines providing goods or services,
38 if the machines are not used for gambling purposes or to convey
39 any gambling ticket, token or other device used in a game of
40 chance.

41 (b) Any person who holds and maintains a valid license
42 under this article may engage in the business of money trans-
43 mission or currency exchange at one or more locations in this
44 state through or by means of an authorized delegate or delegates
45 as set forth in section twenty-seven of this article, as the
46 licensee may designate and appoint from time to time, and no
47 such authorized delegate is required to obtain a separate license
48 under this article.

49 (c) The issuance and sale of stored value cards which are
50 intended to purchase items only from the issuer or seller of the
51 stored value card is exempt from the provisions of this article.

52 (d) Any person who is required and properly obtains a
53 license under this article to transport currency is exempt from
54 the requirements of article eighteen, chapter thirty of this code.

§32A-2-24. Confidential information.

1 (a) Reports of investigation and examination, together with
2 related documents and financial information not normally
3 available to the public that is submitted in confidence by a
4 person regulated under this article, including, but not limited to,
5 that person's evaluation of the expected outcome of pending
6 litigation, are confidential and may not be disclosed to the
7 public by the commissioner or employees of the division of
8 banking, and are not subject to the state's freedom of informa-
9 tion act. The commissioner may release information if:

10 (1) The commissioner finds that immediate and irreparable
11 harm is threatened to the licensee's customers or potential
12 customers or the general public;

13 (2) The licensee consents before the release;

14 (3) The commissioner finds that release of the information
15 is required in connection with a hearing under this article, in

16 which event information may be related to the parties of that
17 hearing; or

18 (4) The commissioner finds that the release is reasonably
19 necessary for the protection of the public and in the interest of
20 justice, in which event information may be distributed to
21 representatives of an agency, department or instrumentality of
22 this state, any other state or the federal government.

23 (b) Nothing in this section 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 considers relevant to the proper adjudication or adminis-
27 tration of justice at public administrative or judicial hearings, or
28 prevents disclosure of information relevant to supporting the
29 issuance of any administrative or judicial order.

§32A-2-25. Hearing on suspension or revocation of license.

1 (a) A license may not be revoked or suspended except after
2 notice and opportunity for hearing on that action. The commis-
3 sioner may issue to a person licensed under this article an order
4 to show cause why the license should not be revoked, or should
5 not be suspended for a period not in excess of six months. The
6 order shall state the place for a hearing and set a time for the
7 hearing that is no less than ten days from the date of the order.
8 The hearing shall be conducted in accordance with the provi-
9 sions of article five, chapter twenty-nine-a of this code. The
10 commissioner may appoint a hearing examiner to preside at the
11 hearing and make a recommended decision. After the hearing
12 the commissioner shall revoke or suspend the license if he or
13 she finds that:

14 (1) The licensee has knowingly or repeatedly violated this
15 chapter or any rule or order lawfully made or issued pursuant to
16 this article;

17 (2) The licensee has failed to remit its required renewal
18 fees;

19 (3) Facts or conditions exist which would clearly have
20 justified the commissioner in refusing to grant a license had

21 these facts or conditions been known to exist at the time the
22 application for the license was made;

23 (4) The licensee does not have available the net worth
24 required by the provisions of section eight of this article, and
25 after ten days' written notice from the commissioner, fails to
26 take steps that the commissioner determines are necessary to
27 remedy the deficiency; or

28 (5) The licensee has failed or refused to keep the bond or
29 other security required by section ten of this article in full force
30 and effect.

31 (b) No revocation or suspension of a license under this
32 article is lawful unless prior to institution of proceedings by the
33 commissioner notice is given to the licensee of the facts or
34 conduct which warrant the intended action and the licensee is
35 given an opportunity to show compliance with all lawful
36 requirements for retention of the license.

37 (c) If the commissioner finds that probable cause for
38 revocation of a license exists and that enforcement of this
39 article to prevent imminent harm to public welfare requires
40 immediate suspension of the license pending investigation, the
41 commissioner may, after a hearing upon five days' written
42 notice, enter an order suspending the license for not more than
43 thirty days.

44 (d) Nothing in this section limits the authority of the
45 commissioner to take action against a licensee or person under
46 other sections of this article.

47 (e) Whenever the commissioner revokes or suspends a
48 license, an order to that effect shall be entered and the commis-
49 sioner shall forthwith notify the licensee of the revocation or
50 suspension. Within five days after the entry of the order the
51 commissioner shall mail by registered or certified mail, or shall
52 provide for personal delivery to the licensee, a copy of the order
53 and the findings supporting the order.

54 (f) Any person holding a license under this article may
55 relinquish the license by notifying the commissioner in writing

56 of its relinquishment, but any relinquishment does not affect a
57 person's liability for acts previously committed.

58 (g) No revocation, suspension or relinquishment of a
59 license impairs or affects the obligation of any preexisting
60 lawful contract between the licensee and any person.

61 (h) The commissioner may reinstate a license, terminate a
62 suspension or grant a new license to a person whose license has
63 been revoked or suspended if no fact or condition then exists
64 which clearly would have justified the commissioner in refusing
65 to grant a license.

CHAPTER 85

(H. B. 3021 — By Delegates Douglas, Collins, Varner,
Stalnaker, Willison, Flanigan and Perdue)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article fourteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia commission for the deaf and hard-of-hearing; establishing authority over the commission to the department of health and human resources.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 14. WEST VIRGINIA COMMISSION FOR THE DEAF AND
HARD-OF-HEARING.**

§5-14-3. Continuation of commission; membership.

1 The West Virginia commission for the deaf and hard-of-
2 hearing is hereby continued within the department of health and
3 human resources consisting of fifteen persons, eight of whom

4 shall serve ex officio. The remaining members are appointed by
5 the governor by and with the advice and consent of the Senate.
6 The commission shall meet no less than four times annually.
7 All meetings and activities held by the commission shall be
8 attended by at least two qualified interpreters who shall be hired
9 at the commission's expense or provided free of charge by
10 agencies, organizations or individuals willing to volunteer
11 qualified interpreters. The members are:

12 (1) The secretary, or his or her designee, of the department
13 of health and human resources; the commissioner, or his or her
14 designee, of the division of labor; the director, or his or her
15 designee, of the division of health; the state superintendent of
16 schools, or his or her designee, of the state board of education;
17 the director, or his or her designee, of the division of rehabilita-
18 tion; the director, or his or her designee, of the division of
19 handicapped children's services in the division of human
20 services; the chairman, or his or her designee, of the advisory
21 council for the education of exceptional children; and the
22 superintendent, or his or her designee, of the West Virginia
23 School for the Deaf and Blind, all of whom serve ex officio;
24 and

25 (2) Seven persons appointed by the governor, at least three
26 of whom are deaf or hard-of-hearing, one of whom is the parent
27 of a deaf child, one of whom is a certified teacher of the
28 hearing-impaired, one audiologist and one otolaryngologist. Of
29 the three deaf people, at least two shall be selected from a list
30 of four people recommended by the board of the West Virginia
31 association of the deaf.

CHAPTER 86

(H. B. 2477 — By Delegates Douglas, Collins,
Prunty, H. White, Hatfield and Stalnaker)

[Passed March 2, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article fourteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia commission for the deaf and hard-of-hearing.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 14. WEST VIRGINIA COMMISSION FOR THE DEAF AND
HARD-OF-HEARING.**

**§5-14-12. Termination of the West Virginia commission for the
deaf and hard-of-hearing.**

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the West Virginia commission for the deaf and hard-of-
3 hearing shall continue to exist until the first day of July, two
4 thousand.

CHAPTER 87

(Com. Sub. for H. B. 2730 — By Delegates Staton,
Michael, Douglas, Varner and Beane)

[Passed March 13, 1999; in effect July 1, 1999. Approved by the Governor.]

AN ACT to amend article three, 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 ten-a; and to amend and reenact section twenty-two of said article, all relating to awarding state agency and legislative contracts; providing that no contract may be awarded or renewed where a vendor has a delinquency regarding any state debts; setting forth definitions; setting forth exceptions; and requiring self-reporting affidavit.

Be it enacted by the Legislature of the State of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.

§5A-3-10a. Prohibition for awarding contracts to vendors which owe a debt to the state.

§5A-3-22. Legislative printing.

§5A-3-10a. Prohibition for awarding contracts to vendors which owe a debt to the state.

1 (a) Unless the context clearly requires a different meaning,
2 for the purposes of this section the terms:

3 (1) "Debt" means any assessment, penalty, fine, tax or other
4 amount of money owed to the state because of a judgment, fine,
5 permit violation, license assessment, penalty or other assess-
6 ment presently due and required to be paid to the state or any of
7 its political subdivisions, including any interest or additional
8 penalties accrued thereon;

9 (2) "Debtor" means any individual, corporation, partner-
10 ship, association, limited liability company or any other form
11 or business association owing a debt to the state or any of its
12 political subdivisions;

13 (3) "Related party" means a party, whether an individual,
14 corporation, partnership, association, limited liability company
15 or any other form or business association or other entity
16 whatsoever related to any vendor by blood, marriage, owner-
17 ship or contract through which the party has a relationship of
18 ownership or other interest with the vendor, so that the party
19 will actually or by effect receive or control a portion of the
20 benefit, profit or other consideration from performance of a
21 vendor contract with the party receiving an amount that meets
22 or exceeds five percent of the total contract amount.

23 (b) No contract or renewal of any contract may be awarded
24 under this article to any vendor or prospective vendor when the
25 vendor or prospective vendor or a related party to the vendor or
26 prospective vender is a debtor as defined in this section and the

27 debt owed is an amount greater than five thousand dollars in the
28 aggregate.

29 (c) The prohibition of this section does not apply where a
30 vendor has contested any tax administered pursuant to chapter
31 eleven of this code, workers' compensation premium, permit
32 fee or environmental fee or assessment, and the matter has not
33 become final, or where the vendor has entered into a payment
34 plan or agreement and the vendor is not in default of any of the
35 provisions of such plan or agreement.

36 (d) All bids submitted under this article shall include an
37 affidavit that the bidder and all related parties do not owe any
38 debts or, if a debt is owed, that the provisions of subsection (c)
39 of this section apply.

§5A-3-22. Legislative printing.

1 Notwithstanding any other provision of this article, the
2 letting of all contracts for legislative printing shall be subject
3 only to the provisions of this section.

4 Upon request of the Legislature, or either house thereof, all
5 contracts for legislative printing shall be let on competitive bids
6 by the director to the lowest responsible bidder. No vendor, or
7 prospective vendor, may be deemed eligible for any contract
8 under this section if the vendor owes a debt to the state as
9 provided for in section ten-a of this article. Each such contract
10 shall be subject to the approval of the governor, and in case of
11 his disapproval the contract shall be relet on competitive bids
12 submitted in the same manner as the original bids on the
13 contract that was disapproved. Each bid on every such contract
14 shall be within the maximum limits that may be fixed from time
15 to time by concurrent resolution of the Legislature. The clerk of
16 the Senate and the clerk of the House of Delegates shall have
17 exclusive control of all printing authorized by their respective
18 legislative bodies, and shall approve the specifications included
19 in any contract before an invitation for bids is released by the
20 director of purchasing. Before presenting for payment any bill
21 for such legislative printing, the printer shall have the same
22 approved by the purchasing division as correct and according
23 to contract specifications. A copy of all bills for legislative

24 printing shall be furnished the clerk of the house for which such
25 printing was done. When properly approved bills are presented
26 to the clerk of the Senate, or to the clerk of the House of
27 Delegates, he shall draw his requisition upon the auditor in the
28 amount of the bill, payable from the legislative printing fund,
29 and the auditor shall honor the requisition and issue to the
30 printer a state draft therefor.

CHAPTER 88

(S. B. 677 — By Senators Snyder, Craigo, Unger, Kessler, Bailey and Edgell)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections fifty-five and fifty-five-a, all relating to intrastate air transportation services for state employees, legislators, members of various state boards and commissions and members of the general public; limiting the authority to contract to one year; directing the solicitation of bids to provide the same; outlining minimum bid specifications; authorizing the limited underwriting of the cost of the same; and making certain findings in relation thereto.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.

§5A-3-55. Legislative findings.

§5A-3-55a. Director to solicit competitive bids to provide partially underwritten intrastate passenger air service at the lowest underwriting costs.

§5A-3-55. Legislative findings.

1 The Legislature hereby finds that the absence of regularly
2 scheduled intrastate commercial passenger air service in the

3 state inhibits participation on state boards and commissions by
4 citizens living in distant areas of the state; results in the loss of
5 productivity by state employees and legislators traveling to and
6 from distant communities; and hampers economic development.
7 The Legislature further finds that it would well serve the state's
8 interests to partially underwrite the cost of providing air service
9 by soliciting competitive bids from responsible bidders in the
10 private sector to provide air service to the state.

§5A-3-55a. Director to solicit competitive bids to provide partially underwritten intrastate passenger air service at the lowest underwriting costs.

1 (a) The director may exercise the authority provided in this
2 article to solicit, from responsible bidders, bids to provide, for
3 a twelve-month period, partially underwritten, reliable, regu-
4 larly scheduled public passenger air service to state employees,
5 legislators, members of various state boards and commissions,
6 and members of the general public between and among commu-
7 nities in the state: *Provided*, That the director's authority to
8 contract for services is limited to one twelve-month contract.

9 (b) To be eligible to respond to the solicitation, a bidder
10 shall offer to provide at a minimum: (1) Round trip prices per
11 passenger which do not exceed three hundred dollars; (2) a
12 flight departure and arrival schedule which is determined by the
13 director to be efficient and appropriate to achieve optimum
14 cost-benefit in light of the official duties, responsibilities and
15 work schedules of the passengers using the service; (3) aircraft
16 which seats at least six passengers, and which meets other
17 safety and comfort specifications determined by the director;
18 and (4) other requirements and specifications determined by the
19 director.

20 (c) At the conclusion of the bidding process, the director
21 may, pursuant to the procedures provided in this article, award
22 a contract to the lowest bidder, taking into consideration the
23 qualities of the articles to be supplied, their conformity to the
24 specifications, their suitability to the requirements of govern-
25 ment and the delivery terms. Any or all bids may be rejected.
26 The director may accept a bid and enter into a contract in which
27 the guarantee amount shall not exceed the amount that the

28 Legislature appropriated to the director for the air service for
29 that fiscal year: *Provided*, That the contract shall provide that
30 the administration of the air service to be rendered pursuant to
31 the contract shall be in accordance with the emergency rules as
32 promulgated by the director in accordance with section fifteen,
33 article three, chapter twenty-nine-a of this code.

CHAPTER 89

(H. B. 3030 — By Delegates Kelley, Laird, Jenkins,
Hall, Fleischauer, Facemyer and Miller)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four, relating to the pay equity salary adjustment for employees of the department of health and human resources.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-4. Department of health and human resources pay equity salary adjustment.

1 The Legislature hereby directs that a pay equity salary
2 adjustment be provided for employees of the various agencies
3 of the department of health and human resources. This salary
4 adjustment shall be provided from the funding appropriated to
5 the department in the fiscal year two thousand and may not be
6 construed to require additional appropriations from the Legisla-
7 ture. In the event any provision of this section conflicts with
8 any rule, policy or provision of this code, the provisions of this

9 section shall control. In determining the pay equity salary
10 adjustments, the department may give consideration to em-
11 ployee tenure, relevant average salaries and such other factors
12 as may be determined relevant by the secretary. Due to the
13 limits of funding, the results of the pay equity salary adjust-
14 ments shall not be subject to the provisions of article six-a,
15 chapter twenty-nine of this code. The provisions of this section
16 are rehabilitative in nature and it is the specific intent of the
17 Legislature that no private cause of action, either express or
18 implied, shall arise pursuant to the provisions or implementa-
19 tion of this section.

CHAPTER 90

(S. B. 682 — By Senators Plymale, Jackson, Edgell and Sprouse)

[Passed March 10, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, four and five, article ten-c, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to including the deputy sheriff retirement system in the government employees retirement plans for purposes of deferring contributions to the deputy sheriff retirement system under the internal revenue code of 1986.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10C. GOVERNMENT EMPLOYEES RETIREMENT PLANS.

§5-10C-3. Definitions.

§5-10C-4. Pick-up of members' contributions by participating public employers.

§5-10C-5. Savings clause.

§5-10C-3. Definitions.

1 The following words and phrases as used in this article,
2 unless a different meaning is clearly indicated by the context,
3 have the following meanings:

4 (1) "Accumulated contributions" means the sum of all
5 amounts credited to a member's individual account in the
6 members' deposit fund and includes both contributions de-
7 ducted from the compensation of a member and contributions
8 of a member picked up and paid by the member's participating
9 public employer, plus applicable interest thereon.

10 (2) "Board of trustees" means, as appropriate: The board of
11 trustees of the West Virginia public employees retirement
12 system created in article ten, chapter five of this code; the
13 retirement board of the West Virginia department of public
14 safety death, disability and retirement fund created in section
15 twenty-six, article two, chapter fifteen of this code; the retire-
16 ment board of the state teachers and board of regents retirement
17 system created in article seven-a, chapter eighteen of this code;
18 the governing board of the board of regents supplemental and
19 additional retirement plans created in section four-a, article
20 twenty-three, chapter eighteen of this code; the retirement board
21 of the judges' retirement system created in article nine, chapter
22 fifty-one of this code; or the board of trustees of the firemen's
23 and policemen's pension and relief funds created in article
24 twenty-two, chapter eight of this code.

25 (3) "Employee" means any person, whether appointed,
26 elected, or under contract, providing services for a public
27 employer, for which compensation is paid and who is a member
28 of the applicable retirement system.

29 (4) "Member" means any employee who is included in a
30 retirement system.

31 (5) "Member contributions" means, as appropriate: The
32 contributions required by section twenty-nine, article ten,
33 chapter five of this code, from employees who are members of
34 the West Virginia public employees retirement system; the
35 contributions required by section twenty-six, article two,
36 chapter fifteen of this code, from employees who are members

37 of the West Virginia department of public safety death, disabil-
38 ity and retirement fund; the contributions required by section
39 seven, article fourteen-d, chapter seven of this code, from
40 employees who are members of the deputy sheriff retirement
41 system; the contributions required by section fourteen, article
42 seven-a, chapter eighteen of this code, from employees who are
43 members of the state teachers retirement system; the contribu-
44 tions authorized by section fourteen-a, article seven-a, chapter
45 eighteen or by section four-a, article twenty-three, chapter
46 eighteen, from employees who are members of the West
47 Virginia board of regents retirement plans; the contributions
48 required by section four, article nine, chapter fifty-one of this
49 code, from employees who are members of the judges' retire-
50 ment system; or the contributions required by section sixteen,
51 article twenty-two, chapter eight of this code, from employees
52 who are members of the firemen's and policemen's pension and
53 relief funds.

54 (6) "Participating public employer" means the state of West
55 Virginia, any board, commission, department, institution or
56 spending unit, and shall include any agency with full-time
57 employees, created by rule of the supreme court of appeals,
58 which for the purpose of this article shall be considered a
59 department of state government, and county boards of educa-
60 tion with respect to teachers employed by them; any political
61 subdivision in the state which has elected to cover its employ-
62 ees, as defined in this article, under the West Virginia public
63 employees retirement system; any political subdivision in the
64 state which has elected to cover its employees, as defined in this
65 article, under the deputy sheriff retirement system; and any
66 political subdivision in this state which is subject to the
67 provisions of article twenty-two, chapter eight of this code.

68 (7) "Political subdivision" means the state of West Virginia,
69 a county, city or town in the state; a school corporation or
70 corporate unit; any separate corporation or instrumentality
71 established by one or more counties, cities or towns, as permit-
72 ted by law; any corporation or instrumentality supported in
73 most part by counties, cities or towns; any public corporation

74 charged by law with the performance of a governmental
75 function and whose jurisdiction is coextensive with one or more
76 counties, cities or towns, any agency or organization established
77 by, or approved by the department of health for the provision of
78 community health or mental retardation services, and which is
79 supported in part by state, county or municipal funds.

80 (8) "Retirement system" means, as appropriate: The West
81 Virginia public employees retirement system created in article
82 ten, chapter five of this code; the West Virginia department of
83 public safety death, disability and retirement fund created in
84 sections twenty-six through thirty-eight, article two, chapter
85 fifteen of this code; the West Virginia deputy sheriff retirement
86 system created in article fourteen-d, chapter seven of this code;
87 the state teachers retirement system created in article seven-a,
88 chapter eighteen of this code; the West Virginia board of
89 regents retirement plans created in section fourteen-a, article
90 seven-a, chapter eighteen and section four-a, article twenty-
91 three, chapter eighteen of this code; the judges' retirement
92 system created in article nine, chapter fifty-one of this code; or
93 the firemen's or policemen's pension and relief fund created in
94 section sixteen, article twenty-two, chapter eight of this code.

95 (9) "Teacher" has the meaning ascribed to it in section
96 three, article seven-a, chapter eighteen of this code.

§5-10C-4. Pick-up of members' contributions by participating public employers.

1 (a) The state of West Virginia for its public employees and
2 county boards of education for its teachers shall pick-up and
3 pay the contributions which such employees are required by law
4 to make to the retirement system in which they are a member
5 for all compensation earned by its member employees after the
6 thirtieth day of June, one thousand nine hundred eighty-six.
7 Any political subdivision that is a participating public employer
8 in the West Virginia public employees retirement system shall
9 pick-up and pay the contributions which such employees are
10 required by law to make to the retirement system in which they
11 are members for all compensation earned by its member
12 employees after the first day of January, one thousand nine

13 hundred ninety-five. Counties shall pick-up and pay the
14 contributions which such employees are required by law to
15 make to the deputy sheriff retirement system in which they are
16 members for all compensation earned by its member employees
17 after the thirtieth day of June, one thousand nine hundred
18 ninety-eight. Any election made by a political subdivision to
19 pick-up and pay employee contributions prior to the first day of
20 January, one thousand nine hundred ninety-five, remains in
21 effect and is not altered or amended by the amendments made
22 to this section during the regular legislative session, one
23 thousand nine hundred ninety-five.

24 (b) When the participating public employer picks up and
25 pays the contributions of its member employees, the contribu-
26 tions shall be treated as employer contributions in determining
27 the tax treatment thereof under article twenty-one, chapter
28 eleven of this code, and the federal Internal Revenue Code of
29 1986, as amended, and the contributions shall not be included
30 in the gross income of the employee in determining his or her
31 tax treatment under those provisions until they are distributed
32 or made available to the employee or his or her beneficiary. The
33 participating public employer shall pay these employee
34 contributions from the same source of funds used in paying
35 compensation to the employee, by effecting an equal cash
36 reduction in the gross salary of the employee, or by an off-set
37 against future salary increases, or by a combination of reduction
38 in gross salary and off-set against future salary increases.

39 (c) When employee contributions are picked up and paid by
40 the participating public employer, they shall be treated by the
41 board of trustees in the same manner and to the same extent as
42 employee contributions made prior to the date on which
43 employee contributions are picked up by the participating
44 public employer.

45 (d) The amount of employee contributions picked up by the
46 participating public employer shall be paid to the retirement
47 system in the manner and form, and in the frequency required
48 by the board of trustees and shall be accompanied by supporting
49 data that the board of trustees may prescribe. When paid to the

50 retirement system, each of these amounts shall be credited to
51 the deposit fund account of the member for whom the contribu-
52 tion was picked up and paid by the participating public em-
53 ployer.

§5-10C-5. Savings clause.

1 In enacting this article, it is the intent of the Legislature that
2 the retirement plan created pursuant to this article and those
3 created pursuant to article ten, chapter five; article fourteen-d,
4 chapter seven; article two, chapter fifteen; article seven-a,
5 chapter eighteen and article nine, chapter fifty-one of this code
6 qualify under section 401 of the Internal Revenue Code of
7 1954, as amended, and that the member contributions picked up
8 by the participating public employer qualify under subsection
9 (h), section 414 of the Internal Revenue Code of 1954, as
10 amended. Should the United States Internal Revenue Service
11 not approve of certain sections or phraseology of certain
12 sections of this article as being in compliance with the statutes
13 or rules governing the Internal Revenue Service, the respective
14 boards of trustees, in the adoption of the deferred compensation
15 plan, shall adopt such terminology with respect to those
16 sections as will comply therewith.

CHAPTER 91

(Com. Sub. for H. B. 2615 — By Mr. Speaker, Mr. Kiss, and
Delegates Martin, Jenkins, Douglas, Varner, Pettit and Staton)

[Passed March 13, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, five, seven, eight, nine, eleven, seventeen, twenty-one, twenty-four and twenty-nine, article fourteen-d, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to technical corrections to the "Deputy Sheriff Retirement Act"; expanding the definition of "covered employment" to include

additional employment which may be covered by another state retirement plan; clarifying that a deputy sheriff who elects membership in the deputy sheriff retirement system may not also accrue benefits in any other plan administered by the consolidated public retirement board while that deputy sheriff is an active member of the deputy sheriff plan; clarifying the assets to be transferred from the public employees retirement system to the deputy sheriff retirement system; allowing transferring deputy sheriffs until the first day of January, two thousand, to pay all amounts into the deputy sheriff retirement system; clarifying that any deputy sheriff who became totally disabled as a result of duty related injury or illness which occurred prior to the inception of the deputy sheriff retirement plan may become a member of the deputy sheriff retirement system unless he or she is receiving, or would receive, in addition to the deputy sheriff retirement system benefit, a retirement or disability benefit from another state retirement system; clarifying retirement benefits; clarifying adjustment of benefits where early retirement is elected; specifying starting dates for annuities; providing additional time periods in which a deputy sheriff may elect to transfer into the deputy sheriff plan from the public employees retirement system; specifying the credit to be given to those deputy sheriffs who transfer to the deputy sheriff retirement system from the public employees retirement system for certain service in addition to that as a deputy sheriff; providing for transfer of credited service under the public employees retirement system for individuals who meet certain requirements; and providing for promulgation of a rule by the director of the public employees insurance agency to govern the funding of insurance coverage for certain retirees of the deputy sheriff's retirement system.

Be it enacted by the Legislature of West Virginia:

That sections two, five, seven, eight, nine, eleven, seventeen, twenty-one, twenty-four and twenty-nine, article fourteen-d, 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 14D. WEST VIRGINIA DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

- §7-14D-2. Definitions.
- §7-14D-5. Members.
- §7-14D-7. Members' contributions; employer contributions.
- §7-14D-8. Transfer from public employees retirement system.
- §7-14D-9. Retirement; commencement of benefits.
- §7-14D-11. Retirement benefits.
- §7-14D-17. Prior disability.
- §7-14D-21. Burial benefit.
- §7-14D-24. Service as sheriff.
- §7-14D-29. Effective date; report to joint committee on government and finance; special starting date for benefits.

§7-14D-2. Definitions.

1 As used in this article, unless a federal law or regulation or
2 the context clearly requires a different meaning:

3 (a) "Accrued benefit" means on behalf of any member two
4 and one-quarter percent of the member's final average salary
5 multiplied by the member's years of credited service. A
6 member's accrued benefit may not exceed the limits of section
7 415 of the Internal Revenue Code.

8 (b) "Accumulated contributions" means the sum of all
9 amounts deducted from the compensation of a member, or paid
10 on his or her behalf pursuant to article ten-c, chapter five of this
11 code, either pursuant to section seven of this article or section
12 twenty-nine, article ten, chapter five of this code as a result of
13 covered employment together with regular interest on the
14 deducted amounts.

15 (c) "Active military duty" means full-time active duty with
16 any branch of the armed forces of the United States, including
17 service with the national guard or reserve military forces when
18 the member has been called to active full-time duty and has
19 received no compensation during the period of that duty from
20 any board on other than the armed forces.

21 (d) "Actuarial equivalent" means a benefit of equal value
22 computed upon the basis of the mortality table and interest rates
23 as the consolidated public retirement board may adopt from
24 time to time.

25 (e) "Annual compensation" means the wages paid to the
26 member during covered employment within the meaning of

27 section 3401(a) of the Internal Revenue Code but determined
28 without regard to any rules that limit the remuneration included
29 in wages based upon the nature or location of employment or
30 services performed during the plan year plus amounts excluded
31 under section 414(h)(2) of the Internal Revenue Code and less
32 reimbursements or other expense allowances, cash or noncash
33 fringe benefits or both, deferred compensation and welfare
34 benefits. Annual compensation for determining benefits during
35 any determination period may not exceed one hundred fifty
36 thousand dollars as adjusted for cost of living in accordance
37 with section 401(a)(17)(B) of the Internal Revenue Code.

38 (f) "Annual leave service" means accrued annual leave.

39 (g) "Annuity starting date" means the first day of the first
40 period for which an amount is received as an annuity by reason
41 of retirement.

42 (h) "Base salary" means a member's cash compensation
43 exclusive of overtime from covered employment during the last
44 twelve months of employment. Until a member has worked
45 twelve months, annualized base salary is used as base salary.

46 (i) "Board" means the consolidated public retirement board
47 created pursuant to article ten-d, chapter five of this code.

48 (j) "County commission" has the meaning ascribed to it in
49 section one, article one, chapter seven of this code.

50 (k) "Covered employment" means either: (1) Employment
51 as a deputy sheriff and the active performance of the duties
52 required of a deputy sheriff; (2) the period of time which active
53 duties are not performed but disability benefits are received
54 under section thirteen or fourteen of this article; or (3) concur-
55 rent employment by a deputy sheriff in a job or jobs in addition
56 to his or her employment as a deputy sheriff where such
57 secondary employment requires the deputy sheriff to be a
58 member of another retirement system which is administered by
59 the consolidated public retirement board pursuant to article ten-
60 d of chapter five of this code: *Provided*, That the deputy sheriff
61 contribute to the fund created in section six of this article the
62 amount specified as the deputy sheriff's contribution in section
63 seven of this article.

64 (l) "Credited service" means the sum of a member's years
65 of service, active military duty, disability service and annual
66 leave service.

67 (m) "Deputy sheriff" means an individual employed as a
68 county law-enforcement deputy sheriff in this state and as
69 defined by section two, article fourteen, chapter seven of this
70 code.

71 (n) "Dependent child" means:

72 (1) An unmarried person under age eighteen who is either:

73 (A) A natural child of the member;

74 (B) A legally adopted child of the member;

75 (C) A child who at the time of the member's death was
76 living with the member while the member was an adopting
77 parent during any period of probation; or

78 (D) A stepchild of the member residing in the member's
79 household at the time of the member's death.

80 (2) Any unmarried child under age twenty-three: (A) Who
81 is enrolled as a full-time student in an accredited college or
82 university; (B) who was claimed as a dependent by the member
83 for federal income tax purposes at the time of member's death;
84 and (C) whose relationship with the member is described in
85 subparagraph (A), (B) or (C), paragraph (1) of this subdivision.

86 (o) "Dependent parent" means the father or mother of the
87 member who was claimed as a dependent by the member for
88 federal income tax purposes at the time of the member's death.

89 (p) "Disability service" means service received by a
90 member, expressed in whole years, fractions thereof or both,
91 equal to one half of the whole years, fractions thereof, or both,
92 during which time a member receives disability benefits under
93 section thirteen or fourteen of this article.

94 (q) "Early retirement age" means age forty or over and
95 completion of twenty years of service.

96 (r) "Effective date" means the first day of July, one
97 thousand nine hundred ninety-eight.

98 (s) "Final average salary" means the average of the highest
99 annual compensation received for covered employment by the
100 member during any five consecutive plan years within the
101 member's last ten years of service. If the member did not have
102 annual compensation for the five full plan years preceding the
103 member's attainment of normal retirement age and during that
104 period the member received disability benefits under section
105 thirteen or fourteen of this article then "final average salary"
106 means the average of the monthly salary determined paid to the
107 member during that period as determined under section
108 seventeen of this article multiplied by twelve.

109 (t) "Fund" means the West Virginia deputy sheriff retire-
110 ment fund created pursuant to section six of this article.

111 (u) "Hour of service" means:

112 (1) Each hour for which a member is paid or entitled to
113 payment for covered employment during which time active
114 duties are performed. These hours shall be credited to the
115 member for the plan year in which the duties are performed;
116 and

117 (2) Each hour for which a member is paid or entitled to
118 payment for covered employment during a plan year but where
119 no duties are performed due to vacation, holiday, illness,
120 incapacity including disability, layoff, jury duty, military duty,
121 leave of absence, or any combination thereof, and without
122 regard to whether the employment relationship has terminated.
123 Hours under this paragraph shall be calculated and credited
124 pursuant to West Virginia department of labor regulations. A
125 member will not be credited with any hours of service for any
126 period of time he or she is receiving benefits under section
127 fourteen or fifteen of this article; and

128 (3) Each hour for which back pay is either awarded or
129 agreed to be paid by the employing county commission,
130 irrespective of mitigation of damages. The same hours of
131 service shall not be credited both under paragraph (1) or (2) of
132 this subdivision, and under this paragraph. Hours under this
133 paragraph shall be credited to the member for the plan year or

134 years to which the award or agreement pertains, rather than the
135 plan year in which the award, agreement or payment is made.

136 (v) "Member" means a person first hired as a deputy sheriff
137 after the effective date of this article, as defined in subsection
138 (r) of this section, or a deputy sheriff first hired prior to the
139 effective date and who elects to become a member pursuant to
140 section five or section seventeen of this article. A member shall
141 remain a member until the benefits to which he or she is
142 entitled under this article are paid or forfeited.

143 (w) "Monthly salary" means the portion of a member's
144 annual compensation which is paid to him or her per month.

145 (x) "Normal form" means a monthly annuity which is one
146 twelfth of the amount of the member's accrued benefit which
147 is payable for the member's life. If the member dies before the
148 sum of the payments he or she receives equals his or her
149 accumulated contributions on the annuity starting date, the
150 named beneficiary shall receive in one lump sum the difference
151 between the accumulated contributions at the annuity starting
152 date and the total of the retirement income payments made to
153 the member.

154 (y) "Normal retirement age" means the first to occur of the
155 following:

156 (1) Attainment of age fifty years and the completion of
157 twenty or more years of service;

158 (2) While still in covered employment, attainment of at
159 least age fifty years, and when the sum of current age plus years
160 of service equals or exceeds seventy years;

161 (3) While still in covered employment, attainment of at
162 least age sixty years, and completion of five years of service; or

163 (4) Attainment of age sixty-two years and completion of
164 five or more years of service.

165 (z) "Partially disabled" means a member's inability to
166 engage in the duties of deputy sheriff by reason of any medi-
167 cally determinable physical or mental impairment that can be
168 expected to result in death or that has lasted or can be expected

169 to last for a continuous period of not less than twelve months.
170 A member may be determined partially disabled for the
171 purposes of this article and maintain the ability to engage in
172 other gainful employment which exists within the state but
173 which ability would not enable him or her to earn an amount at
174 least equal to two thirds of the annual compensation earned by
175 all active members of this plan during the plan year ending as
176 of the most recent thirtieth day of June, as of which plan data
177 has been assembled and used for the actuarial valuation of the
178 plan.

179 (aa) "Public employees retirement system" means the West
180 Virginia public employees' retirement system created by article
181 ten, chapter five of this code.

182 (bb) "Plan" means the West Virginia deputy sheriff death,
183 disability and retirement plan established by this article.

184 (cc) "Plan year" means the twelve-month period commencing
185 on the first day of July and ending the following thirtieth
186 day of June of any designated year.

187 (dd) "Regular interest" means the rate or rates of interest
188 per annum, compounded annually, as the board shall from time
189 to time adopt.

190 (ee) "Retirement income payments" means the annual
191 retirement income payments payable under the plan.

192 (ff) "Spouse" means the person to whom the member is
193 legally married on the annuity starting date.

194 (gg) "Surviving spouse" means the person to whom the
195 member was legally married at the time of the member's death
196 and who survived the member.

197 (hh) "Totally disabled" means a member's inability to
198 engage in substantial gainful activity by reason of any medi-
199 cally determined physical or mental impairment that can be
200 expected to result in death or that has lasted or can be expected
201 to last for a continuous period of not less than twelve months.

202 For purposes of this subdivision:

203 (1) A member is totally disabled only if his or her physical
204 or mental impairment or impairments is so severe that he or she
205 is not only unable to perform his or her previous work as a
206 deputy sheriff but also cannot, considering his or her age,
207 education and work experience, engage in any other kind of
208 substantial gainful employment which exists in the state
209 regardless of whether: (A) The work exists in the immediate
210 area in which the member lives; (B) a specific job vacancy
211 exists; or (C) the member would be hired if he or she applied
212 for work.

213 (2) "Physical or mental impairment" is an impairment that
214 results from an anatomical, physiological, or psychological
215 abnormality that is demonstrated by medically accepted clinical
216 and laboratory diagnostic techniques.

217 A member's receipt of social security disability benefits
218 creates a rebuttable presumption that the member is totally
219 disabled for purposes of this plan. Substantial gainful employ-
220 ment rebuts the presumption of total disability.

221 (ii) "Year of service". A member shall, except in his or her
222 first and last years of covered employment, be credited with
223 year of service credit based upon the hours of service performed
224 as covered employment and credited to the member during the
225 plan year based upon the following schedule:

226	Hours of Service	Year of Service Credited
227	Less than 500	0
228	500 to 999	1/3
229	1,000 to 1,499	2/3
230	1,500 or more	1

231 During a member's first and last years of covered employ-
232 ment, the member shall be credited with one twelfth of a year
233 of service for each month during the plan year in which the
234 member is credited with an hour of service. A member is not
235 entitled to credit for years of service for any time period during
236 which he or she received disability payments under section
237 fourteen or fifteen of this article. Except as specifically ex-
238 cluded, years of service include covered employment prior to
239 the effective date.

240 Years of service which are credited to a member prior to his
241 or her receipt of accumulated contributions upon termination of
242 employment pursuant to section thirteen of this article or
243 section thirty, article ten, chapter five of this code, shall be
244 disregarded for all purposes under this plan unless the member
245 repays the accumulated contributions with interest pursuant to
246 section twelve of this article or had prior to the effective date
247 made the repayment pursuant to section eighteen, article ten,
248 chapter five of this code.

§7-14D-5. Members.

1 (a) Any deputy sheriff first employed by a county in
2 covered employment after the effective date of this article shall
3 be a member of this retirement system and plan and does not
4 qualify for membership in any other retirement system adminis-
5 tered by the board, so long as he or she remains employed in
6 covered employment.

7 (b) Any deputy sheriff employed in covered employment on
8 the effective date of this article shall within six months of that
9 effective date notify in writing both the county commission in
10 the county in which he or she is employed and the board of his
11 or her desire to become a member of the plan: *Provided*, That
12 this time period is extended to the thirtieth day of January, one
13 thousand nine hundred ninety-nine, in accordance with the
14 decision of the supreme court of appeals in *West Virginia*
15 *Deputy Sheriffs' Association, et al v. James L. Simms, et al, No.*
16 *25212: Provided, however*, That any deputy sheriff employed
17 in covered employment on the effective date of this article has
18 an additional time period consisting of the ten-day period
19 following the day after which the amended provisions of this
20 section become law to notify in writing both the county
21 commission in the county in which he or she is employed and
22 the board of his or her desire to become a member of the plan.
23 Any deputy sheriff who elects to become a member of the plan
24 ceases to be a member or have any credit for covered employ-
25 ment in any other retirement system administered by the board
26 and shall continue to be ineligible for membership in any other
27 retirement system administered by the board so long as the
28 deputy sheriff remains employed in covered employment in this

29 plan: *Provided further*, That any deputy sheriff who elects
30 during the time period from July one, one thousand nine
31 hundred ninety-eight, to January thirtieth, one thousand nine
32 hundred ninety-nine, or who so elects during the ten-day time
33 period occurring immediately following the day after the day
34 the amendments made during the one thousand nine hundred
35 ninety-nine legislative session become law, to transfer from the
36 public employees retirement system to the plan created in this
37 article shall contribute to the plan created in this article at the
38 rate set forth in section seven of this article retroactive to the
39 first day of July, one thousand nine hundred ninety-eight. Any
40 deputy sheriff who does not affirmatively elect to become a
41 member of the plan continues to be eligible for any other
42 retirement system as is from time to time offered to other
43 county employees but is ineligible for this plan regardless of
44 any subsequent termination of employment and rehire.

45 (c) Any deputy sheriff who was employed as a deputy
46 sheriff prior to the effective date, but was not employed on the
47 effective date of this article, shall become a member upon
48 rehire as a deputy sheriff. For purposes of this section, the
49 member's years of service and credited service prior to the
50 effective date shall not be counted for any purposes under this
51 plan unless: (1) The deputy sheriff has not received the return
52 of his or her accumulated contributions in the public employees
53 retirement fund system pursuant to section thirty, article ten,
54 chapter five of this code; or (2) the accumulated contributions
55 returned to the member from the public employees retirement
56 system have been repaid pursuant to section twelve of this
57 article. If the conditions of subdivision (1) or (2) of this
58 subsection are met, all years of the deputy sheriff's covered
59 employment shall be counted as years of service for the
60 purposes of this article. Each transferring deputy sheriff shall be
61 given credited service for the purposes of this article for all
62 covered employment transferred from the public employees
63 retirement system regardless of whether such credited service
64 (as that term is defined in section two, article ten, chapter five
65 of this code) was earned as a deputy sheriff. All service in the
66 public employees retirement system accrued by a transferring

67 deputy sheriff shall be transferred into the plan created by this
68 article and the transferring deputy sheriff shall be given the
69 same credit for the purposes of this article for all such covered
70 service which is transferred from the public employees retire-
71 ment system as that transferring deputy sheriff would have
72 received from the public employees retirement system if such
73 transfer had not occurred. In connection with each deputy
74 sheriff receiving credit for prior employment provided in this
75 subsection, a transfer from public employees retirement system
76 to this plan shall be made pursuant to the procedures described
77 in section eight of this article.

78 (d) Once made, the election made under this section is
79 irrevocable. All deputy sheriffs first employed after the
80 effective date and deputy sheriffs electing to become members
81 as described in this section shall be members as a condition of
82 employment and shall make the contributions required by
83 section seven of this article.

§7-14D-7. Members' contributions; employer contributions.

1 There shall be deducted from the monthly salary of each
2 member and paid into the fund an amount equal to eight and
3 one-half percent of his or her monthly salary. Any active
4 member who has concurrent employment in an additional job
5 or jobs and such additional employment requires the deputy
6 sheriff to be a member of another retirement system which is
7 administered by the consolidated public retirement board
8 pursuant to article ten-d, chapter five of this code shall contrib-
9 ute to the fund the sum of eight and one-half percent of his or
10 her monthly salary earned as a deputy sheriff as well as the sum
11 of eight and one-half percent of his or her monthly salary
12 earned from any additional employment which additional
13 employment requires the deputy sheriff to be a member of
14 another retirement which is administered by the consolidated
15 public retirement board pursuant to article ten-d, chapter five of
16 this code. An additional nine and one-half percent of the
17 monthly salary of each member shall be paid to the fund by the
18 county commission of the county in which the member is
19 employed in covered employment. If the board finds that the

20 benefits provided by this article can be actually funded with a
21 lesser contribution, then the board shall reduce the required
22 member and employer contributions proportionally.

§7-14D-8. Transfer from public employees retirement system.

1 (a) The consolidated retirement board shall, within ninety
2 days of the effective date of the transfer of a deputy sheriff
3 from the public employees retirement system to the plan,
4 transfer assets from the public employees retirement system
5 trust fund into the West Virginia deputy sheriff trust fund.

6 (b) The amount of assets to be transferred for each transfer-
7 ring deputy sheriff shall be computed as of the first day of July,
8 one thousand nine hundred ninety-eight, using the actuarial
9 valuation assumptions in effect for the first day of July, one
10 thousand nine hundred ninety-eight, actuarial valuation of
11 public employees retirement system, and updated with seven
12 and one-half percent annual interest to the date of the actual
13 asset transfer. The market value of the assets of the transferring
14 deputy sheriff in the public employees retirement system shall
15 be determined as of the end of the month preceding the actual
16 transfer. To determine the computation of the asset share to be
17 transferred the board shall:

18 (1) Compute the market value of the public employees
19 retirement system assets;

20 (2) Compute the accrued liability for all public employees
21 retirement system retirees, beneficiaries, disabled retirees and
22 terminated inactive members;

23 (3) Reduce the market value of public employees retirement
24 system assets by the accrued liability determined in subdivision
25 (2) of this subsection;

26 (4) Compute the entry age method accrued liability for all
27 active public employees retirement system members;

28 (5) Compute the share of accrued liability as determined
29 pursuant to subdivision (4) of this subsection, that is attribut-
30 able to those deputy sheriffs in public employees retirement
31 system who have elected to transfer to the plan;

32 (6) Compute the percentage of active's accrued liability
33 computed to the deputy sheriffs by dividing subdivision (5) by
34 subdivision (4) of this subsection;

35 (7) Determine the asset share to be transferred from public
36 employees retirement system to the plan by multiplying
37 subdivision (3) times subdivision (6) of this subsection.

38 (c) Once a deputy sheriff has elected to transfer from the
39 public employees retirement system, transfer of that amount as
40 calculated in accordance with the provisions of subsection (b)
41 of this section by the public employees retirement system shall
42 operate as a complete bar to any further liability to the transfer-
43 ring from the public employees retirement system, and consti-
44 tutes an agreement whereby the transferring deputy sheriff
45 forever indemnifies and holds harmless the public employees
46 retirement system from providing him or her any form of
47 retirement benefit whatsoever until such time as that deputy
48 sheriff obtains other employment which would make him or her
49 eligible to re-enter the public employees retirement system with
50 no credit whatsoever for the amounts transferred to the deputy
51 sheriff's retirement system.

52 (d) The board shall cause a judicial determination to be
53 made regarding the transfer of assets from the public employees
54 retirement system to the deputy sheriff's retirement system by
55 causing a suit to be filed in the supreme court of this state
56 seeking a writ of mandamus on or before the thirty-first day of
57 July, one thousand nine hundred ninety-eight.

58 (e) Any deputy sheriff who elected, on or before the
59 thirtieth day of January, one thousand nine hundred ninety-nine,
60 to transfer to the plan created by this article, has until the first
61 day of January, two thousand, to pay any amounts required by
62 section seven of this article as a result of the deputy sheriff's
63 transfer to the deputy sheriff retirement fund.

§7-14D-9. Retirement; commencement of benefits.

1 A member may retire and commence to receive retirement
2 income payments on the first day of the calendar month
3 coincident with or next following the later of the date the

4 member ceases employment and the date the member attains
5 early or normal retirement age, in an amount as provided under
6 section eleven of this article, by filing with the board his or her
7 voluntary petition in writing for retirement: *Provided*, That
8 retirement income payments shall commence no later than the
9 first day of April following the member's seventy and one-half
10 year birthday or the cessation of covered employment, which-
11 ever later occurs. Upon receipt of the petition, the board shall
12 promptly provide the member with an explanation of his or her
13 optional forms of retirement benefits and upon receipt of
14 properly executed forms from the member, the board shall
15 process member's request for and commence payments as soon
16 as administratively feasible.

§7-14D-11. Retirement benefits.

1 This section provides for the adjustment of a member's
2 accrued benefit to reflect the difference in age, in years and
3 months, between the member's annuity starting date and the
4 date the member attains normal retirement age. This age
5 adjustment shall be made based upon the normal form of
6 benefit and shall be the actuarial equivalent of the accrued
7 benefit at the member's normal retirement age. The member
8 shall receive the age adjusted retirement income in the normal
9 form or in an actuarial equivalent amount in an optional form
10 as provided under section twelve of this chapter. The first day
11 of the calendar month of birth shall be used in lieu of any birth
12 date that does not fall on the first day of a calendar month.

13 (a) *Normal retirement.* — A member whose annuity
14 starting date is the date the member attains normal retirement
15 age, is entitled to his or her accrued benefit without adjustment
16 for age at commencement. To the extent that a member's
17 starting date is later than his or her normal retirement age, the
18 amount of that member's retirement income benefit shall be
19 adjusted as provided in subsection (c) of this section.

20 (b) *Early retirement.* — A member who ceases covered
21 employment and has attained early retirement age while in
22 covered employment may elect to receive retirement income
23 payments commencing on the first day of the month coincident

24 with or following the date the member ceases covered employ-
25 ment. "Normal retirement age" for such a member is the first
26 day of the calendar month coincident with or next following the
27 month in which the member attains the age of fifty years. If the
28 member's annuity starting date is prior to the date the member
29 attains normal retirement age, his or her accrued benefit is
30 reduced to the actuarial equivalent benefit amount based on the
31 years and months by which his or her annuity starting date
32 precedes the date he or she attains normal retirement age. If the
33 member's annuity starting date is later than the date the
34 member attains the age of fifty years, the accrued benefit is
35 adjusted as provided in subsection (c) of this section.

36 (c) *Late retirement.* — A member whose annuity starting
37 date is later than the date the member attains normal retirement
38 age shall receive retirement income payments in the normal
39 form which is the actuarial equivalent of the benefit to which he
40 or she would have been entitled had the retirement income
41 payments commenced at the member's normal retirement age.

42 (d) Retirement benefits shall be paid monthly in an amount
43 equal to one twelfth of the retirement income payments elected
44 and at those times established by the board. Notwithstanding
45 any other provision of the plan, a member who is married on
46 the annuity starting date will receive his or her retirement
47 income payments in the form of a sixty-six and two-thirds
48 percent joint and survivor annuity with his or her spouse unless
49 prior to the annuity starting date the spouse waives the form of
50 benefit.

§7-14D-17. Prior disability.

1 Any deputy sheriff who became totally disabled as a result
2 of illness or injury incurred in the line of duty prior to the
3 effective date of this article may be a member of the plan at his
4 or her election and is entitled to disability, death and retirement
5 benefits under this article in lieu of any other disability, death
6 or retirement benefits provided solely in conjunction with a
7 retirement system of this state or his or her county of employ-
8 ment: *Provided*, That the deputy sheriff would have been
9 eligible for disability under section fourteen of this article had

10 that section been in effect at the time of the disability. The
11 amounts of the benefits shall be determined as if the disability
12 first commenced after the effective date of this article with
13 monthly compensation equal to that average monthly compen-
14 sation which the member was receiving in the plan year prior to
15 the initial disability. For the purposes of this section, benefits
16 paid pursuant to chapter twenty-three of this code are not death
17 or retirement benefits provided solely in conjunction with a
18 retirement system of this state or county of this state.

§7-14D-21. Burial benefit.

1 Any member who dies as a result of any service related
2 illness or injury after the effective date is entitled to a lump sum
3 burial benefit of five thousand dollars. If the member is
4 married, the burial benefit will be paid to the member's spouse.
5 If the member is not married, the burial benefit will be paid to
6 the member's estate for the purposes of paying burial expenses,
7 settling the member's final affairs, or both. Any unspent
8 balance shall be distributed as a part of the member's estate. If
9 the member is not entitled to a death benefit under sections
10 eighteen and nineteen of this article, then if greater, the amount
11 payable to the member's estate shall be his or her accumulated
12 contributions.

§7-14D-24. Service as sheriff.

1 (a) Any member who after the effective date of this article
2 is elected sheriff of a county in West Virginia may elect to
3 continue as a member in this plan by paying the amounts
4 required by section seven of this article. Upon the election,
5 service as a sheriff shall be treated as covered employment and
6 the sheriff is not entitled to any credit for that service under any
7 other retirement system of the state.

8 (b) Any person, who before the effective date of this article
9 was elected sheriff of a county in West Virginia, and who,
10 immediately prior to being so elected sheriff, was a deputy
11 sheriff with at least twenty years of credited service under the
12 public employees retirement system, with at least sixteen of
13 those twenty years having been earned as a deputy sheriff, may

14 elect to become a member of this plan by paying the amounts
15 required by section seven of this article. Upon such election,
16 service shall be transferred from the public employees retire-
17 ment system pursuant to section eight of this article: *Provided,*
18 That any service as a sheriff shall be treated as covered employ-
19 ment under this article and the sheriff is not entitled to any
20 credit for that service as a sheriff or the prior service as a
21 deputy sheriff under any other retirement system of the state.
22 Persons making the election provided for in this subsection
23 shall do so within ten days of taking office as sheriff or within
24 ten days of the effective date of this provision.

**§7-14D-29. Effective date; report to joint committee on govern-
ment and finance; special starting date for benefits.**

1 (a) The provisions of this article become effective the first
2 day of July, one thousand nine hundred ninety-eight: *Provided,*
3 That no payout of any benefits may be made to any person prior
4 to the first day of January, two thousand: *Provided, however,*
5 That members who retired due to a disability may begin
6 receiving the benefits at the rate and in the amount specified in
7 either section fourteen or section fifteen of this article, as the
8 case may be, from this fund after the thirtieth day of June, one
9 thousand nine hundred ninety-nine: *Provided further,* That until
10 the thirtieth day of June, one thousand nine hundred ninety-
11 nine, those members who retired due to a disability may draw
12 benefits from this fund at the rate and in the amount set forth in
13 section twenty-five, article ten, chapter five of this code.

14 (b) During the eighteen-month period before the payout of
15 benefits begins, the joint committee on government and finance
16 shall cause an interim study or studies to be conducted on
17 potential effects of the implementation of this retirement
18 system, including, but not limited to, potential funding mecha-
19 nisms to provide health insurance coverage for retirees in the
20 fifty to fifty-five age group: *Provided,* That after the effective
21 date of this provision, the director of the public employees
22 insurance agency shall promulgate a rule governing the funding
23 of health insurance coverage for retirees under the plan pro-
24 vided for in this article who are in the fifty to fifty-five year age

25 group, which rule may be filed as an emergency rule: *Provided,*
26 *however,* That any rule filed as an emergency rule pursuant to
27 this subsection shall be refiled at the earliest opportunity as a
28 legislative rule for review and promulgation in accordance with
29 the provisions of article three, chapter twenty-nine-a of this
30 code.

CHAPTER 92

(Com. Sub. for S. B. 666 — By Senator Bowman)

[Passed March 9, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-two-a, all relating to the West Virginia design-build procurement act; short title; applications; definitions; public policy; conditions for contract; design-build board and members; appointments; meetings; authority to promulgate rules; duties of the board; design-build regulations; design-builder qualifications; rights and powers; development of performance criteria; scope of project; solicitation of proposals; proposals; acceptance of design-build proposal; construction and final certification; withdrawal of proposals; termination provision; and severability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22A. DESIGN-BUILD PROCUREMENT ACT.

- §5-22A-1. Short title; applicability of article.
- §5-22A-2. Definitions.
- §5-22A-3. Public policy; conditions for contract.
- §5-22A-4. Design-build board and members; appointments; meetings; authority to promulgate rules.

- §5-22A-5. Duties of board.
- §5-22A-6. Design-build regulations.
- §5-22A-7. Design-builder qualifications; rights and powers.
- §5-22A-8. Development of performance criteria.
- §5-22A-9. Scope of project.
- §5-22A-10. Solicitation of proposals.
- §5-22A-11. Proposals.
- §5-22A-12. Acceptance of design-build proposal.
- §5-22A-13. Construction and final certification.
- §5-22A-14. Withdrawal of proposals.
- §5-22A-15. Termination provision.
- §5-22A-16. Severability.

§5-22A-1. Short title; applicability of article.

1 This article shall be known and may be cited as the “West
2 Virginia Design-Build Procurement Act.”

3 The provisions of this article must be used to select design-
4 builders for authorized projects that are constructed and owned,
5 potentially owned, or ultimately owned by any agency.

§5-22A-2. Definitions.

1 For the purpose of this article:

2 “Agency” means all state departments, agencies, authori-
3 ties, quasi-public corporations and all political subdivisions,
4 including cities, counties, boards of education and public
5 service districts and the individual representatives of the agency
6 appointed to oversee or supervise the project.

7 “Board” means the review board established pursuant to
8 section four of this article to determine whether a public project
9 can be constructed under the design-build method of construc-
10 tion.

11 “Design-build” is defined as providing responsibility within
12 a single contract for design, construction or alteration of a
13 building or buildings, together with incidental approaches,
14 structures and facilities to be constructed, where services within
15 the scope of the practice of professional engineering or archi-
16 tecture, as defined by the laws of the state of West Virginia, are
17 performed by an engineer or architect duly registered in the
18 state of West Virginia and where services within the scope of

19 construction contracting, as defined by the laws of the state of
20 West Virginia, are performed by a contractor qualified and
21 licensed under the applicable statutes. The design-build method
22 of construction may not be used for any other construction
23 projects, such as highway, water or sewer projects.

24 “Design-build contract” means the contract between an
25 agency and a design-builder to furnish the architecture, engi-
26 neering, and related services as required, for a given public
27 project, and to furnish the labor, materials and other construc-
28 tion of services for the same public project. A design-build
29 contract may be conditional upon subsequent refinements in
30 scope and price, and may permit the agency to make changes in
31 the scope of the project without invalidating the design-build
32 contract.

33 “Design-builder” means the entity, whether natural person,
34 partnership, joint venture, corporation, professional corporation,
35 business association, or other legal entity, that proposes to
36 design and construct any public project governed by the
37 procedures of article six, section seven of this chapter and this
38 article.

39 “Firm” means any individual, firm, partnership, corpora-
40 tion, limited liability company, limited liability partnership,
41 association, joint venture, or other legal entity permitted by law
42 to practice engineering, architecture or construction contracting
43 in the state of West Virginia.

44 “Performance criteria” means the requirements for the
45 public project, including as appropriate, aesthetics, capacity,
46 durability, production standard, ingress and egress requirements
47 or other criteria for the intended use of the public project,
48 expressed in performance-oriented drawings and specifications
49 suitable to allow the design-builder to make a proposal.

50 “Performance criteria developer” means an architect or
51 engineer duly registered in accordance with the laws of this
52 state and if applicable, the architect’s or engineer’s employer,
53 company, partners, joint venturers, affiliates or subcontractors
54 retained by the agency to develop performance criteria.

55 “Project” means that project described in the public
56 announcement.

57 “Proposal” means an offer to enter into a design-build
58 contract, as further defined in this article.

59 “Request for proposals” means the document or publication
60 whereby an agency solicits proposals for a design-build
61 contract.

62 “Substantial completion” means the stage in the progress of
63 the work when the work or designated portion thereof is
64 sufficiently complete in accordance with the design-build
65 contract so the agency can occupy or utilize the work for its
66 intended use.

67 “Work” means the construction and services required by the
68 design-build contract, whether completed or partially com-
69 pleted, and includes all other labor, materials, equipment and
70 services provided or to be provided by the design-builder to
71 fulfill the design-builder’s obligations. The work may constitute
72 the whole or a part of the project.

§5-22A-3. Public policy; conditions for contract.

1 Recognizing that the design-bid-build method provides a
2 viable delivery method for public projects, it is also the public
3 policy of this state to permit an agency to enter into design-
4 build contracts for public projects.

5 An agency may not enter into a design-build contract for
6 public project unless:

7 (1) The department of administration or appropriate
8 governing body, prior to issuing requests for proposals,
9 promulgates and publishes rules consistent with this article for
10 the solicitation and award of design-build contracts and shall
11 adhere to this article and those rules;

12 (2) The agency, for each public project or projects procured
13 pursuant to this article, must determine that it is in the best
14 interest of the public to enter into a design-build contract to
15 complete the public project or projects; and

16 (3) The board established pursuant to section four of this
17 article determines that the public project is appropriate as a
18 design-build project utilizing the mandatory criteria as provided
19 for in section five of this article.

**§5-22A-4. Design-build board and members; appointments;
meetings; authority to promulgate rules.**

1 (a) There is hereby created the design-build board and shall
2 be composed of the following nine members who are to be
3 appointed by the governor with the advice and consent of the
4 Senate: Two contractors licensed in the state of West Virginia;
5 one architect licensed in the state of West Virginia and one
6 professional engineer licensed in the state of West Virginia; the
7 secretary of the department of administration, ex officio; one
8 representative from labor and three other members of the public
9 at large. Members of the board are not entitled to compensation
10 for services performed as members. Each member of the board
11 must take and subscribe to the oath or affirmation required
12 pursuant to section five, article IV of the Constitution of West
13 Virginia.

14 (b) Within thirty days of the effective date of this section,
15 the governor shall make the initial appointments to the design-
16 build board. Of the initial appointments to the board, four will
17 be for a term ending two years after the effective date of this
18 section and four for a term ending three years after the effective
19 date of this section. Thereafter, terms of office are for three
20 years, each term ending on the same day of the same month of
21 the year as did the term which it succeeds. Each member will
22 hold office from the date of his or her appointment or until his
23 or her successor qualifies for office. When a vacancy occurs as
24 a result of death, resignation or removal in the membership of
25 the board, it must be filled by an appointment within thirty days
26 of the vacancy for the unexpired portion of the term in the same
27 manner as original appointments.

28 (c) The board must meet within thirty days of the initial
29 appointments to the board at a time and place to be determined
30 by the governor, who must designate a member to preside at
31 that meeting until a chairman is elected. At its first meeting, the

32 board shall elect a chairman and such other officers as are
33 necessary. The board shall within ninety days after its first
34 meeting adopt rules for its procedures. Five members of the
35 board constitute a quorum. Except as may otherwise be
36 provided in this section, a majority of the total membership is
37 necessary to act at all times. Meetings of the board shall be
38 upon the call of the secretary of the department of administra-
39 tion.

40 (d) The board shall promulgate rules to carry out the
41 purposes of this article. Any rules adopted by the board prior to
42 the first day of October, one thousand nine hundred ninety-nine,
43 are exempt from the provisions of article three, chapter twenty-
44 nine-a of this code: *Provided*, That the board shall file a copy
45 of any rule so exempted from the provisions of chapter twenty-
46 nine-a of this code with the legislative rule-making review
47 committee created pursuant to section eleven, article three of
48 said chapter prior to the thirtieth day of November, one
49 thousand nine hundred ninety-nine.

§5-22A-5. Duties of board.

1 Prior to allowing an agency to enter into design-build
2 contracts for public projects, the board must determine that the
3 public project is appropriate as a design-build project in
4 accordance with all of the following:

5 (1) The agency requires a project design and construction
6 time line that is faster than the traditional design-bid-build
7 process would allow;

8 (2) The project requires close coordination of design and
9 construction expertise or an extreme amount of coordination;
10 and

11 (3) The agency requires early cost commitments.

§5-22A-6. Design-build regulations.

1 The department of administration shall adopt rules consis-
2 tent with this article for the award of design-build contracts.
3 Any rules so adopted by the department of administration prior
4 to the first day of October, one thousand nine hundred ninety-

5 nine, are exempt from the provisions of article three, chapter
6 twenty-nine-a of this code: *Provided*, That the department of
7 administration shall file a copy of any rule so exempted from
8 the provisions of chapter twenty-nine-a of this code with the
9 legislative rule-making review committee created pursuant to
10 section eleven, article three of said chapter prior to the thirtieth
11 day of November, one thousand nine hundred ninety-nine. The
12 rules must consist of, but not be limited to:

13 (1) The procedures to select or designate a performance
14 criteria developer and prepare performance criteria;

15 (2) The procedures for the preparation and contents of
16 requests for proposals;

17 (3) The procedures for preparing and submitting proposals;

18 (4) The procedures for evaluating proposals;

19 (5) The procedures for negotiations between the agency and
20 those submitting proposals prior to the acceptance of a pro-
21 posal, if any such negotiations are contemplated;

22 (6) The procedures for awarding and executing design-build
23 contracts;

24 (7) The procedures for awarding design-build contracts in
25 the event of public emergencies as defined in the applicable
26 statutes; and

27 (8) The procedures for acting on formal protests relating to
28 the solicitation or award of design-build contracts.

§5-22A-7. Design-builder qualifications; rights and powers.

1 Each design-builder must be duly licensed and registered to
2 do business in this state and be a licensed architect or engineer
3 or a general contractor.

4 Each design-builder must have the following rights and
5 powers:

6 (1) The design-builder must assign or sublet the responsi-
7 bility for professional design services to a firm duly licensed
8 and registered to provide professional design services in this

9 state. The firm must carry, at all times, professional design
10 liability insurance in an appropriate amount as designated by
11 the agency. This professional may be a full or part-time
12 employee of the design-builder.

13 (2) The design-builder must assign or sublet responsibility
14 for construction or other services requiring a contractor's
15 license to persons or entities duly registered, licensed or
16 otherwise qualified to provide those services in this state.

17 (3) The design-builder may contract with the agency to
18 provide professional services or construction services that the
19 design-builder is not itself licensed, registered or otherwise
20 authorized to provide so long as those services are assigned or
21 sublet to a firm that is a member of the design-build team and
22 is registered, licensed and qualified to provide those services.

§5-22A-8. Development of performance criteria.

1 (a) Each request for proposal must contain performance
2 criteria prepared by an architect or engineer duly registered in
3 accordance with the laws of this state, referred to as the
4 "performance criteria developer." If the performance criteria
5 developer is not an employee of the agency, then the perfor-
6 mance criteria developer and his or her employer, company,
7 partners, joint venturers, affiliates or consultants are disquali-
8 fied from submitting a proposal to enter into the design-build
9 contract and the design-builder will not be permitted to delegate
10 services under the design-build contract to the performance
11 criteria developer or its consultants. The performance criteria
12 developer must be retained by the agency through final comple-
13 tion of the project to monitor adherence to the performance
14 criteria.

15 (b) The performance criteria developer may be an employee
16 of the agency, and to the extent allowed by law may delegate
17 the development of specific aspects of the design criteria to an
18 architect or engineer duly registered with this state and his or
19 her employer, company, partners, joint venturers, affiliates or
20 other consultants. If the performance criteria developer is not an
21 employee of the agency, the performance criteria developer

22 shall be selected in accordance with the requirements of article
23 one, chapter five-g of this code.

§5-22A-9. Scope of project.

1 (a) The agency, in consultation with the performance
2 criteria developer, shall determine the scope and level of detail
3 required for the performance criteria. The performance criteria
4 must be detailed enough to permit qualified persons to submit
5 proposals in accordance with the request for proposals, given
6 the nature of the public project and the level of design to be
7 provided in the proposal.

8 (b) The performance criteria developer shall review the
9 program furnished by the agency to ascertain the requirements
10 of the project and shall arrive at a mutual understanding of such
11 requirements with the agency.

12 (c) Based on the mutually agreed-upon program, schedule
13 and construction budget requirements, the performance criteria
14 developer shall prepare for approval by the agency documents
15 indicating the scale and relationship of project components.

§5-22A-10. Solicitation of proposals.

1 Proposals must be solicited from not less than three design-
2 builders. A request for proposal must be prepared for each
3 design-build contract and shall consist of, but not be limited to:

4 (1) The identity of the agency which will award the design-
5 build contract;

6 (2) The procedures to be followed for submitting proposals,
7 the criteria for evaluation of proposals and their relative weight,
8 and the procedures for making awards, including a reference to
9 the requirements of this article, the rules promulgated herein
10 and any regulations pertaining to the agency;

11 (3) The proposed terms and conditions for the design-build
12 contract;

13 (4) The performance criteria;

14 (5) The description of the drawings, specifications or other
15 submittals to be submitted with the proposal, with guidance as

16 to the form and level of completeness of the drawings, specifi-
17 cations or submittals that will be acceptable;

18 (6) A schedule for planned commencement and completion
19 of the design-build contract;

20 (7) Budget limits for the design-build contract, if any;

21 (8) Design-builder qualifications; and

22 (9) Requirements for performance bonds, payment bonds
23 and insurance.

24 The request for proposals may include any other informa-
25 tion that the agency, at its discretion, chooses to supply,
26 including, but not limited to, surveys, soils reports, drawings or
27 models of existing structures, environmental studies, photo-
28 graphs or references to public records.

29 Notice of requests for proposals must be advertised as
30 prescribed by the procedures utilized by the purchasing division
31 pursuant to article three, chapter five-a of this code.

§5-22A-11. Proposals.

1 Proposals must be sealed and may not be opened until
2 expiration of the time established for making proposals as set
3 forth in the request for proposals. Requests for proposals must
4 require and be accompanied by a bid bond not to exceed five
5 percent of the maximum cost of the design-build contract, as
6 established by the proposal. In the event the proposal is
7 accepted and the design-builder fails to execute the design-build
8 contract, the bid bond will be forfeited.

9 To the extent required, the request for proposal must
10 identify each firm to whom the design-builder proposes to
11 sublet obligations under the design-build contract. At a mini-
12 mum, each proposal must identify each firm responsible for the
13 design and primary construction and their affiliation to the
14 design-builder. Proposals must establish a cost of the design-
15 build contract that will not be exceeded if the proposal is
16 accepted without change. After award of the proposal, the
17 maximum cost of the proposal may be converted to fixed prices

18 by negotiated agreement between the agency and the design-
19 builder.

20 Prior to the award of the design-build contract, all draw-
21 ings, specifications and other information submitted in the
22 proposal shall remain the property of the design-builder
23 submitting the proposal. Additionally, prior to the award of the
24 design-build contract, the agency shall maintain the secrecy and
25 confidentiality of all information contained in the proposal.
26 Once a proposal is accepted, the disclosure of the proposal and
27 the information in the proposal, and the ownership of the
28 drawings, specifications and information therein, shall be
29 determined in accordance with existing law and the terms of the
30 design-build contract.

31 Proposals may not be amended during the review process.

32 At the discretion of the agency, a stipend may be paid to the
33 design-builders not ultimately selected.

§5-22A-12. Acceptance of design-build proposal.

1 Proposals must be submitted to the purchasing division or
2 agency, as applicable. Clarifications may be required to ensure
3 conformance of proposals with the performance criteria. In
4 seeking clarifications, the performance criteria developer may
5 not reveal any aspect of any proposal to any other design-
6 builder. The performance criteria developer must certify each
7 proposal in regard to compliance with the performance criteria.
8 No proposal or design-build contract may be accepted unless
9 the purchasing division or agency, as applicable, determines
10 that there was adequate competition for the contract.

11 After receiving and evaluating all proposals submitted
12 based upon the criteria and procedures set forward in the
13 request for proposals, the purchasing division or agency, as
14 applicable, must accept the proposal that receives the best
15 score, as set forth in the rules provided for in section six of this
16 article.

17 Acceptance of a proposal shall be by written notice to the
18 design-builder which submitted the accepted proposal. At the

19 same time notice of acceptance is delivered, the purchasing
20 division or agency, as applicable, shall also inform, in writing,
21 the unsuccessful design-builders that their proposals were not
22 accepted. When a design-builder receives notification that its
23 proposal was not accepted, the design-builder may, within three
24 days after receipt of such notification, request in writing a copy
25 of the best score and all other factors used or considered in the
26 selection process.

§5-22A-13. Construction and final certification.

1 The performance criteria developer must visit the site at
2 intervals appropriate to the stage of construction to become
3 generally familiar with the progress and quality of the work
4 completed and to determine in general if the work is being
5 performed in a manner indicating that work, when completed,
6 will be in accordance with the design-build contract. On the
7 basis of such on-site observations the performance criteria
8 developer shall keep the agency informed of the progress of the
9 work on the project and shall endeavor to guard the agency
10 against defects and deficiencies in such work.

11 The performance criteria developer shall assist the agency
12 in determining whether the agency shall reject work which does
13 not conform to the design-build contract.

14 The performance criteria developer shall assist the agency
15 in conducting inspections, to determine the date or dates of
16 substantial completion and of final completion, and shall review
17 and approve, or take other appropriate action regarding the
18 contractor's list of items to be completed or corrected, and shall
19 forward the list to the agency for final disposition. The perfor-
20 mance criteria developer shall issue to the agency a final
21 certification in writing with respect to final acceptance of the
22 project.

§5-22A-14. Withdrawal of proposals.

1 At the option of the design-builder, proposals may be
2 withdrawn for any reason at any time prior to their opening
3 without forfeiture of the security. Once opened, a proposal may
4 be withdrawn for any reason prior to acceptance with forfeiture
5 of the bid bond.

§5-22A-15. Termination provision.

- 1 Pursuant to the provisions of article ten, chapter four of this
- 2 code, the design-build board shall continue to exist until the
- 3 first day of July, two thousand four.

§5-22A-16. Severability.

- 1 The provisions of subsection (cc), section ten, article two,
- 2 chapter two of this code shall apply to the provisions of this
- 3 chapter to the same extent as if the same were set forth in
- 4 extension herein.



CHAPTER 93

(S. B. 138 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 2, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six-a, article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing the requirement that the division of vocational rehabilitation transfer disproportionate share hospital funds received by the division to the medical services trust fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10A. REHABILITATION SERVICES.**§18-10A-6a. West Virginia rehabilitation services special account; expenditures.**

- 1 (a) There is hereby established in the state treasury a
- 2 separate account which shall be designated the "West Virginia

3 rehabilitation services special account". The director of
4 rehabilitation services shall deposit promptly into the account
5 all fees received for services provided by the West Virginia
6 rehabilitation center from whatever source, including the
7 federal government, state government or from other third-party
8 payers or personal payments.

9 (b) A five-year West Virginia rehabilitation services long-
10 range plan shall be developed by the director and shall be
11 adopted by the secretary of education and the arts. The West
12 Virginia rehabilitation services' long-range plan shall be
13 updated and revised at least every two years.

14 (c) The director is authorized to expend the moneys
15 deposited in the West Virginia rehabilitation services special
16 account in accordance with federal laws and regulations and
17 with the laws of this state as is necessary for the development
18 of the five-year long-range plan and subsequent revisions.

19 (d) The director is authorized to expend the moneys
20 deposited in the West Virginia rehabilitation services special
21 account as provided in the long-range plan at such times and in
22 such amounts as the director determines to be necessary for the
23 purpose of maintaining or improving the delivery of rehabilita-
24 tion services: *Provided*, That during the budget preparation
25 period which occurs prior to the convening of the Legislature,
26 the director shall submit for inclusion in the executive budget
27 document and budget bill his recommended capital expendi-
28 tures, recommended priorities, estimated costs and request for
29 appropriations for maintaining or improving the delivery of
30 vocational rehabilitation services.

31 (e) The director shall make an annual report to the Legisla-
32 ture on the status of the West Virginia rehabilitation services
33 special account, including the previous year's expenditures and
34 projected expenditures for the next year.

CHAPTER 94

(S.B. 705 — By Senators Wooton, Ball, Dittmar, Hunter, McCabe, Minard, Mitchell, Ollverlo, Redd, Ross, Snyder, Deem and McKenzie)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two-c, 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 four-c, relating to creating a special revenue fund, designated the “domestic violence legal services fund”; authorizing receipt of certain moneys; and prohibiting state appropriations for two years.

Be it enacted by the Legislature of West Virginia:

That article two-c, 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 four-c, to read as follows:

ARTICLE 2C. DOMESTIC VIOLENCE ACT.

§48-2C-4c. Domestic violence legal services fund.

1 There is hereby established in the state treasury a special
2 revenue account, designated as the “domestic violence legal
3 services fund”, which shall be an appropriated fund for receipt
4 of grants, gifts, fees, or federal or state funds designated for
5 legal services for domestic violence victims: *Provided*, That
6 state funds may not be appropriated prior to fiscal year two
7 thousand two. Expenditures from the fund shall be limited to
8 attorneys employed by domestic violence shelters, or employed
9 by nonprofit agencies which establish a collaborative relation-
10 ship with a domestic violence shelter, that provide civil legal
11 services to victims of domestic violence.

CHAPTER 95

(Com. Sub. for S. B. 431 — By Senators Jackson, Tomblin, Mr. President, Craigo, Wooton, Chafin, Plymale, Prezioso, Bailey, Hunter, Minard, Walker, Snyder, Anderson, Dittmar, Kessler, Edgell, Sharpe, Ross, Schoonover, Love, Mitchell, Ball, Unger, Redd, McCabe, McKenzie, Sprouse and Minear)

[Passed March 21, 1999; in effect July 1, 1999. Approved by the Governor.]

AN ACT to amend and reenact section twelve-a, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter eighteen-c of said code by adding thereto a new article, designated article seven, all relating to student scholarships, aid and the prepaid tuition trust; clarifying the income tax modification; establishing the “West Virginia providing real opportunities for maximizing in-state student excellence scholarship program”; setting forth findings and purpose; defining terms; appointment of board; setting forth the powers of the board; authorizing the board to promulgate rules; setting forth the minimum requirements for the scholarship; creating the scholarship fund; and creating the scholarship program supplemental fund.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.

18C. Student Loans; Scholarships and State Aids

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

***§11-21-12a. Additional modification reducing federal adjusted gross income.**

*** Clerk's Note:** This section was also amended by HB 2693 (Chapter 274), which passed prior to this act.

1 In addition to amounts authorized to be subtracted from
2 federal adjusted gross income pursuant to subsection (c),
3 section twelve of this article, any payment made under a
4 prepaid tuition contract as provided under section seven, article
5 thirty, chapter eighteen of this code, is also an authorized
6 modification reducing federal adjusted gross income, but only
7 to the extent the amount is not allowable as a deduction when
8 arriving at the taxpayer's federal adjusted gross income for the
9 taxable year in which the payment is made. This modification
10 is available regardless of the type of return form filed. The
11 taxpayer may also elect to carry forward the modification over
12 a period not to exceed five taxable years, beginning in the
13 taxable year in which the payment was made.

CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

ARTICLE 7. WEST VIRGINIA PROVIDING REAL OPPORTUNITIES FOR MAXIMIZING IN-STATE STUDENT EXCELLENCE SCHOLARSHIP PROGRAM.

§18C-7-1. Title.

§18C-7-2. Legislative findings and purpose.

§18C-7-3. Definitions.

§18C-7-4. Appointment of board of the PROMISE scholarship program; compensation; proceedings generally.

§18C-7-5. Powers of the board.

§18C-7-6. Requirements for rules promulgated by the board.

§18C-7-7. West Virginia PROMISE scholarship fund created.

§18C-7-8. PROMISE scholarship supplemental fund created; promulgation of rules.

§18C-7-1. Title.

1 This article shall be known and may be cited as the "West
2 Virginia providing real opportunities for maximizing in-state
3 student excellence (PROMISE) scholarship program".

§18C-7-2. Legislative findings and purpose.

1 The Legislature hereby finds and declares that:

2 (a) The state's college-going rate does not compare
3 favorably with the member states of the southern regional
4 education board average, nor with the national average;

5 (b) West Virginia must have an educated work force in
6 order to attract and retain the high wage, high skill jobs of the
7 next century;

8 (c) The percentage of West Virginia's adult population over
9 the age of twenty-five with at least a bachelor's degree is only
10 fourteen percent and does not compare favorably with the
11 member states of the southern regional education board average
12 or with the national average;

13 (d) Increases in the level of education increases the income
14 earned by an individual which enhances his or her quality of
15 life;

16 (e) During the year one thousand nine hundred ninety-
17 seven, an individual holding a bachelor's degree had an average
18 earned income which was one hundred seventy-seven percent
19 of the average income earned by a high school graduate;

20 (f) Students at all levels should have an incentive to
21 perform at a high academic level;

22 (g) There is a need to provide parents with all tools possible
23 to aid them in helping their children understand the importance
24 of high achievement in high school and college;

25 (h) There is a financial need for many students who wish to
26 attend state institutions of higher education within the state;

27 (i) The West Virginia higher education grant program is a
28 vitally important source of financial assistance for needy
29 residents of the state and should continue to receive strong
30 financial support; and

31 (j) It is the intent of this article to establish a West Virginia
32 PROMISE scholarship program to deal effectively with the
33 findings set forth in this section.

§18C-7-3. Definitions.

1 (a) "Eligible institution" means:

2 (1) A state institution of higher education as is defined in
3 section two, article one, chapter eighteen-b of this code;

4 (2) Alderson-Broaddus College, Appalachian Bible
5 College, Bethany College, the College of West Virginia, Davis
6 and Elkins College, Ohio Valley College, Salem-Teikyo

7 University, the University of Charleston, West Virginia
8 Wesleyan College and Wheeling Jesuit University, all in West
9 Virginia: *Provided*, That if any institution listed in this subdivi-
10 sion is not regionally accredited, it shall not be included as an
11 eligible institution; or

12 (3) Any other regionally accredited institution in this state,
13 public or private, approved by the board.

14 (b) "Board" means the board of the West Virginia PROM-
15 ISE scholarship program as provided for in section four of this
16 article.

17 (c) "Tuition" means the quarter, semester or term charges
18 imposed by a state institution of higher education and all
19 mandatory fees required as a condition of enrollment by all
20 students.

**§18C-7-4. Appointment of board of the PROMISE scholarship
program; compensation; proceedings generally.**

1 (a) The board of the PROMISE scholarship program
2 consists of thirteen members and shall include the chancellor of
3 the university of West Virginia board of trustees; the chancellor
4 of the board of directors of the state college system; the state
5 superintendent of schools or his or her designee; the secretary
6 of education and the arts; the state treasurer or his or her
7 designee; the chair of the Senate committee on finance or his or
8 her designee who is a member of the committee; the chair of the
9 House of Delegates committee on finance or his or her designee
10 who is a member of the committee; the chair of the Senate
11 committee on education or his or her designee who is a member
12 of the committee; the chair of the House of Delegates commit-
13 tee on education or his or her designee who is a member of the
14 committee; and four other appointed members with knowledge,
15 skill and experience in an academic, business or financial field.
16 At least three of the four appointed members shall be residents
17 of the state. The four appointed members shall be appointed by
18 the governor with the advice and consent of the Senate. No
19 more than two of the four appointed members may be from the
20 same party. No more than two of the four appointed members
21 may be from the same congressional district.

22 (b) Appointed members shall serve a term of four years and
23 may be reappointed at the expiration of their terms. In the event
24 of a vacancy among appointed members, the governor shall
25 appoint a person representing the same interests to fill the
26 unexpired term. A person appointed to fill a vacancy shall be
27 appointed only for the remainder of that term and is eligible for
28 reappointment. Unless a vacancy occurs due to death, resigna-
29 tion or removal pursuant to subsection (e) of this section, an
30 appointed member of the board shall continue to serve until a
31 successor has been appointed and qualified as provided for in
32 subsection (a) of this section. Of the initial appointments, the
33 governor shall appoint one member to a one-year term, one
34 member to a two-year term, one member to a three-year term
35 and one member to a four-year term. Thereafter, all terms shall
36 be for four years.

37 (c) Members of the board shall serve without compensation,
38 but shall be reimbursed by the office of the secretary of
39 education and the arts for expenses, including travel expenses,
40 actually incurred by a member in the official conduct of the
41 business of the board at the same rate as is paid the employees
42 of the state.

43 (d) The secretary of education and the arts is the chairman
44 and presiding officer of the board. A majority of the members
45 of the board constitute a quorum for the transaction of the
46 board's business.

47 (e) The members appointed by the governor may be
48 removed by the governor for official misconduct, incompe-
49 tence, neglect of duty or gross immorality, and then only in the
50 manner prescribed by law for the removal by the governor of
51 the state elective officers in accordance with section five, article
52 six, chapter six of this code.

§18C-7-5. Powers of the board.

1 In addition to the powers granted by any other provision of
2 this article, the board has the powers necessary or convenient to
3 carry out the purposes and provisions of this article and the
4 powers delegated by any other law of the state or any executive

5 order of the state including, but not limited to, the following
6 express powers:

7 (a) To adopt and amend bylaws;

8 (b) To propose legislative rules for promulgation in
9 accordance with the provisions of article three-a, chapter
10 twenty-nine-a of this code to effectuate the purposes of this
11 article: *Provided*, That the board shall not promulgate emer-
12 gency rules;

13 (c) To invest any of its funds at the board's discretion, with
14 the West Virginia investment management board in accordance
15 with the provisions of article six, chapter twelve of this code.
16 Any investments made under this article shall be made with the
17 care, skill, prudence and diligence under the circumstances then
18 prevailing that a prudent person acting in a like capacity and
19 familiar with such matters would use in the conduct of an
20 enterprise of a like character and with like aims. Fiduciaries
21 shall diversify plan investments to the extent permitted by law
22 so as to minimize the risk of large losses, unless under the
23 circumstances it is clearly prudent not to do so;

24 (d) To execute contracts and other necessary instruments;

25 (e) To impose reasonable requirements for residency for
26 students applying for the PROMISE scholarship. However,
27 nothing in this subdivision may be construed to establish
28 residency requirements for matriculation or fee payment
29 purposes at state institutions of higher education;

30 (f) To contract for necessary goods and services, to employ
31 necessary personnel and to engage the services of private
32 persons for administrative and technical assistance in carrying
33 out the responsibilities of the scholarship program;

34 (g) To solicit and accept gifts, including bequests or other
35 testamentary gifts made by will, trust or other disposition,
36 grants, loans and other aids from any source or to participate in
37 any other way in any federal, state or local governmental
38 programs in carrying out the purposes of this article;

39 (h) To define the terms and conditions under which
40 scholarships shall be awarded with the minimum requirements
41 being set forth in section six of this article; and

42 (i) To establish other policies, procedures and criteria
43 necessary to implement and administer the provisions of this
44 article.

§18C-7-6. Requirements for rules promulgated by the board.

1 (a) The board shall propose rules which shall include at
2 least the following:

3 (1) A requirement that a scholarship will not pay an amount
4 that exceeds the cost of tuition at state institutions of higher
5 education and may include an allowance for books and sup-
6 plies;

7 (2) A requirement that a scholarship in combination with
8 aid from all other sources shall not exceed the cost of education
9 at the institution the recipient is attending;

10 (3) Minimum requirements for eligibility for the scholar-
11 ship which include:

12 (A) A provision that a student is only eligible to apply for
13 a scholarship within two years of the time he or she graduates
14 from high school: *Provided*, That if a student has entered the
15 United States armed services within two years after he or she
16 graduates from high school, the student is eligible to apply for
17 a scholarship within seven years of the time he or she enters
18 military service: *Provided, however*, That once discharged from
19 the military, the student is only eligible to apply for one year
20 from the date of discharge;

21 (B) For individuals with zero to fifteen credits from an
22 institution of higher education, that the individual attain at least
23 a "B" average at the secondary level as defined by the board;

24 (C) For individuals with more than fifteen credits from an
25 institution of higher education, that the individual attain and
26 maintain at least a "B" average at the undergraduate education
27 level as defined by the board; and

28 (D) For all individuals, additional objective standards as the
29 board considers necessary to promote academic excellence and
30 to maintain the financial stability of the fund;

31 (4) A provision requiring the student to be enrolled in or in
32 the process of enrolling in an eligible institution as defined in
33 section three of this article;

34 (5) Provisions for making the highest and best use of the
35 PROMISE scholarship program in conjunction with the West
36 Virginia prepaid tuition trust act set forth in article thirty,
37 chapter eighteen of this code;

38 (6) A determination of whether to require scholarship
39 recipients to repay the amount of their scholarship, in whole or
40 in part, if they choose to work outside the state after graduation;

41 (7) A determination of whether to set aside a portion of the
42 scholarship funds for targeted scholarships for applicants
43 accepted or enrolled in an engineering program, science
44 program, technology program or other designated programs;

45 (8) A determination whether to require persons to file
46 federal financial aid forms before they may receive a PROM-
47 ISE scholarship; and

48 (9) A determination of what other sources of funding for
49 higher education, if any, should be deducted from the PROM-
50 ISE scholarship award.

51 (b) The board shall use the services of the senior adminis-
52 trator and any employees of the senior administrator in drafting
53 the rules. The rules shall be submitted to the legislative over-
54 sight commission on education accountability on or before the
55 first day of December, one thousand nine hundred ninety-nine.

§18C-7-7. West Virginia PROMISE scholarship fund created.

1 (a) There is hereby created a special revenue fund in the
2 state treasury which shall be designated and known as the
3 "PROMISE scholarship fund". The fund shall consist of all
4 appropriations to the fund from the West Virginia lottery, video
5 lottery, taxes on amusement devices, and any other legislative

6 appropriations, and all interest earned from investment of the
7 fund and any gifts, grants or contributions received by the fund.

8 (b) The board may expend the moneys in the fund to
9 implement the provisions of this article.

**§18C-7-8. PROMISE scholarship supplemental fund created;
promulgation of rules.**

1 (a) The Legislature recognizes that the PROMISE scholar-
2 ship program may lead to an increased number of individuals
3 attending the state institutions of higher education, and there-
4 fore, it may contribute to increases in expenses greater than the
5 additional tuition income generated by increased enrollment.
6 Therefore, there is hereby created a special revenue fund in the
7 state treasury which shall be designated and known as the
8 "PROMISE scholarship supplemental fund". The fund shall
9 consist of all appropriations to the fund and all interest earned
10 from the investment of the fund and any gifts, grants or
11 contributions received by the fund. The board shall expend the
12 moneys in this fund to implement the provisions of this article
13 and may only expend the moneys for state institutions of higher
14 education.

15 (b) The board shall promulgate rules for administering the
16 fund in accordance with article three-a, chapter twenty-nine-a
17 of this code: *Provided*, That the board shall not promulgate
18 emergency rules. The rules shall include the following:

19 (1) Provisions for distributing the moneys from the fund to
20 state institutions of higher education: *Provided*, That the
21 distribution of the moneys from the fund shall be completely
22 independent of the distributions in accordance with the resource
23 allocation model and the resource allocation policies: *Provided*,
24 *however*, That the funds shall be divided among the state
25 institutions of higher education in a reasonable manner to
26 reflect the actual distribution of PROMISE scholarship students
27 among the institutions; and

28 (2) A procedure for submitting a budget request to the
29 governor: *Provided*, That nothing in this article shall require
30 any appropriation by the Legislature.

CHAPTER 96

(H. B. 2855 — By Delegates Williams, Stemple, Houston,
Wills, Stalnaker, Armstead and Harrison)

[Passed March 13, 1999; in effect July 1, 1999. Approved by the Governor.]

AN ACT to amend and reenact section six, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article two-e of said chapter by adding thereto four new sections, designated sections eight-a, eight-b, eight-c and eight-d; and to amend and reenact section one-e, article one, chapter eighteen-b of said code, all relating to voiding provisions for development of an electronic portfolio by the state board of education and their future effect; legislative findings; requiring state board to direct a review of policy requirements for new courses, assist counties in meeting the requirements; requiring state board to direct state superintendent to organize department to better communicate, provide technical assistance and support for schools and school systems in certain areas; requiring plan for repair, maintenance and upgrade of technology in public schools; providing legislative intent to work with state board to continue improving education and ensure a thorough and efficient education; allowing students who complete two successful semesters in vocational agriculture to receive one required science unit toward high school graduation; and further expressing the legislative intent with respect to the Jobs Through Education Act.

Be it enacted by the Legislature of West Virginia:

That section six, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article two-e of said chapter be amended by adding thereto four new sections, designated sections eight-a, eight-b, eight-c and eight-d; and that section one-e, article one, chapter eighteen-b of said code be amended and reenacted, all to read as follows:

Chapter**18. Education.****18B. Higher Education.****CHAPTER 18. EDUCATION.****ARTICLE****2. STATE BOARD OF EDUCATION.****2E. HIGH QUALITY EDUCATIONAL PROGRAMS.****ARTICLE 2. STATE BOARD OF EDUCATION.****§18-2-6. Classification and standardization of schools; standards for degrees and diploma; certificates of proficiency; establishment of alternative education programs.**

1 The state board shall make rules for the accreditation,
2 classification and standardization of all schools in the state,
3 except institutions of higher education, and shall determine the
4 minimum standards for the granting of diplomas and certifi-
5 cates of proficiency by those schools. Not later than the school
6 year one thousand nine hundred ninety—ninety-one, certificates
7 of proficiency including specific information regarding the
8 graduate's skills, competence and readiness for employment or
9 honors and advanced education shall be granted, along with the
10 diploma, to every eligible high school graduate. The certificate
11 of proficiency shall include the program of study major
12 completed by the student only for those students who have
13 completed the required major courses, or higher level courses,
14 advanced placement courses, college courses or other more
15 rigorous substitutes related to the major, and recommended
16 electives.

17 No institution of less than collegiate or university status
18 may grant any diploma or certificate of proficiency on any basis
19 of work or merit below the minimum standards prescribed by
20 the state board.

21 No charter or other instrument containing the right to issue
22 diplomas or certificates of proficiency shall be granted by the
23 state of West Virginia to any institution or other associations or
24 organizations of less than collegiate or university status within
25 the state until the condition of granting or issuing such diplo-

26 mas or other certificates of proficiency has first been approved
27 in writing by the state board.

28 The state board also may establish policies and procedures
29 for the approval of alternative education programs for disrup-
30 tive students who are at risk of not succeeding in the traditional
31 school structure. These policies and procedures may provide for
32 the waiver of other policies of the state board, the establishment
33 and delivery of a nontraditional curriculum, establishment of
34 licensure requirements for alternative education program
35 teachers, and the establishment of performance measures for
36 school accreditation.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-8a. Electronic portfolio repealed.

§18-2E-8b. Audit of state board policies; legislative findings; report to legislative oversight commission; required plan of improvement; exemptions from determination of accreditation status.

§18-2E-8c. The "Robert C. Beach" Vocational Agriculture Credit.

§18-2E-8d. Further expressions of legislative intent with respect to this article; parental consent for substitute classes.

§18-2E-8a. Electronic portfolio repealed.

1 Notwithstanding the provisions of subsections (i) and (j),
2 section eight of this article, information on student attainment
3 of special skills, honors, advanced education, exceptional
4 performance and other outstanding accomplishments shall be
5 included on the certificate of proficiency granted to eligible
6 high school graduates along with the diploma pursuant to
7 section six, article two of this chapter. All provisions for
8 development of an electronic portfolio by the state board are
9 hereby null and void and without future effect.

**§18-2E-8b. Audit of state board policies; legislative findings;
report to legislative oversight commission; re-
quired plan of improvement; exemptions from
determination of accreditation status.**

1 (a) The Legislature finds that, pursuant to its constitutional
2 responsibility to provide for a thorough and efficient system of
3 schools, a process for improving education was enacted and set
4 forth in section five of this article, a process that was endorsed

5 by the West Virginia board of education in a resolution that was
6 adopted. The Legislature finds that the process for improving
7 education includes four primary elements, those being stan-
8 dards, assessments, accountability and capacity building. The
9 Legislature finds that as the constitutional body charged with
10 the general supervision of schools, as provided by general law,
11 the West Virginia board of education has the authority and
12 responsibility to establish policies, which are not subject to
13 approval by the Legislature, to assess performance against the
14 standards, to hold schools and school systems accountable for
15 meeting the standards and to assist schools and school systems
16 to build their capacity to meet the standards, including, when
17 necessary, seeking additional resources in consultation with the
18 Legislature and the governor. The Legislature finds that in
19 fulfilling its constitutional responsibility to provide for a
20 thorough and efficient system of schools, the Legislature has
21 been diligent in not mandating the delivery of programs that are
22 beyond the capacity of schools and school systems without
23 providing the necessary additional resources. The Legislature
24 further finds, however, that concerns exist with respect to the
25 capacity of school systems to meet certain mandates and
26 expenses which arise either from state board policy or the need
27 for better communication, technical assistance and support by
28 the state board and state department of education. The Legisla-
29 ture finds that it is imperative that these concerns be addressed
30 so as not to adversely affect the progress West Virginia has
31 made toward improving its system of education or negate the
32 excellent work of dedicated personnel at local schools and
33 school systems to more thoroughly prepare their students for
34 college, other post-secondary education and employment.
35 Therefore, it is the intent of this section to engage the state
36 board and the state department in the spirit of cooperation and
37 collaboration intended in the process for improving education
38 to examine the impact of their policies and the efforts being
39 made by the state board and the state department of education
40 to assist schools and school systems to meet them.

41 (b) The state board shall:

42 (1) Direct the office of education performance audits to
43 include in its review of county boards and schools a determina-
44 tion of whether the county boards and schools have the capacity
45 to meet the requirements within the policies of the state board
46 for school systems to provide additional new courses and
47 determine the capacity of school systems to deliver these new
48 courses, if any. If it is determined that a county does not have
49 the capacity to meet these requirements, the state board shall
50 direct the department to develop and implement a plan to assist
51 the counties in meeting the requirements.

52 (2) Review the organization of the state department of
53 education to ensure that it is able to provide the best communi-
54 cation, technical assistance and support for schools and school
55 systems in a number of areas, including, but not limited to:

56 (i) The advantages and disadvantages of various methods
57 of scheduling and how they can be modified to best meet the
58 needs of students;

59 (ii) Establishing policies which allow advanced students to
60 test out of required courses for which they already possess the
61 required academic skills; and

62 (iii) Subject to the provision of section eight-d of this
63 article, establishing policies which allow students, whether they
64 are preparing for college, other post-secondary education or
65 work, to take a higher level course, advanced placement course,
66 college course or other more rigorous substitute in place of a
67 required major course as set forth in the applicable program of
68 study.

69 (3) Prepare and report annually to the legislative oversight
70 committee on educational accountability by the first day of
71 December a plan for the repair, maintenance and upgrade of
72 technology in the public schools.

73 (c) It is further the intent of the Legislature to regularly
74 consult with the state board, examine the progress it is making
75 with respect to these issues, and consider alternative measures
76 to ensure that all students continue receiving the thorough and
77 efficient education to which they are entitled.

§18-2E-8c. The “Robert C. Beach” vocational agriculture credit.

1 (a) The Legislature finds that vocational agriculture
2 curriculum plays a vital role in the development of science
3 education for those students enrolled in the program. The
4 Legislature further finds that as a former member of the West
5 Virginia House of Delegates, Robert C. Beach was a strong
6 supporter of the vocational agriculture program.

7 (b) Students completing two successful semesters in
8 vocational agriculture classes, as defined by state board policy
9 on the first day October, one thousand nine hundred ninety-
10 nine, shall receive no more than one of the three required units
11 towards high school graduation for science.

§18-2E-8d. Further expressions of legislative intent with respect to this article; parental consent for substitute classes.

1 (a) The Legislature finds that many school systems are
2 improving the quality of education for their students through
3 implementation of the goals and policies set forth in this article.
4 The Legislature finds that local school systems have had and
5 should continue to have substantial flexibility for implementing
6 these improvements. The Legislature further finds that certain
7 of the goals address legally recognized elements within the
8 definition of a thorough and efficient education among which
9 is the development in every child his or her capacity and
10 knowledge to intelligently pursue his or her options. The
11 purpose of this section is to further this progress through a
12 greater expression of the legislative intent with respect to
13 eliminating the general track curriculum and to insure that all
14 students perform at high levels of academic achievement.

15 (b) The intent of the Legislature is to provide in an econom-
16 ical manner for a thorough and efficient education that:

17 (1) Provides information to parents and students which
18 clearly identifies the courses a student should take to prepare
19 fully for continuing their education in college, other post-
20 secondary education or employment so they can intelligently
21 choose among the many options available to them;

22 (2) Encourages the involvement of parents in their child's
23 education by providing parents and students with information
24 and opportunities to help students explore their interests and
25 plan a program of study while they are still in high school and
26 have greater options and flexibility;

27 (3) Ensures that the quality, content, and alignment of the
28 curriculum is sufficient to prepare students fully for the
29 transition to college, other post-secondary education or employ-
30 ment in areas in which they have an interest following gradua-
31 tion from high school; and

32 (4) Improves student learning by increasing the rigor of the
33 curriculum, making it more relevant to students, and reinforcing
34 academic instruction through applications to real life problem
35 solving so that whatever options a student pursues following
36 graduation from high school, the student has acquired a
37 foundation of knowledge, skills and abilities that prepares him
38 or her fully for success.

39 (c) Notwithstanding the courses specified as required major
40 courses within a high school program of study, a student in
41 consultation with his or her parents and school advisor, and
42 with the written consent of his or her parents, may take a higher
43 level course, advanced placement course, college course or
44 other more rigorous substitute. The parental consent form shall
45 include a certification signed by the school advisor that the
46 parents were advised of the impact of the substitute course on
47 the student's preparation for college, other post-secondary
48 education or employment in the student's major field of study
49 and that the student's certificate of proficiency will not indicate
50 that the student completed a program of study major unless
51 such substitute courses are related to the major field of study
52 selected by the student.

53 (d) Notwithstanding the courses specified as recommended
54 electives within a high school program of study, a student in
55 consultation with his or her parents and school advisor, and
56 with the written consent of his or her parents, may substitute
57 other elective courses in place of those recommended to prepare

58 the student fully for continuing his or her education in college,
59 other post-secondary education or employment. The parental
60 consent form shall include a certification signed by the school
61 advisor that the parents were advised of the impact of the
62 substitute course on the student's preparation for college, other
63 post-secondary education or employment in the student's major
64 field of study and that the student's certificate of proficiency
65 will not indicate that the student completed a program of study
66 major unless such substitute courses are related to the major
67 field of study selected by the student.

68 (e) On or before the first day of July, one thousand nine
69 hundred ninety-nine, the state board shall establish a uniform
70 parental consent form to be maintained in the students perma-
71 nent record for the purposes of subsections (c) and (d) of this
72 section which shall contain:

73 (1) A statement to be signed and dated by the parents to
74 consent to their child's substitution of another course for a
75 required major course as provided in subsection (c) of this
76 section and the course titles of the required major course and
77 the substitute course;

78 (2) A statement to be signed and dated by the parents to
79 consent to their child's substitution of another course for a
80 recommended elective course as provided in subsection (d) of
81 this section and the course titles of the recommended elective
82 course and the substitute course; and

83 (3) A statement to be signed and dated by the school
84 advisor certifying that the school advisor advised the parents of
85 the impact of the substitute course on the student's preparation
86 for college, other post-secondary education or employment in
87 the student's major field of study and the student's certificate
88 of proficiency.

89 (f) Nothing in this section shall prohibit a county board
90 from establishing high school graduation requirements which
91 exceed the minimum high school graduation requirements
92 established by the state board.

CHAPTER 18B. HIGHER EDUCATION.**ARTICLE 1. GOVERNANCE.****§18B-1-1e. Public education and higher education collaboration for the preparation of students for college and other post-secondary education.**

1 (a) *Purpose.* — The purpose of this section is as follows:

2 (1) To assist students in the planning and preparation for
3 success in college and other post-secondary education if their
4 education major interests require such formal education after
5 high school;

6 (2) To establish the minimum expected level of knowledge,
7 skill and competency a student must possess to be prepared
8 fully for college and other post-secondary education at state
9 institutions of higher education;

10 (3) To implement a method for communicating the mini-
11 mum level of knowledge, skill and competency to students,
12 parents, educators and counselors in the public schools, and
13 admissions officers, advisors and faculty in the higher educa-
14 tion institutions; and

15 (4) To assure that the teacher preparation programs in state
16 institutions of higher education prepare educators to, at a
17 minimum, deliver instruction necessary to prepare students
18 fully for college and other post-secondary education or gainful
19 employment consistent with the provisions of section eight,
20 article two-e, chapter eighteen of this code.

21 (b) *Joint rule.* — On or before the first day of October, one
22 thousand nine hundred ninety-six, the higher education govern-
23 ing boards shall promulgate a joint rule to achieve the purposes
24 of subsection (a) of this section. In the development of such
25 rule, the governing boards shall consult with the state board and
26 the jobs through education employer panel, established pursuant
27 to section eight, article two-e, chapter eighteen of this code, and
28 shall collaborate with the state board in the establishment of
29 compatible practices within their separate systems.

30 (c) *Assessment of student readiness.* — To provide continu-
31 ous assessment and program improvement in the preparation of
32 high school students for success in college or other post-
33 secondary education, the higher education governing boards
34 shall communicate to the state board and the legislative
35 oversight commission on education accountability by the first
36 day of December in each year, beginning in December, one
37 thousand nine hundred ninety-seven, the number of graduates
38 from the public schools in the state by high schools who were
39 accepted in the last calendar year for enrollment at each of the
40 state institutions of higher education within one year of
41 graduation, and whose knowledge, skill and competency were
42 below the minimum expected levels for full preparation as
43 defined by the governing boards. The governing boards also
44 shall report the areas in which the knowledge, skill and compe-
45 tency of the students were below the minimum expected level.
46 The state board shall provide information to each of the high
47 schools of the state for graduates from the high school.

CHAPTER 97

(S. B. 588 — Originating in the Committee on Education.)

[Passed March 9, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-three, relating to requiring the state board to promulgate antihazing rules for public school-sponsored student organizations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STATE BOARD OF EDUCATION.**§18-2-33. Rules for antihazing.**

1 (a) The Legislature hereby finds that hazing has become a
2 problem in a limited number of public school-sponsored student
3 organizations and that legal liability has already resulted from
4 some of those activities. It is the intent of this section that
5 problems with hazing in public school-sponsored student
6 organizations be addressed.

7 (b) The state board shall promulgate legislative rules in
8 accordance with article three-b, chapter twenty-nine-a of this
9 code that addresses hazing in the public school system. The
10 rules shall include at least the following:

11 (1) A definition of hazing;

12 (2) A definition of a public school-sponsored student
13 organization that includes both cocurricular and extracurricular
14 activities;

15 (3) A method to advise students and employees of the
16 problems associated with hazing;

17 (4) Appropriate penalties or procedures for establishing
18 penalties for students who haze while engaged in the activities
19 of a public school-sponsored student organization; and

20 (5) Methods to prevent hazing in public school-sponsored
21 organizations.

22 (c) The state board shall consider the antihazing law set
23 forth in article sixteen, chapter eighteen in drafting the rules
24 required by this section.

25 (d) Nothing in this section or in the policy promulgated in
26 accordance with this section may be construed to prevent a
27 suspension or expulsion executed in accordance with section
28 one-a, article five, chapter eighteen-a of this code.

CHAPTER 98

(H. B. 3024 — By Delegates Williams, Romine, Susman,
Manuel, Shelton, Stemple and Anderson)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-d, relating to establishment of a competitive grant “Mathematic Achievement Through Help” program; providing legislative intent and purposes; specifying priorities for grant awards; and providing procedures for grant application and selection.

Be it enacted by the Legislature of West Virginia:

That article two-e, 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 three-d, to read as follows:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-3d. Summer school MATH grant program created; legislative findings and purpose of section.

- 1 (a) The Legislature hereby finds and acknowledges that, if
- 2 remediation is necessary, it should be provided when students
- 3 are younger and before patterns of failure are established. The
- 4 Legislature further acknowledges that the people of West
- 5 Virginia would be better served if the state acted to ensure that
- 6 all public school students were able to execute mathematical
- 7 skills at or above grade level upon exiting grade four, that
- 8 county boards are in the best position to determine if
- 9 remediation is necessary for students in kindergarten through
- 10 grade four and that the counties should have the option of
- 11 providing summer school for students and may consider student
- 12 attendance as a factor in determining whether a child is eligible
- 13 to be promoted to the next grade.

14 The Legislature further finds that not all students are
15 financially able to pay for summer school, nor do all county
16 schools hold summer school. It is, therefore, the purpose of this
17 section to help the county boards to provide, either individually
18 or cooperatively, free summer school and summer school
19 transportation for those students in kindergarten through grade
20 four who did not perform at grade level during the regular
21 school year. It also is the purpose of this section to help
22 students in kindergarten through grade four who are identified
23 as being in danger of failing to execute mathematical skills at
24 grade level by the end of the school year to receive intensive
25 mathematics instruction during their regularly scheduled
26 mathematics time throughout the regular school year.

27 (b) Subject to appropriation by the Legislature therefor, the
28 state board shall establish a competitive grant program as set
29 forth in this section to provide mathematics programs for
30 students in kindergarten through grade four who are not
31 performing at grade level. The program shall be designated and
32 known as the "Mathematic Achievement Through Help"
33 program and, along with such designation, may be referred to
34 as "West Virginia MATH".

35 Priorities for awarding the grants shall include, but are not
36 limited to:

37 (1) Schools that have math test scores below the state
38 standards; or

39 (2) Schools that receive federal funds for the improvement
40 of mathematics.

41 Competitive grant applications must be submitted by the
42 county boards, or by a community collaborative with the county
43 board as a partner with leadership responsibility, and shall
44 describe how the program will:

45 (1) Employ strategies, proven methods and innovative
46 techniques for student learning, teaching and school manage-
47 ment that are based on reliable research and effective practices,
48 and can be replicated in other schools to improve the mathemat-
49 ical skills of students;

50 (2) Contain measurable goals for the improvement of
51 student mathematical skills and benchmarks for meeting those
52 goals;

53 (3) Include a plan for the evaluation of student progress
54 toward achieving the state's high standards;

55 (4) Identify how other federal, state, local and private
56 resources, including volunteers, will be utilized to further the
57 intent of this section;

58 (5) Link summer improvement programs for mathematics
59 with mathematical instruction and remediation throughout the
60 school year;

61 (6) Determine the feasibility of collaborating with colleges
62 of education for the purpose of providing educational experi-
63 ences for prospective teachers;

64 (7) Identify the use of technology, including computers and
65 calculators, and demonstrate how technology will be integrated
66 into the program; and

67 (8) Accomplish other objectives as deemed necessary by
68 the state board.

69 (c) Any county receiving a grant should encourage students
70 in kindergarten through grade four who did not perform at
71 grade level during the regular school year to attend summer
72 school and may consider summer school attendance as a factor
73 in determining whether a child is eligible to be promoted to the
74 next grade. The county board shall provide intensive mathemat-
75 ics instruction during regularly scheduled mathematics time
76 throughout the regular school year to students in kindergarten
77 through grade four who are identified by the classroom teacher
78 as being in danger of failing to execute mathematical skills at
79 grade level by the end of the school year. Nothing in this
80 section shall prohibit county boards from permitting students to
81 participate in mathematics programs on a student fee basis.

82 (d) The state board shall approve procedures for the
83 implementation of this section. To assist the state board in

84 developing procedures for the implementation of this section,
85 including the grant application and the grant review and
86 selection process, the state board shall appoint an advisory
87 board consisting of the mathematics education coordinator and
88 the Title I mathematics coordinator/specialist, both from the
89 state department of education, a college or university professor
90 of mathematics, a county mathematics curriculum specialist, an
91 elementary teacher with a mathematics certification, an
92 elementary principal with a mathematics certification, a
93 mathematics teacher with a certificate issued by the national
94 board of professional teaching standards, a representative from
95 the West Virginia council of teachers of mathematics and two
96 or more representatives from local school systems that are
97 certified in mathematics education, or representatives of like
98 successor organizations should these named organizations cease
99 to exist. The procedures shall provide for:

100 (1) The appointment of a grant review and selection panel
101 by the state board consisting of persons with expertise and
102 practical experience in delivering programs to increase the
103 mathematical skills of young students, not more than one half
104 of whom may be employees of the state department of educa-
105 tion, or the state board may designate the advisory board as the
106 grant review and selection panel;

107 (2) Notice to all schools of the grant competition and the
108 availability of applications on or before the thirtieth day of
109 September, in each fiscal year for which grant funds are
110 available;

111 (3) A grant application deadline postmarked on or before
112 the fifteenth day of December, in each fiscal year for which
113 grant funds are available;

114 (4) Notice of grant awards on or before the first day of
115 March, in each fiscal year for which grant funds are available;
116 and

117 (5) Other such requirements as deemed necessary by the
118 state board.

119 (e) The state board may fund, from any other funds
120 available for such purposes, the programs required by this

121 section for students in kindergarten through grade four and any
122 programs required by state board rules such as, but not limited
123 to, the following:

124 (1) Tutoring;

125 (2) Summer school educational services;

126 (3) Additional certified personnel to provide intensive
127 instruction in mathematics throughout the school year;

128 (4) Staff development for teachers; and

129 (5) Hot meal programs.

130 (f) Nothing in this section shall supersede the individual-
131 ized education program (IEP) of any student.

132 (g) Nothing in this section may be construed to require any
133 specific level of funding by the Legislature.

CHAPTER 99

(H. B. 3025 — By Delegates Houston, Susman, Willis,
Sparks, Armstead, Harrison and Fletcher)

[Passed March 12, 1999; in effect July 1, 1999. Approved by the Governor.]

AN ACT to amend article four, 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-c; and to amend and reenact section four, article five of said chapter, all relating to increasing compensation for county school board members; allowing county boards of education to establish certain personal leave banks; definition of care giver; and rules adopted by the county board.

Be it enacted by the Legislature of West Virginia:

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

amended and reenacted; and that article four, chapter eighteen-a be amended by adding thereto a new section, designated section ten-c, to read as follows:

Chapter

18. Education.

18A. School Personnel.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.

1 The board shall meet on the first Monday of January,
2 except that in the year one thousand nine hundred eighty-two,
3 and every year thereafter, the board shall meet on the first
4 Monday of July, and upon the dates provided by law for the
5 laying of levies, and at such other times as the board may fix
6 upon its records. At any meeting as authorized above and in
7 compliance with the provisions of article four of this chapter,
8 the board may employ such qualified teachers, or those who
9 will qualify by the time of entering upon their duties, necessary
10 to fill existing or anticipated vacancies for the current or next
11 ensuing school year. At a meeting of the board, on or before the
12 first Monday of May, the superintendent shall furnish in writing
13 to the board a list of those teachers to be considered for transfer
14 and subsequent assignment for the next ensuing school year; all
15 other teachers not so listed shall be considered as reassigned to
16 the positions held at the time of this meeting. Such list of those
17 recommended for transfer shall be included in the minute
18 record and the teachers so listed shall be notified in writing,
19 which notice shall be delivered in writing, by certified mail,
20 return receipt requested, to such teachers' last-known addresses
21 within ten days following said board meeting, of their having
22 been so recommended for transfer and subsequent assignment.

23 Special meetings may be called by the president or any
24 three members, but no business shall be transacted other than
25 that designated in the call.

26 In addition, a public hearing shall be held concerning the
27 preliminary operating budget for the next fiscal year not less
28 than ten days after such budget has been made available to the
29 public for inspection and within a reasonable time prior to the
30 submission of said budget to the state board for approval and at
31 such hearing reasonable time shall be granted to any person or
32 persons who wish to speak regarding parts or all of such budget.
33 Notice of such hearing shall be published as a Class I legal
34 advertisement in compliance with the provisions of article
35 three, chapter fifty-nine of this code.

36 A majority of the members shall constitute the quorum
37 necessary for the transaction of official business.

38 Board members may receive compensation at a rate not to
39 exceed one hundred dollars per meeting attended. But they shall
40 not receive pay for more than sixty meetings in any one fiscal
41 year.

42 Members shall also be paid, upon the presentation of an
43 itemized sworn statement, for all necessary traveling expenses,
44 including all authorized meetings, incurred on official business,
45 at the order of the board.

46 When, by a majority vote of its members, a county board
47 deems it a matter of public interest, such board may join the
48 West Virginia school board association and the national school
49 board association, and may pay such dues as may be prescribed
50 by said associations and approved by action of the respective
51 county boards. Membership dues and actual traveling expenses
52 of board members for attending meetings of the West Virginia
53 school board association may be paid by their respective county
54 boards out of funds available to meet actual expenses of the
55 members, but no allowance shall be made except upon sworn
56 itemized statements.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-10c. Personal leave banks for care givers.

- 1 (a) For the purposes of this section, "care giver" means any
- 2 employee of a county board of education who is a spouse, child

3 or parent of any employee who meets the following qualifica-
4 tions:

5 (1) He or she is an employee of the same county board of
6 education as the care giver; and

7 (2) He or she currently is eligible to receive benefits from
8 the personal leave bank established in section ten of this article.

9 (b) A county board of education may establish a personal
10 leave bank for care givers which is separate from any personal
11 leave bank as defined in section ten of this article. The personal
12 leave bank shall be operated pursuant to rules adopted by the
13 county board which shall include, but not be limited to, the
14 following:

15 (1) An employee may contribute no more than two days of
16 personal leave per school year;

17 (2) The bank shall be established either jointly or separately
18 for both professional personnel and school service personnel
19 and shall be available to all school personnel;

20 (3) The rules may limit the maximum number of days used
21 by a care giver;

22 (4) The rules shall require that leave bank days be used only
23 by a care giver who is absent from work during the same time
24 period as the absent employee for whom care is being provided;
25 and

26 (5) The rules shall require that the care giver is an active
27 employee with less than five days accumulated personal leave.

28 (c) The use of such days by the care giver for the extension
29 of insurance coverage pursuant to section twelve, article
30 sixteen, chapter five of this code is prohibited.

31 (d) Contributions shall reduce, to the extent of the contribu-
32 tion, the number of personal leave days to which a contributing
33 employee is entitled by section ten of this article: *Provided,*
34 That the employee's contribution may not reduce the number of
35 entitled personal leave days without cause.

36 (e) No employee may be compelled to contribute to a
37 personal leave bank.

CHAPTER 100

(Com. Sub. for H. B. 2402 — By Delegates Davis, Stemple,
Ennis, Williams, Houston, Stalnaker and Armstead)

[Passed March 13, 1999; in effect July 1, 1999. Approved by the Governor.]

AN ACT to amend and reenact sections five-a and seven, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section eight-a, article four, chapter eighteen-a of said code, all relating to funding of public education; increasing the maximum ratio of service personnel per one thousand students in net enrollment from forty-three and one-half to forty-three and six-tenths for low density counties and to forty-four and one-half for high density counties; changing the percent of the replacement value of bus fleets included in the calculation of the allowance in the foundation school program for transportation; and increasing the monthly pay of service personnel for college or comparable credit.

Be it enacted by the Legislature of West Virginia:

That sections five-a and seven, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section eight-a, article four, chapter eighteen-a of said code be amended and reenacted, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-5a. Ratio of foundation allowances for professional educators and service personnel to net enrollment.

- 1 (a) The purpose of this section is to establish maximum
- 2 ratios between the numbers of professional educators and
- 3 service personnel in the counties which are funded through the
- 4 public school support plan and the net enrollment in the

5 counties, such ratios are in addition to the ratios provided for in
6 sections four and five of this article. It is the intent of the
7 Legislature to adjust these ratios pursuant to legislative act as
8 may be appropriate when additional personnel are needed to
9 perform additional duties.

10 (b) Commencing with the school year one thousand nine
11 hundred eighty-nine—ninety, and each year thereafter, in
12 computing the basic foundation allowance to a county for
13 professional educators and the basic foundation allowance to a
14 county for service personnel under sections four and five of this
15 article, a county shall not receive an allowance for such
16 personnel which number per one thousand students in net
17 enrollment is in excess of the number of professional educators
18 and the number of service personnel in the county computed as
19 follows:

20		Maximum professional	Maximum service
21	For the	educators per 1000	personnel per 1000
22	school year	net enrollment the	net enrollment the
23		preceding year	preceding year
24	1998-99	74.0	43.5
25		Maximum professional	Maximum service
26	For the	educators per 1000	personnel per 1000
27	school year	net enrollment the	net enrollment the
28		preceding year	preceding year for
29			each high density
30			county
31	1999-2000 and		
32	thereafter	74.0	43.6
			44.5

33 (c) Every county shall utilize methods other than reductions
34 in force, such as attrition and early retirement, before imple-
35 menting their reductions in force policy to comply with the
36 limitations of this section.

§18-9A-7. Foundation allowance for transportation cost.

1 The allowance in the foundation school program for each
2 county for transportation shall be the sum of the following
3 computations:

4 (1) Eighty-five percent of the transportation cost within
5 each high density county and ninety percent of the transporta-
6 tion cost within each low density county for maintenance,
7 operation and related costs, exclusive of all salaries: *Provided*,
8 That for the school year beginning the first day of July, one
9 thousand nine hundred ninety-eight, and thereafter, in the event
10 a county uses an alternative fuel such as compressed natural gas
11 or other acceptable alternative fuel for the operation of all or
12 any portion of its school bus system, then the allowance in the
13 foundation school program for each such county for that portion
14 of its school bus system shall be ninety-five percent of the
15 transportation cost for maintenance, operation and related costs,
16 exclusive of all salaries, incurred by the use of the alternatively
17 fueled school buses: *Provided, however*, That any county using
18 an alternative fuel and qualifying for the additional allowance
19 shall submit a plan regarding the intended future use of alterna-
20 tively fueled school buses;

21 (2) The total cost, within each county, of insurance premi-
22 ums on buses, buildings and equipment used in transportation:
23 *Provided*, That such premiums were procured through competi-
24 tive bidding;

25 (3) For the school year beginning the first day of July, one
26 thousand nine hundred ninety-nine, and thereafter, an amount
27 equal to eight and one-third percent of the current replacement
28 value of the bus fleet within each county as determined by the
29 state board, such amount to be used only for the replacement of
30 buses. Buses purchased after the first day of July, one thousand
31 nine hundred ninety-nine that are driven one hundred eighty
32 thousand miles regardless of year model will be subject to the
33 replacement value of eight and one-third percent as determined
34 by the state board. In addition, in any school year in which its
35 net enrollment increases when compared to the net enrollment
36 the year immediately preceding, a school district may apply to
37 the state superintendent for funding for an additional bus. The
38 state superintendent shall make a decision regarding each
39 application based upon an analysis of the individual school
40 district's net enrollment history and transportation needs:
41 *Provided*, That the superintendent shall not consider any

42 application which fails to document that the county has applied
43 for federal funding for additional buses. If the state superinten-
44 dent finds that a need exists, a request for funding shall be
45 included in the budget request submitted by the state board for
46 the upcoming fiscal year;

47 (4) Eighty-five percent of the cost of contracted transporta-
48 tion services and public utility transportation within each high
49 density county and ninety percent of the cost of contracted
50 transportation services and public utility transportation within
51 each low density county;

52 (5) Aid in lieu of transportation equal to the state average
53 amount per pupil for each pupil receiving such aid within each
54 county; and

55 (6) Ninety-five percent of the transportation cost for
56 maintenance, operation and related costs, exclusive of all
57 salaries, for transporting students to and from classes at a
58 multicounty vocational center.

59 The total state share for this purpose shall be the sum of the
60 county shares: *Provided*, That no county shall receive an
61 allowance which is greater than one-third above the computed
62 state average allowance per transportation mile multiplied by
63 the total transportation mileage in the county: *Provided*,
64 *however*, That one half of one percent of the transportation
65 allowance distributed to each county shall be for the purpose of
66 trips related to academic classroom curriculum and not related
67 to any extracurricular activity: *Provided further*, That any
68 remaining funds credited to a county for the purpose of trips
69 related to academic classroom curriculum during the fiscal year
70 shall be carried over for use in the same manner the next fiscal
71 year and shall be separate and apart from, and in addition to, the
72 appropriation for the next fiscal year: *And provided further*,
73 That the state board may request a county to document the use
74 of funds for trips related to academic classroom curriculum if
75 the board deems it necessary.

76 The state department of education shall cause a comprehen-
77 sive study to be made relating to student transportation. The
78 study shall examine, but is not limited to, the issues of funding,

79 timeliness of data used for formula distribution, service
 80 personnel needed, inter-county service, regionalization of
 81 services, bus routes, amount of time students spend on buses,
 82 maintenance, safety training, and alternative transportation
 83 systems. The state department of education shall submit a
 84 report of the study to the legislative oversight commission on
 85 education accountability by the fifteenth day of January, one
 86 thousand nine hundred ninety-nine.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8a. Service personnel minimum monthly salaries.

1 (1) The minimum monthly pay for each service employee
 2 whose employment is for a period of more than three and
 3 one-half hours a day shall be at least the amounts indicated in
 4 the "state minimum pay scale pay grade I" and the minimum
 5 monthly pay for each service employee whose employment is
 6 for a period of three and one-half hours or less a day shall be at
 7 least one-half the amount indicated in the "state minimum pay
 8 scale pay grade I" set forth in this section.

9 STATE MINIMUM PAY SCALE PAY GRADE I

10		A	B	C	D	E	F	G	H
11	0	1,100	1,120	1,160	1,210	1,260	1,320	1,350	1,420
12	1	1,127	1,147	1,187	1,237	1,287	1,347	1,377	1,447
13	2	1,154	1,174	1,214	1,264	1,314	1,374	1,404	1,474
14	3	1,181	1,201	1,241	1,291	1,341	1,401	1,431	1,501
15	4	1,208	1,228	1,268	1,318	1,368	1,428	1,458	1,528
16	5	1,235	1,255	1,295	1,345	1,395	1,455	1,485	1,555
17	6	1,262	1,282	1,322	1,372	1,422	1,482	1,512	1,582
18	7	1,289	1,309	1,349	1,399	1,449	1,509	1,539	1,609
19	8	1,316	1,336	1,376	1,426	1,476	1,536	1,566	1,636
20	9	1,343	1,363	1,403	1,453	1,503	1,563	1,593	1,663
21	10	1,370	1,390	1,430	1,480	1,530	1,590	1,620	1,690
22	11	1,397	1,417	1,457	1,507	1,557	1,617	1,647	1,717
23	12	1,424	1,444	1,484	1,534	1,584	1,644	1,674	1,744
24	13	1,451	1,471	1,511	1,561	1,611	1,671	1,701	1,771

25		A	B	C	D	E	F	G	H
26	14	1,478	1,498	1,538	1,588	1,638	1,698	1,728	1,798
27	15	1,505	1,525	1,565	1,615	1,665	1,725	1,755	1,825
28	16	1,532	1,552	1,592	1,642	1,692	1,752	1,782	1,852
29	17	1,559	1,579	1,619	1,669	1,719	1,779	1,809	1,879
30	18	1,586	1,606	1,646	1,696	1,746	1,806	1,836	1,906
31	19	1,613	1,633	1,673	1,723	1,773	1,833	1,863	1,933
32	20	1,640	1,660	1,700	1,750	1,800	1,860	1,890	1,960
33	21	1,667	1,687	1,727	1,777	1,827	1,887	1,917	1,987
34	22	1,694	1,714	1,754	1,804	1,854	1,914	1,944	2,014
35	23	1,721	1,741	1,781	1,831	1,881	1,941	1,971	2,041
36	24	1,748	1,768	1,808	1,858	1,908	1,968	1,998	2,068
37	25	1,775	1,795	1,835	1,885	1,935	1,995	2,025	2,095
38	26	1,802	1,822	1,862	1,912	1,962	2,022	2,052	2,122
39	27	1,829	1,849	1,889	1,939	1,989	2,049	2,079	2,149
40	28	1,856	1,876	1,916	1,966	2,016	2,076	2,106	2,176
41	29	1,883	1,903	1,943	1,993	2,043	2,103	2,133	2,203
42	30	1,910	1,930	1,970	2,020	2,070	2,130	2,160	2,230
43	31	1,937	1,957	1,997	2,047	2,097	2,157	2,187	2,257
44	32	1,964	1,984	2,024	2,074	2,124	2,184	2,214	2,284
45	33	1,991	2,011	2,051	2,101	2,151	2,211	2,241	2,311
46	34	2,018	2,038	2,078	2,128	2,178	2,238	2,268	2,338
47	35	2,045	2,065	2,105	2,155	2,205	2,265	2,295	2,365
48	36	2,072	2,092	2,132	2,182	2,232	2,292	2,322	2,392

49 Subject to a recommendation by the governor for a pay
50 raise through the delivery of an executive message to the
51 Legislature and an appropriation by the Legislature for a pay
52 raise, effective the first day of July, one thousand nine hundred
53 ninety-nine and thereafter, the minimum monthly pay for each
54 service employee whose employment is for a period of more
55 than three and one-half hours a day shall be at least the amounts
56 indicated in the "state minimum pay scale pay grade II" and the
57 minimum monthly pay for each service employee whose
58 employment is for a period of three and one-half hours or less
59 a day shall be at least one-half the amount indicated in the
60 "state minimum pay scale pay grade II" set forth in this section.

61 STATE MINIMUM PAY SCALE PAY GRADE II

62 Years of

63 Employment

Pay Grade

64		A	B	C	D	E	F	G	H
65	0	1,160	1,180	1,220	1,270	1,320	1,380	1,410	1,480
66	1	1,188	1,208	1,248	1,298	1,348	1,408	1,438	1,508
67	2	1,216	1,236	1,276	1,326	1,376	1,436	1,466	1,536
68	3	1,244	1,264	1,304	1,354	1,404	1,464	1,494	1,564
69	4	1,272	1,292	1,332	1,382	1,432	1,492	1,522	1,592
70	5	1,300	1,320	1,360	1,410	1,460	1,520	1,550	1,620
71	6	1,328	1,348	1,388	1,438	1,488	1,548	1,578	1,648
72	7	1,356	1,376	1,416	1,466	1,516	1,576	1,606	1,676
73	8	1,384	1,404	1,444	1,494	1,544	1,604	1,634	1,704
74	9	1,412	1,432	1,472	1,522	1,572	1,632	1,662	1,732
75	10	1,440	1,460	1,500	1,550	1,600	1,660	1,690	1,760
76	11	1,468	1,488	1,528	1,578	1,628	1,688	1,718	1,788
77	12	1,496	1,516	1,556	1,606	1,656	1,716	1,746	1,816
78	13	1,524	1,544	1,584	1,634	1,684	1,744	1,774	1,844
79	14	1,552	1,572	1,612	1,662	1,712	1,772	1,802	1,872
80	15	1,580	1,600	1,640	1,690	1,740	1,800	1,830	1,900
81	16	1,608	1,628	1,668	1,718	1,768	1,828	1,858	1,928
82	17	1,636	1,656	1,696	1,746	1,796	1,856	1,886	1,956
83	18	1,664	1,684	1,724	1,774	1,824	1,884	1,914	1,984
84	19	1,692	1,712	1,752	1,802	1,852	1,912	1,942	2,012
85	20	1,720	1,740	1,780	1,830	1,880	1,940	1,970	2,040
86	21	1,748	1,768	1,808	1,858	1,908	1,968	1,998	2,068
87	22	1,776	1,796	1,836	1,886	1,936	1,996	2,026	2,096
88	23	1,804	1,824	1,864	1,914	1,964	2,024	2,054	2,124
89	24	1,832	1,852	1,892	1,942	1,992	2,052	2,082	2,152
90	25	1,860	1,880	1,920	1,970	2,020	2,080	2,110	2,180
91	26	1,888	1,908	1,948	1,998	2,048	2,108	2,138	2,208
92	27	1,916	1,936	1,976	2,026	2,076	2,136	2,166	2,236
93	28	1,944	1,964	2,004	2,054	2,104	2,164	2,194	2,264
94	29	1,972	1,992	2,032	2,082	2,132	2,192	2,222	2,292
95	30	2,000	2,020	2,060	2,110	2,160	2,220	2,250	2,320
96	31	2,028	2,048	2,088	2,138	2,188	2,248	2,278	2,348
97	32	2,056	2,076	2,116	2,166	2,216	2,276	2,306	2,376

98		A	B	C	D	E	F	G	H
99	33	2,084	2,104	2,144	2,194	2,244	2,304	2,334	2,404
100	34	2,112	2,132	2,172	2,222	2,272	2,332	2,362	2,432
101	35	2,140	2,160	2,200	2,250	2,300	2,360	2,390	2,460
102	36	2,168	2,188	2,228	2,278	2,328	2,388	2,418	2,488

103 If "state minimum pay scale pay grade II" becomes
 104 effective on the first day of July, one thousand nine hundred
 105 ninety-nine, and the governor recommends a pay raise through
 106 the delivery of an executive message to the Legislature and the
 107 Legislature appropriates money for a pay raise, the minimum
 108 monthly pay for each service employee whose employment is
 109 for a period of more than three and one-half hours a day shall
 110 be at least the amounts indicated in the "state minimum pay
 111 scale pay grade III" and the minimum monthly pay for each
 112 service employee whose employment is for a period of three
 113 and one-half hours or less a day shall be at least one-half the
 114 amount indicated in the "state minimum pay scale pay grade
 115 III" set forth in this section.

116 STATE MINIMUM PAY SCALE PAY GRADE III

117 **Years of**

118 **Employment**

Pay Grade

119		A	B	C	D	E	F	G	H
120	0	1,220	1,240	1,280	1,330	1,380	1,440	1,470	1,540
121	1	1,249	1,269	1,309	1,359	1,409	1,469	1,499	1,569
122	2	1,278	1,298	1,338	1,388	1,438	1,498	1,528	1,598
123	3	1,307	1,327	1,367	1,417	1,467	1,527	1,557	1,627
124	4	1,336	1,356	1,396	1,446	1,496	1,556	1,586	1,656
125	5	1,365	1,385	1,425	1,475	1,525	1,585	1,615	1,685
126	6	1,394	1,414	1,454	1,504	1,554	1,614	1,644	1,714
127	7	1,423	1,443	1,483	1,533	1,583	1,643	1,673	1,743
128	8	1,452	1,472	1,512	1,562	1,612	1,672	1,702	1,772
129	9	1,481	1,501	1,541	1,591	1,641	1,701	1,731	1,801
130	10	1,510	1,530	1,570	1,620	1,670	1,730	1,760	1,830
131	11	1,539	1,559	1,599	1,649	1,699	1,759	1,789	1,859
132	12	1,568	1,588	1,628	1,678	1,728	1,788	1,818	1,888
133	13	1,597	1,617	1,657	1,707	1,757	1,817	1,847	1,917

134		A	B	C	D	E	F	G	H
135	14	1,626	1,646	1,686	1,736	1,786	1,846	1,876	1,946
136	15	1,655	1,675	1,715	1,765	1,815	1,875	1,905	1,975
137	16	1,684	1,704	1,744	1,794	1,844	1,904	1,934	2,004
138	17	1,713	1,733	1,773	1,823	1,873	1,933	1,963	2,033
139	18	1,742	1,762	1,802	1,852	1,902	1,962	1,992	2,062
140	19	1,771	1,791	1,831	1,881	1,931	1,991	2,021	2,091
141	20	1,800	1,820	1,860	1,910	1,960	2,020	2,050	2,120
142	21	1,829	1,849	1,889	1,939	1,989	2,049	2,079	2,149
143	22	1,858	1,878	1,918	1,968	2,018	2,078	2,108	2,178
144	23	1,887	1,907	1,947	1,997	2,047	2,107	2,137	2,207
145	24	1,916	1,936	1,976	2,026	2,076	2,136	2,166	2,236
146	25	1,945	1,965	2,005	2,055	2,105	2,165	2,195	2,265
147	26	1,974	1,994	2,034	2,084	2,134	2,194	2,224	2,294
148	27	2,003	2,023	2,063	2,113	2,163	2,223	2,253	2,323
149	28	2,032	2,052	2,092	2,142	2,192	2,252	2,282	2,352
150	29	2,061	2,081	2,121	2,171	2,221	2,281	2,311	2,381
151	30	2,090	2,110	2,150	2,200	2,250	2,310	2,340	2,410
152	31	2,119	2,139	2,179	2,229	2,279	2,339	2,369	2,439
153	32	2,148	2,168	2,208	2,258	2,308	2,368	2,398	2,468
154	33	2,177	2,197	2,237	2,287	2,337	2,397	2,427	2,497
155	34	2,206	2,226	2,266	2,316	2,366	2,426	2,456	2,526
156	35	2,235	2,255	2,295	2,345	2,395	2,455	2,485	2,555
157	36	2,264	2,284	2,324	2,374	2,424	2,484	2,514	2,584

158	CLASS TITLE	PAY GRADE
-----	-------------	-----------

159	Accountant I	D
160	Accountant II	E
161	Accountant III	F
162	Aide I	A
163	Aide II	B
164	Aide III	C
165	Aide IV	D
166	Audiovisual Technician	C
167	Auditor	G
168	Autism Mentor	E
169	Braille or Sign Language Specialist	E
170	Bus Operator	D
171	Buyer	F

172	CLASS TITLE	PAY GRADE
173	Cabinetmaker	G
174	Cafeteria Manager	D
175	Carpenter I	E
176	Carpenter II	F
177	Chief Mechanic	G
178	Clerk I	B
179	Clerk II	C
180	Computer Operator	E
181	Cook I	A
182	Cook II	B
183	Cook III	C
184	Crew Leader	F
185	Custodian I	A
186	Custodian II	B
187	Custodian III	C
188	Custodian IV	D
189	Director or Coordinator of Services	H
190	Draftsman	D
191	Electrician I	F
192	Electrician II	G
193	Electronic Technician I	F
194	Electronic Technician II	G
195	Executive Secretary	G
196	Food Services Supervisor	G
197	Foreman	G
198	General Maintenance	C
199	Glazier	D
200	Graphic Artist	D
201	Groundsman	B
202	Handyman	B
203	Heating and Air Conditioning Mechanic I	E
204	Heating and Air Conditioning Mechanic II	G
205	Heavy Equipment Operator	E
206	Inventory Supervisor	D
207	Key Punch Operator	B
208	Locksmith	G
209	Lubrication Man	C

210	CLASS TITLE	PAY GRADE
211	Machinist	F
212	Mail Clerk	D
213	Maintenance Clerk	C
214	Mason	G
215	Mechanic	F
216	Mechanic Assistant	E
217	Office Equipment Repairman I	F
218	Office Equipment Repairman II	G
219	Painter	E
220	Paraprofessional	F
221	Plumber I	E
222	Plumber II	G
223	Printing Operator	B
224	Printing Supervisor	D
225	Programmer	H
226	Roofing/Sheet Metal Mechanic	F
227	Sanitation Plant Operator	F
228	School Bus Supervisor	E
229	Secretary I	D
230	Secretary II	E
231	Secretary III	F
232	Supervisor of Maintenance	H
233	Supervisor of Transportation	H
234	Switchboard Operator-Receptionist	D
235	Truck Driver	D
236	Warehouse Clerk	C
237	Watchman	B
238	Welder	F

239 (2) An additional ten dollars per month shall be added to
 240 the minimum monthly pay of each service employee who holds
 241 a high school diploma or its equivalent.

242 (3) An additional ten dollars per month also shall be added
 243 to the minimum monthly pay of each service employee for each
 244 of the following:

245 (A) A service employee who holds twelve college hours or
 246 comparable credit obtained in a trade or vocational school as
 247 approved by the state board;

248 (B) A service employee who holds twenty-four college
249 hours or comparable credit obtained in a trade or vocational
250 school as approved by the state board;

251 (C) A service employee who holds thirty-six college hours
252 or comparable credit obtained in a trade or vocational school as
253 approved by the state board; and

254 (D) A service employee who holds forty-eight college hours
255 or comparable credit obtained in a trade or vocational school as
256 approved by the state board.

257 (4) When any part of a school service employee's daily
258 shift of work is performed between the hours of six o'clock
259 p.m. and five o'clock a.m. the following day, the employee
260 shall be paid no less than an additional ten dollars per month
261 and one half of the pay shall be paid with local funds.

262 (5) Any service employee required to work on any legal
263 school holiday shall be paid at a rate one and one-half times the
264 employee's usual hourly rate.

265 (6) Any full-time service personnel required to work in
266 excess of their normal working day during any week which
267 contains a school holiday for which they are paid shall be paid
268 for the additional hours or fraction of the additional hours at a
269 rate of one and one-half times their usual hourly rate and paid
270 entirely from county board funds.

271 (7) No service employee may have his or her daily work
272 schedule changed during the school year without the em-
273 ployee's written consent, and the employee's required daily
274 work hours may not be changed to prevent the payment of time
275 and one-half wages or the employment of another employee.

276 (8) The minimum hourly rate of pay for extra duty assign-
277 ments as defined in section eight-b of this article shall be no
278 less than one seventh of the employee's daily total salary for
279 each hour the employee is involved in performing the assign-
280 ment and paid entirely from local funds: *Provided*, That an
281 alternative minimum hourly rate of pay for performing extra
282 duty assignments within a particular category of employment

283 may be utilized if the alternate hourly rate of pay is approved
284 both by the county board and by the affirmative vote of a two-
285 thirds majority of the regular full-time employees within that
286 classification category of employment within that county:
287 *Provided, however,* That the vote shall be by secret ballot if so
288 requested by a service personnel employee within that classifi-
289 cation category within that county. The salary for any fraction
290 of an hour the employee is involved in performing the assign-
291 ment shall be prorated accordingly. When performing extra
292 duty assignments, employees who are regularly employed on a
293 one-half day salary basis shall receive the same hourly extra
294 duty assignment pay computed as though the employee were
295 employed on a full-day salary basis.

296 (9) The minimum pay for any service personnel employees
297 engaged in the removal of asbestos material or related duties
298 required for asbestos removal shall be their regular total daily
299 rate of pay and no less than an additional three dollars per hour
300 or no less than five dollars per hour for service personnel
301 supervising asbestos removal responsibilities for each hour
302 these employees are involved in asbestos related duties. Related
303 duties required for asbestos removal include, but are not limited
304 to, travel, preparation of the work site, removal of asbestos
305 decontamination of the work site, placing and removal of
306 equipment and removal of structures from the site. If any
307 member of an asbestos crew is engaged in asbestos related
308 duties outside of the employee's regular employment county,
309 the daily rate of pay shall be no less than the minimum amount
310 as established in the employee's regular employment county for
311 asbestos removal and an additional thirty dollars per each day
312 the employee is engaged in asbestos removal and related duties.
313 The additional pay for asbestos removal and related duties shall
314 be payable entirely from county funds. Before service personnel
315 employees may be utilized in the removal of asbestos material
316 or related duties, they shall have completed a federal Environ-
317 mental Protection Act approved training program and be
318 licensed. The employer shall provide all necessary protective
319 equipment and maintain all records required by the Environ-
320 mental Protection Act.

321 (10) For the purpose of qualifying for additional pay as
322 provided in section eight, article five of this chapter, an aide
323 shall be considered to be exercising the authority of a supervi-
324 sory aide and control over pupils if the aide is required to
325 supervise, control, direct, monitor, escort or render service to a
326 child or children when not under the direct supervision of
327 certificated professional personnel within the classroom,
328 library, hallway, lunchroom, gymnasium, school building,
329 school grounds or wherever supervision is required. For
330 purposes of this section, “under the direct supervision of
331 certificated professional personnel” means that certificated
332 professional personnel is present, with and accompanying the
333 aide.

CHAPTER 101

(S. B. 589 — Originating in the Committee on Education.)

[Passed March 21, 1999; in effect July 1, 1999. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section twenty-six; and to amend and reenact section one-a, article two, chapter twenty-three of said code, all relating to requiring that all moneys appropriated for alternative education programs be distributed in accordance with net enrollment; and providing workers' compensation coverage for work-based learning.

Be it enacted by the Legislature of West Virginia:

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

Chapter**18. Education.****23. Workers' Compensation.****CHAPTER 18. EDUCATION.****ARTICLE 9A. PUBLIC SCHOOL SUPPORT.****§18-9A-21. Funding for alternative education programs.****§18-9A-26. Allowance for workers' compensation for unpaid student work-based learning.****§18-9A-21. Funding for alternative education programs.**

1 (a) An appropriation may be made to the state department
 2 to be distributed to county boards for the operation of alterna-
 3 tive education programs established in accordance with policies
 4 and procedures adopted by the state board under section six,
 5 article two of this chapter: *Provided*, That nothing in this
 6 section shall be construed to require any specific level of
 7 funding by the Legislature: *Provided, however*, That ninety
 8 percent of any appropriation which may be made for the
 9 purposes set forth in this section shall be distributed to county
 10 boards on the basis of net enrollment and ten percent of this
 11 appropriation shall be distributed on a competitive basis to
 12 county boards for the operation of pilot or innovative alterna-
 13 tive education programs: *Provided further*, That for the fiscal
 14 year beginning the first day of July, two thousand, the total
 15 appropriation which may be made for the purposes set forth in
 16 this section shall be distributed to the county boards on the
 17 basis of net enrollment.

18 (b) Each county board shall apply to the state superinten-
 19 dent for receipt of its share of the distribution in the manner set
 20 forth by the state superintendent which is consistent with the
 21 policies and procedures adopted by the state board for the
 22 establishment and maintenance of alternative education
 23 programs.

§18-9A-26. Allowance for workers' compensation for unpaid student work-based learning.

1 (a) The workers' compensation division shall create a
 2 classification and calculate a base premium tax rate for students
 3 participating in an unpaid work-based learning experience off

4 school premises as a part of the school curriculum with employ-
5 ers other than the county board of education. The workers'
6 compensation division shall report to the state department of
7 education:

8 (1) The amount of the base premium tax rate for the class;
9 and

10 (2) The amount of wages per student to be used to provide
11 the minimum weekly benefits required by section six, article
12 four, chapter twenty-three of this code.

13 (b) The state department of education shall communicate
14 the amount of the premium to the governor and Legislature by
15 the first day of December of each year, beginning the first day
16 of December, one thousand nine hundred ninety-nine.

17 (c) The base premium tax rate reported to the state depart-
18 ment of education shall be that which was published by the
19 workers' compensation division prior to the first day of the
20 immediately preceding July. That premium tax rate, however,
21 shall not be implemented by the workers' compensation
22 division until the first day of January and shall remain in effect
23 through the last day of the next December. The workers'
24 compensation division shall make no merit rate adjustment, as
25 otherwise provided for in paragraph (A), subdivision (1),
26 subsection (a), section four, article two, chapter twenty-three of
27 this code, for the members of the class required to be created by
28 subsection (a) of this section.

29 (d) Notwithstanding anything to the contrary in any rules
30 adopted to implement the provisions of section four, article two,
31 chapter twenty-three of this code and for the sole purposes of
32 this section, the workers' compensation division shall permit
33 any county board of education affected by this section to be
34 classified in accordance with this section and to be also
35 classified as otherwise required by any rules adopted to
36 implement the provisions of section four, article two, chapter
37 twenty-three of this code.

38 (e) Subject to an appropriation by the Legislature, funds
39 shall be provided to the department of education to distribute to

40 the county boards. If the appropriation is less than the total
41 premium calculated, the county boards, individually, shall
42 either reduce the number of students participating in work-
43 based learning experiences off school premises or the county
44 boards shall pay the difference between the amount of the
45 premium calculated by the workers' compensation division and
46 the amount allocated to the county board by the department of
47 education.

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRATERRITORIAL COVERAGE.

§23-2-1a. Employees subject to chapter.

1 (a) Employees subject to this chapter are all persons in the
2 service of employers and employed by them for the purpose of
3 carrying on the industry, business, service or work in which
4 they are engaged, including, but not limited to:

5 (1) Persons regularly employed in the state whose duties
6 necessitate employment of a temporary or transitory nature by
7 the same employer without the state;

8 (2) Every person in the service of the state or of any
9 political subdivision or agency thereof, under any contract of
10 hire, express or implied, and every appointed official or officer
11 thereof while performing his or her official duties;

12 (3) Checkweighmen employed according to law;

13 (4) All members of rescue teams assisting in mine accidents
14 with the consent of the owner who, in such case, shall be
15 deemed the employer, or at the direction of the director of the
16 department of mines;

17 (5) All forest firefighters who, under the supervision of the
18 director of the department of natural resources or his or her
19 designated representative, assist in the prevention, confinement
20 and suppression of any forest fire; and

21 (6) Students while participating in a work-based learning
22 experience with an employer approved as a part of the curricu-

23 lum by the county board. The county board shall be the
24 employer of record of students while participating in unpaid
25 work-based experiences off school premises with employers
26 other than the county board. Students in unpaid work-based
27 learning experiences shall be considered to be paid the amount
28 of wages so as to provide the minimum workers' compensation
29 weekly benefits required by section six, article four of this
30 chapter.

31 (b) The right to receive compensation under this chapter
32 shall not be affected by the fact that a minor is employed or is
33 permitted to be employed in violation of the laws of this state
34 relating to the employment of minors, or that he or she obtained
35 his or her employment by misrepresenting his or her age.

CHAPTER 102

(Com. Sub. for H. B. 2401 — By Delegates Williams,
Manuel, C. White, Sparks, Houston, Webb and Stemple)

[Passed March 11, 1999; in effect from passage. Approved by the Governor]

AN ACT to amend and reenact section three, article nine-e, 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 four and five, all relating to preconstruction and post-construction site testing for radon; requiring the state board to promulgate rules that minimize the use of carpeting; requiring the state board to promulgate rules that address the employment of heating, ventilating and air-conditioning technicians; requiring the state board to promulgate rules that would set forth a procedure for investigating and addressing indoor air quality complaints; and provisions for enforcement.

Be it enacted by the Legislature of West Virginia:

That section three, article nine-e, 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 four and five, all to read as follows:

ARTICLE 9E. AIR QUALITY IN NEW SCHOOLS ACT.

§18-9E-3. Air quality in new schools.

§18-9E-4. Heating, ventilation, and air-conditioning technicians.

§18-9E-5. Investigation of indoor air quality complaints in existing schools and schools subsequently constructed.

§18-9E-3. Air quality in new schools.

1 (a) In an effort to create well ventilated school environ-
2 ments, and notwithstanding any other provision of this code to
3 the contrary, any new school building designed and constructed
4 in the state by a county board after the first day of July, one
5 thousand nine hundred ninety-eight, regardless of the funding
6 source, shall be designed and constructed in compliance with
7 the current standards of the American society of heating,
8 refrigerating and air conditioning engineers handbook
9 (ASHRAE), the national fire protection association code
10 (NFPA) and the code of the building officials and code admin-
11 istrators (BOCA).

12 (b) Upon notice from the school building authority that a
13 new public school building is occupied, the division of health
14 shall perform radon testing in the school within the first year
15 after occupancy and at least every five years thereafter. The
16 county school board shall provide such reasonable assistance to
17 the division of health as may be necessary to perform the radon
18 testing. The radon testing shall include all major student
19 occupied areas at or below grade level. If it is determined that
20 radon is present in amounts greater than the amount determined
21 to be acceptable by the rules promulgated by the school
22 building authority, pursuant to subsection (d) of this section,
23 any industry accepted mitigation technique shall be utilized to
24 reduce the radon level to the level or below the level deter-
25 mined acceptable by the school building authority.

26 (c) If the school building authority determines that it is
27 feasible to test for radon prior to the construction of a school
28 building, the school building authority may cause preconstruction
29 site testing for radon to be performed.

30 (d) The school building authority shall promulgate rules
31 pursuant to article three-a, chapter twenty-nine-a of this code to
32 assure that any new school building designed after the effective
33 date of this article is designed and constructed in accordance
34 with the current ASHRAE, NFPA and BOCA standards. The
35 school building authority shall promulgate rules, pursuant to
36 article three-a, chapter twenty-nine-a of this code that establish
37 standards for safe levels of radon for public school buildings.
38 The school building authority shall submit the rules for approval
39 to the legislative oversight commission on education
40 accountability on or before the first day of July, one thousand
41 nine hundred ninety-nine. The rules shall include the requirement
42 that county boards submit all new school designs to the
43 school building authority for review and approval for compliance
44 with current education standards and design efficiencies
45 prior to preparation of final bid documents.

46 (e) The state board shall promulgate rules, pursuant to
47 article three-b, chapter twenty-nine-a of this code, in consultation
48 with the division of health, that minimize the use of
49 carpeting in public school buildings based on user needs and
50 performance specifications of the carpeting. The state board
51 shall submit the rules to the legislative oversight commission on
52 education accountability on or before the first day of July, one
53 thousand nine hundred ninety-nine.

§18-9E-4. Heating, ventilation, and air-conditioning technicians.

1 (a) Subject to appropriation by the Legislature therefor, the
2 state board, in consultation with the division of health, shall
3 promulgate rules pursuant to article three-b, chapter twenty-
4 nine-a of this code that will address servicing public school
5 buildings by heating, ventilation and air-conditioning (HVAC)
6 technicians. The rules shall set forth a job description for the
7 HVAC technician. At the discretion of the state board, HVAC

8 technicians may be employed by the county board of education,
9 by the regional educational service agency servicing the county
10 or by the department of education using the funds allocated
11 pursuant to this section. The hiring entity shall set a salary for
12 the HVAC technician that is competitive with other employers
13 of HVAC technicians in the region after accounting for annual
14 leave, sick leave, insurance benefits, retirement benefits and
15 any other benefits provided. Existing employees who have
16 advanced HVAC skills or existing employees who receive
17 appropriate HVAC training may be utilized as HVAC techni-
18 cians. The rules also shall provide for sufficient continuing
19 education training for HVAC technicians to maintain profi-
20 ciency in the changing technologies in the field. The rules shall
21 be submitted to the legislative oversight commission on
22 educational accountability prior to the first day of September,
23 one thousand nine hundred ninety-nine.

24 (b) County boards, regional educational service agencies
25 and the department of education shall have the option to
26 contract for HVAC services from prequalified vendors if this
27 option is more cost effective than using existing employees or
28 creating a new position: *Provided*, That an existing employee
29 may not be displaced by contracting for HVAC technician
30 services: *Provided, however*, That HVAC services that have
31 been performed in the past or which require knowledge and
32 experience the employer does not have access to, may be
33 contracted out to a prequalified vendor.

34 (c) Funds appropriated for the purpose of hiring HVAC
35 technicians shall be appropriated originally to the department
36 of education. The department of education then may allocate
37 the funds to the regional educational service agencies or to the
38 counties, depending upon which entity employs the HVAC
39 technician as specified by rule.

**§18-9E-5. Investigation of indoor air quality complaints in exist-
ing schools and schools subsequently constructed.**

1 (a) The state board, in consultation with the division of
2 health, shall promulgate rules pursuant to article three-b,
3 chapter twenty-nine-a of this code which require each county

4 board to investigate all reports of indoor air quality problems
5 within the county. The rules shall set forth a designated official
6 or officials within the county school system to be responsible
7 for addressing, pursuant to this section, any indoor air quality
8 complaints. The rules also shall set forth a procedure for any
9 party to file a complaint with the designated official or officials.
10 Any indoor air quality complaint found to be valid by the
11 designated official or officials shall be addressed by forming a
12 plan of correction. Any county board that addresses an indoor
13 air quality complaint is encouraged to seek any available
14 assistance from local, state and federal agencies in both
15 investigating the complaint and in forming the plan of correc-
16 tion. A county board shall consider any documented plans of
17 closure of a school building when forming any plan of correc-
18 tion for that school building. The rules shall be submitted to the
19 legislative oversight commission on education accountability
20 prior to the first day of September, one thousand nine hundred
21 ninety-nine. Additionally, the rules shall set an appropriate cost
22 for a plan of correction over which all such plans of correction
23 shall be reported to the legislative oversight commission on
24 education accountability. Based upon the legislative oversight
25 commission on education accountability's experience in
26 receiving the complaints, the commission shall submit a
27 recommendation for funding the plans of correction.

28 (b) Furthermore, each plan of correction shall be incorpo-
29 rated into each county board's ten-year county-wide major
30 improvement plan set forth in section sixteen, article nine-d of
31 this chapter. Also pursuant to section sixteen, article nine-d of
32 this chapter, the state board may restrict the use of the neces-
33 sary funds or otherwise allocate funds from moneys appropri-
34 ated by the Legislature for those purposes set forth in section
35 nine, article nine-a of this chapter: *Provided*, That nothing in
36 this subsection shall be interpreted as requiring that a county
37 board make addressing an air quality complaint a priority over
38 other projects in the county board's ten-year county-wide major
39 improvement plan.

CHAPTER 103

(Com. Sub. for H. B. 2438 — By Delegates Douglas, Leach and Hubbard)

[Passed March 13, 1999; 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-1, relating to the creation of the “Ron Yost Personal Assistance Services Act” to provide personal assistance services to certain severely disabled individuals; stating public policy; making the division of rehabilitation responsible for administering the program through the West Virginia statewide independent living council; providing for development and components of program; creating a special account in the state treasury designated as the “Ron Yost Personal Assistance Services Fund”; limiting the amount of funds that may be expended for administrative costs; authorizing use of legislatively appropriated funds and directing application for funding from other sources; requiring the division of rehabilitation services to propose legislative rules to implement article; providing for payment based on ability to pay; requiring annual report; and providing for an expiration date.

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-1, to read as follows:

ARTICLE 10L. RON YOST PERSONAL ASSISTANCE SERVICES ACT.

- §18-10L-1. Short title.
- §18-10L-2. Policy; principles; projects.
- §18-10L-3. Definitions.
- §18-10L-4. Programs.
- §18-10L-5. Funding.
- §18-10L-6. Rules.
- §18-10L-7. Report.
- §18-10L-8. Continuation of program.

§18-10L-1. Short title.

1 This article may be known and cited as the “Ron Yost
2 Personal Assistance Services Act.”

§18-10L-2. Policy; principles; projects.

1 (a) It is hereby declared to be the public policy of this state
2 that:

3 (1) Availability of personal assistance services for persons
4 with disabilities should be increased to enable them to live in
5 their own homes and communities;

6 (2) Recipients of personal assistance will be those with
7 severe disabilities, including mental, sensory or physical
8 impairments, or any combination of impairments, who are in
9 need of assistance to live in a living arrangement of their choice
10 in lieu of a more restrictive setting; and

11 (3) Recipients of personal assistance have the right to make
12 decisions regarding and to control the provision of their
13 personal assistance services. This includes, but is not limited to,
14 hiring, training, managing, paying and terminating an assis-
15 tant’s employment.

16 (b) Implementation of the program established in this
17 article shall be based on the following five basic principles:

18 (1) Services may be received where they are needed, either
19 at home or in the community, subject to available funding;

20 (2) Services may be scheduled when they are needed,
21 twenty-four hours a day, seven days a week, as scheduled or
22 needed on an emergency basis, subject to available funding;

23 (3) Recipients contribute to the cost of services based on
24 their ability to pay;

25 (4) Recipients are granted control over the services pro-
26 vided to the fullest extent possible including how, when and by
27 whom services are provided; and

28 (5) Eligibility shall be based on functional needs rather than
29 on a medical diagnosis.

30 (c) Subject to available funds, other personal assistance
31 projects shall be developed to increase the availability of
32 services throughout the state to serve eligible individuals.

§18-10L-3. Definitions.

1 The following words and phrases, when used in this article,
2 have the following meanings unless the context clearly indi-
3 cates otherwise:

4 (1) "Personal assistance services" means:

5 (A) Those basic and ancillary services that enable eligible
6 individuals to live in their homes and communities rather than
7 in institutions and to carry out functions of daily living, self-
8 care and mobility;

9 (B) Basic services include, but are not limited to, getting in
10 and out of a bed, wheelchair or motor vehicle; assistance with
11 routine bodily functions, such as health maintenance activities;
12 bathing and personal hygiene; dressing and grooming; and
13 feeding, including preparation and cleanup.

14 (2) "Personal assistant" means an individual of the con-
15 sumer's choice who provides personal assistance services for
16 the eligible individual.

17 (3) "Recipient" or "consumer" means any individual with
18 a physical, mental, or sensory impairment that affects one or
19 more major life activity who meets all of the following require-
20 ments:

21 (A) Experiences any physical, mental or sensory impair-
22 ment, or combination of impairments, which can be expected to
23 recur or last for a period of not less than twelve months as
24 determined by the evaluation conducted by functional assess-
25 ment;

26 (B) With support from the West Virginia statewide inde-
27 pendent living council when necessary, assumes the employer
28 responsibilities of selecting, supervising and, if needed,
29 terminating the employment of a personal assistant, or desig-
30 nates an individual to assume those responsibilities;

31 (C) With support from the West Virginia statewide inde-
32 pendent living council when necessary, manages his or her own
33 financial and legal affairs or designates an individual to manage
34 those responsibilities;

35 (D) Requires assistance to complete functions of daily
36 living, self-care and mobility, including, but not limited to,
37 those functions included in the definition of personal assistance
38 services; and

39 (E) Is not currently receiving personal assistance services
40 through any other program: *Provided*, That the division of
41 rehabilitation services may, in the event that an option for
42 consumer directed personal assistance services is developed
43 through the state's medicaid program, develop a program
44 coordinated with requirements of any medicaid option and
45 available to medicaid-eligible persons.

§18-10L-4. Programs.

1 (a) The personal assistance services program shall be
2 administered by the division of rehabilitation services through
3 the state plan for independent living and managed by the West
4 Virginia statewide independent living council, established
5 pursuant to the provisions of 29 U.S.C. § 796d.

6 (b) The West Virginia statewide independent living council
7 shall establish a standing committee to function as the con-
8 sumer board to direct the implementation of the program. The
9 board shall be composed of individuals with severe disabilities:
10 *Provided*, That one member shall be a representative of the
11 West Virginia statewide independent living council with a
12 disability. No member of the board is eligible to receive
13 personal assistance services through the program provided for
14 in this article.

1 (c) Determination of eligibility and the need for and amount
2 of personal assistance services shall be decided by the con-
3 sumer board based on functional assessments conducted using
4 a tool developed by the West Virginia statewide independent
5 living council. Each consumer assessment shall include a
6 written report which shall be filed with the division of rehabili-
7 tation services.

8 (d) The division of rehabilitation services shall develop a
9 waiting list for those eligible individuals who cannot be served
10 immediately.

11 (e) Any program developed pursuant to this article shall
12 contain provisions designed to assure that the employment of
13 any personal assistant providing services under this article is in
14 compliance with applicable state and federal laws, including,
15 but not limited to, state and federal payroll taxes, deductions
16 and withholding, wage withholding for child support, and any
17 other applicable employment related law.

18 (f) Funds or services provided to eligible individuals by the
19 personal assistance services program under this article shall not
20 be considered as income to those individuals for any purpose
21 under this code or under the rules of any agency of state
22 government.

§18-10L-5. Funding.

1 (a) There is hereby created in the state treasury a special
2 fund designated the "Ron Yost Personal Assistance Services
3 Fund". The fund shall be an appropriated account within the
4 division of rehabilitation services and the moneys shall be
5 expended exclusively for the purposes of this article.

6 (b) Funds made available for programs under this article
7 may be used only for the planning, designing, delivering and
8 administering of personal assistance services and training. The
9 division of rehabilitation services may use not more than seven
10 percent of the total allocation for administrative costs.

11 (c) The programs created pursuant to this article may use
12 funds from a number of sources, including state and federal
13 funds, program fees and other allotted moneys. The division of
14 rehabilitation services shall apply for and use all available
15 funding sources to carry out this program.

16 (d) Funds shall be disbursed in a manner that ensures
17 maximum consumer control of the services provided under the
18 program.

19 (e) Personal assistance services shall be available only to
20 the extent funding is available through annual appropriations of
21 state, federal and other allotted funds.

§18-10L-6. Rules.

1 The division of rehabilitation services, as directed by the
2 consumer board, shall propose rules for legislative approval in
3 accordance with the provisions of article three, chapter twenty-
4 nine-a of this code, necessary for the effective administration of
5 this article including a sliding scale for funding based on the
6 recipient's, as the employer, ability to contribute to the cost of
7 services.

§18-10L-7. Report.

1 An annual report shall be filed with the Legislature on or
2 before the first day of January of each year, which is to include
3 a summary of the personal assistance services provided under
4 this article and recommendations regarding the program for
5 upcoming fiscal years.

§18-10L-8. Continuation of program.

1 The personal assistance services program shall continue to
2 exist until the first day of July, two thousand two, pursuant to
3 the provisions of article ten, chapter four of this code, to allow
4 for the completion of a preliminary performance review by the
5 joint committee on government operations.

CHAPTER 104

(Com. Sub. for H. B. 2349 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 13, 1999; in effect July 1, 1999. Approved by the Governor.]

AN ACT to amend article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a,

relating to providing a salary bonus for classroom teachers who hold a valid certificate issued by the national board of professional teaching standards and reimbursement for teachers in the process of receiving certification.

Be it enacted by the Legislature of West Virginia:

That article four, chapter eighteen-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 two-a, to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-2a. State minimum salary bonus for classroom teachers with national board certification.

1 (a) The Legislature hereby finds and declares that the
2 rigorous standards and processes for certification by the
3 national board for professional teaching standards (NBPTS)
4 helps to promote the quality of teaching and learning. There-
5 fore, classroom teachers in the public schools of West Virginia
6 should be encouraged to achieve national board certification
7 through a reimbursement of expenses and an additional salary
8 bonus which reflects their additional certification, to be paid in
9 accordance with subsection (b) of this section.

10 (b) Beginning on the first day of July, one thousand nine-
11 hundred ninety-eight, and subject to legislative appropriation,
12 one thousand dollars shall be paid annually at the conclusion of
13 the first semester to each classroom teacher who holds a valid
14 certificate issued by the national board of professional teaching
15 standards for the life of the certification, but in no event more
16 than ten years for any one certification.

17 (c) Subject to legislative appropriation, one thousand
18 dollars shall be paid for reimbursement once to each teacher
19 who enrolls in the program for the national board for profes-
20 sional teaching standards certification and one thousand dollars
21 shall be paid for reimbursement once to each teacher who
22 completes the national board for professional teaching stan-
23 dards certification. Teachers who achieve national board for
24 professional teaching standards certification may be reimbursed

25 a maximum of six hundred dollars for expenses actually
26 incurred while obtaining the national board for professional
27 teaching standards certification.

28 (d) The state board shall limit the number of teachers who
29 receive the initial reimbursements to one hundred teachers
30 annually. The state board shall establish selection criteria for
31 the one hundred teachers by the legislative rule required
32 pursuant to subsection (g) of this section.

33 (e) Funding for the national board for professional teaching
34 standards certifications shall be administered by the state
35 department of education from an appropriation established for
36 that purpose by the Legislature. If funds appropriated by the
37 Legislature to accomplish the purposes of this section are
38 insufficient, the state department shall prorate the reimburse-
39 ments for expenses and salary bonuses and shall request of the
40 Legislature, at its next regular session, funds sufficient to
41 accomplish the purposes of this section, including needed
42 retroactive payments.

43 (f) Nothing in this section shall be construed to require any
44 level of appropriation by the Legislature nor to create any
45 entitlement for payments pursuant to the provisions of this
46 section.

47 (g) The state board shall promulgate legislative rules
48 pursuant to article three-b, chapter twenty-nine-a of this code to
49 implement the provisions of this section.

CHAPTER 105

(H. B. 2612 — By Delegates Hubbard and Jenkins)

[Passed March 11, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-d, relating

to personal leave for school personnel and providing that a surviving spouse may use the personal leave of his or her spouse under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That article four, chapter eighteen-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 ten-d, to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-10d. Use of personal leave days by surviving spouse in certain circumstances.

1 (a) For the purposes of this section, the following terms
2 have the following meanings:

3 (1) "Surviving spouse" means an employee of a county
4 board whose spouse was also employed by the same county
5 board at the time of his or her death; and

6 (2) "Deceased spouse" means a person who, at the time of
7 his or her death, was employed by the same board of education
8 as his or her spouse.

9 (b) Beginning the first day of January, one thousand nine
10 hundred ninety-nine, a county board of education may credit a
11 surviving spouse with any or all personal leave days to which
12 the deceased spouse was entitled at the time of the death of the
13 deceased spouse.

14 (c) The provisions of this section only shall apply if all the
15 following conditions are met:

16 (1) Both spouses were employed by the same county board
17 of education at the time of the death of the deceased spouse;

18 (2) The deceased spouse had unused personal leave days
19 which he or she was entitled to use;

20 (3) The surviving spouse is an active employee with less
21 than five days accumulated personal leave;

22 (4) The death of the deceased spouse was by accident;

23 (5) It is determined by the county board, on evidence
24 provided by a licensed physician, that the surviving spouse is
25 physically disabled to work at the position held by the surviving
26 spouse; and

27 (6) It is determined by the county board that the cause of
28 the disability to the surviving spouse arose from the same
29 accident that resulted in the death of the deceased spouse.

30 (d) The county board periodically shall review the status of
31 the surviving spouse and, upon a determination of the county
32 board that the surviving spouse is able to work at his or her
33 assigned position, any personal leave days credited to the
34 surviving spouse pursuant to the terms of this section shall be
35 extinguished.

36 (e) Personal leave days credited to the surviving spouse
37 pursuant to this section may be used only for the purposes of
38 this section and may not be used for any other purpose, includ-
39 ing, but not limited to, the enhancement of retirement or health
40 insurance benefits.

CHAPTER 106

(Com. Sub. for S. B. 391 — By Senator Jackson)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring that all department of education employees receive at least the same pay as employees of the board of education wherein the principal place of employment is located.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**§18A-4-18. Department of education certified staff salaries.**

1 (a) Personnel employed by the state department of educa-
2 tion who are required to hold a teaching certificate shall receive
3 a salary that is at least equal to the salary paid to comparable
4 professional personnel employed by the county board in the
5 county in which their office is located, minus the six hundred
6 dollars authorized pursuant to section two of this article for
7 classroom teachers with twenty years of experience.

8 (b) Effective the first day of July, two thousand two, service
9 personnel employed by the department of education shall
10 receive a salary that is at least equal to the salary paid to
11 comparable personnel employed by the county board in the
12 county in which their principal place of employment is located.
13 The department of education shall establish a salary schedule
14 that phases in the necessary salary increases before the first day
15 of July, two thousand two.

CHAPTER 107

(H. B. 3019 — By Delegates Mezzatesta, Williams,
Stemple, Manuel, Shelton, Ennis and Davis)

[Passed March 21, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend article three, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections six and seven; and to further amend said chapter by adding thereto a new article, designated article three-e, all relating to the board of directors of the state college system; authority, powers and duties of the board of directors of the state college system; community and technical college education; establishing the freestanding Eastern West Virginia Community and Technical College; authority, powers and duties of freestanding community and technical colleges; authority, powers and duties of the board of

directors relating to operation of Eastern West Virginia Community and Technical College; authority, powers and duties of Eastern West Virginia Community and Technical College; employing a president and appropriate faculty and staff; advisory board; courses, programs, services, tuition and fees; property and title; authorizing contracts for services; reports required; requiring preparation and submission of strategic plans; authorizing contractual arrangements for administration and operation prior to independent accreditation; community and technical college district; defining freestanding community and technical college; providing certain operational parameters for freestanding community and technical colleges; filing a request for approval of certificate and associate degree programs; requiring the board of directors to adopt a model of program approval; requiring legislative rules; legislative findings and intent; requiring a study to be authorized on certain higher education issues; and components of the study.

Be it enacted by the Legislature of West Virginia:

That article three, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections six and seven; and that said chapter be further amended by adding thereto a new article, designated article three-e, all to read as follows:

Article

3. Board of Directors of the State College System.

3E. Eastern West Virginia Community and Technical College.

ARTICLE 3. BOARD OF DIRECTORS OF THE STATE COLLEGE SYSTEM.

§18B-3-6. Increasing flexibility for freestanding community and technical colleges.

§18B-3-7. Legislative findings; study by Joint Committee on Government and Finance.

§18B-3-6. Increasing flexibility for freestanding community and technical colleges.

- 1 (a) For the purposes of this section, "freestanding commu-
- 2 nity and technical college" means Eastern West Virginia
- 3 Community and Technical College, Southern West Virginia
- 4 Community and Technical College, West Virginia Northern
- 5 Community and Technical College and any other freestanding

6 community and technical college so designated by the Legisla-
7 ture.

8 (b) Notwithstanding any rules or procedures of the state
9 college system board of directors, the freestanding community
10 and technical colleges under the jurisdiction of the board of
11 directors have the authority and the duty to:

12 (1) Incorporate the most effective and efficient use of
13 technology in accessing and delivering courses and programs in
14 order to make the best use of available resources and to control
15 costs;

16 (2) Incorporate a model to offer occupational program
17 curricula in smaller modules to accommodate specific student
18 and employer needs and to gain sufficient flexibility in format-
19 ting courses;

20 (3) Serve as a facilitator for education programs from
21 outside delivery sources that meet the needs of the residents and
22 employers of the district; and

23 (4) Employ faculty in the most effective manner to serve
24 the core mission of the community and technical college. To
25 that end the freestanding community and technical colleges may
26 employ faculty for an indefinite period without a grant of tenure
27 and shall work toward a staffing goal of no more than twenty
28 percent of the faculty holding tenure or being tenure-track
29 employees: *Provided*, That tenured faculty currently employed
30 by public institutions of higher education may not be affected
31 by this provision.

32 (c) The freestanding community and technical colleges may
33 not be required to file a request for approval of certificate and
34 associate degree programs with the board of trustees before
35 implementing a new program pursuant to section eight, article
36 one of this chapter.

37 (d) Potomac State College of West Virginia University and
38 West Virginia University at Parkersburg may not be required to
39 file a request for approval of certificate and associate degree
40 programs with the board of directors before implementing a

41 new program pursuant to section eight, article one of this
42 chapter.

43 (e) The board of directors shall adopt a model of program
44 approval for the freestanding community and technical colleges
45 that permits occupational programs to be customized to meet
46 needs without requiring approval by the board of directors and,
47 furthermore, that incorporates a post-audit review by the board
48 of directors of such programs on a three-year cycle to determine
49 the effectiveness of such programs in meeting district needs.

50 (f) The board of directors shall promulgate legislative rules
51 in accordance with the provisions of article three-a, chapter
52 twenty-nine-a of this code to effectuate the purposes of this
53 section: *Provided*, That the board may not promulgate emer-
54 gency rules. The rules shall be filed with the legislative
55 oversight commission on education accountability no later than
56 the first day of November, one thousand nine hundred ninety-
57 nine.

**§18B-3-7. Legislative findings; study by joint committee on
government and finance.**

1 (a) The Legislature recognizes that it is in the best interest
2 of the state to have effective and comprehensive higher
3 education programs. It is critical that there be a system for the
4 delivery of high quality community and technical college
5 education because of its importance to the economic and
6 cultural well-being of state residents.

7 (b) The Legislature finds that a need exists to strengthen the
8 public community colleges so that they are able to respond
9 better to the economic needs of the state for a highly trained,
10 competent work force. Therefore, the Legislature has sought,
11 through passage of legislation, to restructure and refocus
12 community and technical college education for the purpose of
13 establishing programs that function well with the public schools
14 and four-year colleges, that make maximum use of resources,
15 that encourage citizens to pursue a lifetime of learning, that
16 serve as instruments of economic development, and that have
17 the independence and flexibility to respond quickly to changing
18 needs.

19 (c) The Legislature finds that, although great progress has
20 been made on reaching some of the established goals, the
21 purposes for which community and technical college education
22 was created have not been fulfilled and many of the goals
23 established have not been met.

24 (d) The Legislature further finds that a need exists to clarify
25 the missions of public institutions of higher education, to
26 consider the equity and effectiveness of current funding
27 methods and to consider methods of equitably offering access
28 to associate, baccalaureate and graduate education programs at
29 institutions throughout the state.

30 (e) It is the responsibility of the Legislature to make the
31 best use of available resources and to provide a blueprint that
32 will meet goals established for public higher education.
33 Therefore, the joint committee on government and finance shall
34 authorize a study for the purpose of making specific and
35 detailed recommendations to the Legislature. The recommenda-
36 tions shall be delivered to the Legislature by the first day of
37 January, two thousand. The study shall include, but may not be
38 limited to, the following:

39 (1) Recommendations on clarifying the missions of higher
40 education institutions, directing resources to programs that meet
41 the current and future work force needs of the state and distrib-
42 uting available revenues in an equitable fashion that enables
43 each state institution of higher education to fulfill its mission;

44 (2) A review of state statutes and the rules, policies,
45 practices and procedures of the higher education governing
46 boards that may hinder effective delivery of high quality
47 education programs and recommendations on how any statute
48 or policy should be changed;

49 (3) A review of and recommendations on the higher
50 education resource allocation model and resource allocation
51 policies, established pursuant to section two, article five of this
52 chapter, to determine a new or modified model for funding
53 public higher education in West Virginia. The recommenda-
54 tions shall include a method of funding reimbursement based on

55 delivering credit and noncredit course work, eliminating or
56 reducing the funding and regulatory differences between credit
57 and noncredit courses to facilitate students moving between the
58 two types of programs, and allowing faculty more flexibility to
59 teach in both credit and noncredit program areas;

60 (4) Recommendations on a model for delivery of graduate
61 education that makes effective use of resources available at
62 four-year institutions under the jurisdiction of the board of
63 directors;

64 (5) Recommendations on a model for delivery of baccalau-
65 reate education that makes effective use of resources available
66 at the freestanding community colleges under the jurisdiction
67 of the board of directors;

68 (6) A review of facility and maintenance needs of all state
69 institutions of higher education and recommendations for
70 addressing those needs;

71 (7) Recommendations on an appropriate model or models
72 for governance of public institutions of higher education in the
73 state; and

74 (8) Recommendations on the most effective and efficient
75 model to be used in creating a system of public community and
76 technical colleges in West Virginia.

ARTICLE 3E. EASTERN WEST VIRGINIA COMMUNITY AND TECHNICAL COLLEGE.

§18B-3E-1. Legislative findings and intent.

§18B-3E-2. Establishment and operation of Eastern West Virginia Community and Technical College; authority and duty to purchase property, expend appropriations and conduct programs.

§18B-3E-1. Legislative findings and intent.

1 (a) The Legislature finds that the potomac highlands is an
2 area of the state that is underserved for higher education and
3 that deserves more convenient access to higher education
4 opportunities, including work force development opportunities.

5 (b) It is the intent of the Legislature in establishing Eastern
6 West Virginia Community and Technical College to focus on
7 the advantages available to the potomac highlands and to the

8 state by providing quality community and technical college
9 education.

10 (c) It is further the intent of the Legislature that Eastern
11 West Virginia Community and Technical College shall serve as
12 a delivery platform for higher education in the potomac
13 highlands while the study required by section seven, article
14 three of this chapter is being conducted. The final organiza-
15 tional structure of the institution should reflect the results of the
16 study.

17 (d) In order to satisfy the growing needs of the potomac
18 highlands for access to quality higher education programs, the
19 community and technical college shall meet the critical two-
20 fold core mission which is to deliver work force development
21 programs that meet the needs of employers and to increase the
22 college participation rate of all the residents of the district.
23 Establishment of this college is intended to provide an opportu-
24 nity to implement more effective education delivery systems,
25 organizational structures, and management and to result in
26 finding the best model for delivery of high quality community
27 and technical college education.

**§18B-3E-2. Establishment and operation of Eastern West Vir-
ginia Community and Technical College; authority
and duty to purchase property, expend appropria-
tions and conduct programs.**

1 (a) The board of directors shall establish, operate and
2 maintain as a state institution of higher education and as a part
3 of the state college system of West Virginia, the freestanding
4 community and technical college, known as "Eastern West
5 Virginia Community and Technical College", located in Hardy
6 County. The title to all real property, facilities and equipment
7 of Eastern West Virginia Community and Technical College is
8 and remains vested in the board of directors.

9 (b) The board of directors shall employ a president and such
10 staff and faculty as determined appropriate for the institution;
11 appoint a board of advisors consistent with section one, article
12 six of this chapter; and exercise general determination, control,

13 supervision and management of the financial, business and
14 education policies and affairs of the community and technical
15 college.

16 (c) Subject to the intent of the Legislature as stated in
17 section one of this article, Eastern West Virginia Community
18 and Technical College may offer such curricula, programs,
19 courses and services and confer such degrees as is approved by
20 the board of directors. The board of directors shall fix tuition
21 and establish and set other fees to be charged students as it
22 considers appropriate, including establishing special fees for
23 specific purposes. Special fees shall be paid into special funds
24 and may be used only for the purposes for which the fees were
25 collected.

26 (d) The board of directors shall expend from the appropri-
27 ations allocated for Eastern West Virginia Community and
28 Technical College such funds as are necessary to operate and
29 conduct programs, to acquire clear title to any real property and
30 to make necessary capital improvements. The title to all
31 property purchased for the use of Eastern West Virginia
32 Community and Technical College is vested in the board of
33 directors.

34 (e) The board of directors may enter into contracts on
35 behalf of Eastern West Virginia Community and Technical
36 College with public and private education institutions, agencies,
37 boards, government agencies, corporations, partnerships and
38 individuals to perform instructional or other services.

39 (f) The board of directors shall make any necessary reports
40 to the legislative oversight commission on education account-
41 ability for the phased implementation of this section.

42 (g) Eastern West Virginia Community and Technical
43 College shall prepare and submit strategic plans in accordance
44 with the provisions of section one-c, article one of this chapter.

45 (h) The board of directors may provide through contractual
46 arrangement for the administration and operation of Eastern
47 West Virginia Community and Technical College by other state
48 institutions of higher education until such time as the commu-

49 nity and technical college attains appropriate independent
 50 accreditation. Any contractual arrangement shall ensure that the
 51 programs offered at Eastern West Virginia Community and
 52 Technical College are accredited while independent accredita-
 53 tion is being sought.

54 (i) Notwithstanding the provisions of section three-a of this
 55 article, the community and technical college district of Eastern
 56 West Virginia Community and Technical College, for the
 57 purposes of initial implementation, is comprised as follows:
 58 Grant, Hardy, Hampshire, Pendleton and Tucker counties.

CHAPTER 108

(H. B. 3009 — By Delegates Mezzatesta, Martin, Williams,
 Stemple, Manuel, Houston and Fletcher)

[Passed March 12, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-d, relating to creating the workforce development initiative program under the council for community and economic development; providing that the council is responsible for administering the state fund for community and technical college and workforce development; providing the programs mission is to link postsecondary education capacity to the needs of employers; requirements for participating in the program; establishing grant application procedures; and requiring legislative rules.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.

§18B-3D-1. Legislative findings and intent.

§18B-3D-2. Workforce development initiative program created; program administration.

§18B-3D-3. Mission of the workforce development initiative program.

§18B-3D-4. Grant Application Procedures.

§18B-3D-5. Legislative rules.

§18B-3D-1. Legislative findings and intent.

1 (a) The Legislature finds that a recent statewide study of the
2 workforce training needs of employers throughout the state
3 provided a clear message from the business community:

4 (1) The needs of employers are rapidly changing and
5 training providers must be more responsive or the state econ-
6 omy will suffer;

7 (2) Information specific to West Virginia, once again
8 emphasizes the critical link between education and economic
9 development that empowering youth and adults with the
10 knowledge and skills they need to succeed in the competitive
11 work world also results in a workforce which enables busi-
12 nesses and communities to prosper;

13 (3) Although employers are generally satisfied with the
14 quality of the West Virginia workforce and the study provides
15 additional support that the measures adopted in the Jobs
16 Through Education Act will bring continued improvement,
17 workforce needs are not static, critical skill shortages currently
18 exist, and the establishment of a workforce development system
19 that responds more quickly to the evolving skill requirements
20 of employers is needed.

21 (b) The Legislature further finds that a study of community
22 and technical education in West Virginia performed by the
23 national center for higher education management systems called
24 attention to problems in providing needed workforce education
25 and found that there is a need to:

26 (1) Jump-start development of community college and
27 postsecondary workforce development initiatives,

28 (2) Provide incentives for existing public postsecondary
29 providers to respond jointly to both short and long term needs
30 of employers and other clients,

31 (3) Provide funding for explicit incentives for partnerships
32 between employers and public postsecondary institutions to
33 develop comprehensive community college and workforce
34 development services, and

35 (4) Allocate funds competitively on the basis of proposals
36 submitted by providers.

37 (c) It is further the intent of the Legislature that the granting
38 of funds under this article will promote the mission of commu-
39 nity and technical colleges as set forth in section three-a, article
40 three of this chapter.

41 (d) It is the intent of the Legislature through the grant of
42 funds under this article to provide limited seed money to
43 address some of the specific areas where improvement is
44 needed, including:

45 (1) Improving employer awareness and access to services
46 available through the state's education institutions,

47 (2) Providing designated professionals and resources to
48 support workforce education through the state's education
49 institutions,

50 (3) Increasing the capacity of the state's education institu-
51 tions to respond rapidly to employer needs for workforce
52 education, and training on an on-going basis through the
53 development of a client-focused, visible point of contact for
54 program development and delivery, service referral and needs
55 assessment, such as a workforce development center, and

56 (4) Maximizing the use of available resources for
57 workforce education and training through partnerships with
58 public vocational, technical and adult education centers and
59 private training providers.

60 (e) It is further the intent of the Legislature that consider-
61 ation and partnering opportunities be given to small businesses
62 on an equal basis with larger businesses for the purposes of this

63 article and that the seed money will assist providers in becom-
64 ing self-sustaining through partnerships with business and
65 industry which will include cost-sharing initiatives and fees
66 charged for the use of services.

67 (f) The Legislature intends that grants of funds made under
68 the provisions of this article will be competitive among
69 applicants who meet all of the criteria established in this article
70 and such other criteria as may be specified by the council.
71 Subject to the availability of funds, more than one competition
72 may be held during the same fiscal year and the dollar range of
73 awards granted in successive competitions shall be prorated
74 based on the number of months remaining in the fiscal year.
75 Subject to annual review and justification, it is the intent of the
76 Legislature to renew grant awards made under this article each
77 year for five years following the initial grant award.

**§18B-3D-2. Workforce development initiative program created;
program administration.**

1 (a) For the purposes of this article "Council" means the
2 council for community and economic development as defined
3 in section two, article two, chapter five-b of this code.

4 (b) There is hereby created under the council, a workforce
5 development initiative program to administer and oversee
6 grants to community and technical colleges to achieve the
7 purposes of this article in accordance with legislative intent.
8 The primary responsibility of the council as it relates to the
9 workforce development initiative program is to administer the
10 state fund for community and technical college and workforce
11 development including setting criteria for grant applications,
12 receiving applications for grants, making determinations on
13 distribution of funds, and evaluating the performance of
14 workforce development initiatives.

15 (c) The council shall review and approve the expenditure of
16 all grant funds, including development of application criteria,
17 the review and selection of applicants for funding, and the
18 annual review and justification of applicants for grant renewal.

19 (1) To aid in decisionmaking, the council shall appoint an
20 advisory committee consisting of the vice chancellor for

21 community and technical colleges, the secretary of education
22 and the arts or a designee, the assistant state superintendent for
23 technical and adult education, the chair of the joint commission
24 for vocational-technical-occupational education, and the chair
25 of the human resource investment council. The advisory
26 committee shall review all applications for workforce develop-
27 ment initiative grants and make a report including recommen-
28 dations for distributing grant funds to the council. The advisory
29 committee also shall make recommendations on methods to
30 share among the community and technical colleges any
31 curricula developed as a result of a workforce development
32 initiative grant.

33 (2) When determining which grant proposals will be
34 funded, the council shall give special consideration to proposals
35 by community and technical colleges that involve businesses
36 with fewer than fifty employees.

37 (3) The council also shall weigh each proposal to avoid
38 awarding grants which will have the ultimate effect of provid-
39 ing unfair advantage to employers new to the state who will be
40 in direct competition with established local businesses.

41 (d) The council may allocate a reasonable amount, not to
42 exceed five percent up to a maximum of \$50,000 of the funds
43 available for grants on an annual basis, for general program
44 administration.

45 (e) The head of the council shall report to the legislative
46 oversight commission on education accountability on the status
47 of the workforce development initiative program by the first
48 day of December, one thousand nine hundred ninety-nine, and
49 annually thereafter by the first day of December.

50 (f) Moneys appropriated or otherwise available for the
51 workforce development initiative program shall be allocated by
52 line item to an appropriate account. Any moneys remaining in
53 the fund at the close of a fiscal year shall be carried forward for
54 use in the next fiscal year.

55 (g) Nothing in this article requires a specific level of
56 appropriation by the Legislature.

§18B-3D-3. Mission of the workforce development initiative program.

1 (a) The state-wide mission of the workforce development
2 initiative program is to develop a strategy to strengthen the
3 quality of the state's workforce by linking the existing
4 postsecondary education capacity to the needs of business,
5 industry and other employers. Available funding will be used to
6 provide explicit incentives for partnerships between employers
7 and community and technical colleges to develop comprehen-
8 sive workforce development services. Funds will be granted on
9 the basis of proposals developed according to criteria estab-
10 lished by the council.

11 (b) The mission of any community and technical college
12 accepting a workforce development initiative grant is to:

13 (1) Become client-focused and develop programs that meet
14 documented employer needs;

15 (2) Involve and collaborate with employers in the develop-
16 ment of programs;

17 (3) Develop customized training programs that provide for
18 the changing needs of employers and that are offered at flexible
19 times and locations to accommodate employer scheduling;

20 (4) Develop partnerships with other public and private
21 providers, including small business development centers and,
22 vocational, technical and adult education centers, and with
23 business and labor, to fulfill the workforce development needs
24 of the service area;

25 (5) Assist in the on-going assessment of the workforce
26 development needs of the service area; and

27 (6) Serve as a visible point of contact and referral for
28 services to meet the workforce development needs of the
29 service area.

§18B-3D-4. Grant application procedures.

1 (a) In order to participate in the workforce development
2 initiative grant program, a community and technical college
3 must meet the following conditions:

4 (1) Establish a consortia committee as required by section
5 three, article three-a of this chapter. The consortia committee or
6 a subcommittee thereof shall participate in the development of
7 and approve applications for funding grants under the provi-
8 sions of this article, and shall approve the workforce develop-
9 ment initiative budget;

10 (2) Develop a plan to achieve measurable improvements in
11 the quality of the workforce within its service area over a five-
12 year period. The plan must be developed in partnership with
13 employers, local vocational schools, and other workforce
14 education providers;

15 (3) Establish a special revolving fund under the jurisdiction
16 of the consortia committee dedicated solely to workforce
17 development initiatives for the purposes provided in this article.
18 Any fees or revenues generated from workforce development
19 initiatives funded by a competitive grant shall be deposited into
20 this fund.

21 (b) To be eligible to receive a workforce development
22 initiative grant, a community and technical college must
23 provide at least the following information in its application:

24 (1) Identification of the specific business or business sector
25 training needs that will be met if a workforce development
26 initiative grant is received;

27 (2) A commitment from the private sector to provide a
28 match of one dollar for each dollar of state grant money
29 received except in cases where the community and technical
30 college can demonstrate in the grant application that it would be
31 a hardship for the business being served to provide such a
32 match. In those cases only, the match required may be reduced
33 to one private dollar for every three dollars of state grant money
34 provided;

35 (3) An agreement to share with other community and
36 technical colleges any curricula developed using funds from a
37 workforce development initiative grant;

38 (4) A specific plan showing how the community and
39 technical college will collaborate with local postsecondary
40 vocational institutions to maximize the use of existing facilities;

41 (5) An acknowledgment that acceptance of a grant under
42 the provisions of this article commits the community and
43 technical college and its consortia committee to such terms,
44 conditions and deliverables as is specified by the council in the
45 request for applications, including, but not limited to, the
46 measures by which the performance of the workforce develop-
47 ment initiative will be evaluated.

§18B-3D-5. Legislative rules.

1 The council shall propose a legislative rule pursuant to
2 article three-a, chapter twenty-nine-a of this code to implement
3 the provisions of this article and shall file the rule with the
4 legislative oversight commission on education accountability
5 no later than the first day of September, one thousand nine
6 hundred ninety-nine.

CHAPTER 109

(H. B. 2471 — By Delegates Modesitt and Faircloth)

[Passed March 13, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and five-a, article four, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one and five, article twenty-nine, chapter thirty of said code; to amend and reenact section five hundred one, article five, chapter sixty-a of said code; and to amend and reenact section four, article three-b, chapter sixty-one of said code, all relating to renaming security officers of institutions of higher learning; providing that security officers are renamed "campus police officers"; empowering campus security officers to enforce the provisions of the uniform controlled substances act on campuses; campus police officers to carry firearms; providing that campus police officers are law-enforcement officers and setting forth definition.

Be it enacted by the Legislature of West Virginia:

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

Chapter

18B. Higher Education.

30. Professions and Occupations.

60A. Uniform Controlled Substances Act.

61. Crimes and Their Punishment.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-5. Campus police officers; appointment; qualifications; authority; compensation and removal.

§18B-4-5a. Crimes committed on campus of institutions of higher education.

§18B-4-5. Campus police officers; appointment; qualifications; authority; compensation and removal.

1 The governing boards are hereby authorized to appoint
 2 bona fide residents of this state to act as campus police officers
 3 upon any premises owned or leased by the state of West
 4 Virginia and under the jurisdiction of the governing boards,
 5 subject to the conditions and restrictions hereinafter imposed.
 6 Before performing duties as a campus police officer in any
 7 county, each person so appointed shall first qualify therefor in
 8 the same manner as is required of county police officers by the
 9 taking and filing of an oath of office as required by article one,
 10 chapter six of this code and by posting an official bond as
 11 required by article two, chapter six of this code. A campus
 12 police officer shall have authority to carry a gun and may carry
 13 any other dangerous weapon while on duty if the campus police
 14 officer fulfills the certification requirement for law-enforcement

15 officers under section five, article twenty-nine, chapter thirty of
16 this code.

17 It is the duty of any person so appointed and qualified as a
18 campus police officer to preserve law and order only upon those
19 premises under the jurisdiction of the governing boards and on
20 any other street, road or thoroughfare, except controlled access
21 and open country highways, immediately adjacent to or passing
22 through such premises, to which the person may be assigned by
23 the president or other administrative head of the state institution
24 of higher education. For this purpose the campus police officer
25 is a law-enforcement officer pursuant to the provisions of
26 section one, article twenty-nine, chapter thirty of this code and,
27 as to offenses committed within any area so assigned, has and
28 may exercise all the powers and authority and is subject to all
29 the requirements and responsibilities of a law-enforcement
30 officer: *Provided*, That the assignment of campus police
31 officers to the duties authorized by this section may not be
32 deemed to supersede in any way the authority or duty of other
33 peace officers to preserve law and order on such premises. In
34 addition, the campus police officers appointed under provisions
35 of this section have authority to assist local peace officers on
36 public highways in the control of traffic in and around premises
37 owned by the state of West Virginia whenever such traffic is
38 generated as a result of athletic or other activities conducted or
39 sponsored by a state institution of higher education and when
40 such assistance has been requested by the local peace officers.

41 The salary of all such campus police officers shall be paid
42 by the appropriate governing board. Each state institution may
43 furnish each campus police officer with a firearm and an
44 official uniform to be worn while on duty and shall furnish and
45 require each officer while on duty to wear a shield with an
46 appropriate inscription and to carry credentials certifying to the
47 person's identity and authority as a campus police officer.

48 The governing boards may at their pleasure revoke the
49 authority of any campus police officer. The president or other
50 administrative head of the state institution of higher education
51 shall report the termination of employment of a campus police

52 officer by filing a notice to that effect in the office of the clerk
53 of each county in which the campus police officer's oath of
54 office was filed.

**§18B-4-5a. Crimes committed on campus of institutions of higher
education.**

1 The president or a designee of each institution of higher
2 education in this state shall on a regular and timely basis
3 provide information to the public concerning alleged crimes
4 occurring on the institution's property which have been
5 reported to a campus police officer or any other officer of the
6 institution. A crime shall be deemed reported whenever a
7 campus police officer or other officer of the institution deter-
8 mines that the report is credible, when the report is submitted
9 in writing and attested to by the victim on such forms as shall
10 be made available by the institution for such purpose, or when
11 the institution is notified by a law-enforcement agency of the
12 reporting of a crime alleged to have occurred on the institu-
13 tion's property.

14 Such reports shall be referred within twenty-four hours to
15 the appropriate law-enforcement agencies, as defined in section
16 one, article twenty-nine, chapter thirty of this code, for further
17 investigation. The information required to be made available to
18 the public regarding the crime report shall be so available
19 within ten days of the report and shall include the nature of the
20 criminal offense, the date of the offense, the general location of
21 the offense (such as a designation of a specific building or area
22 of the campus) and the time of day when the offense occurred:
23 *Provided*, That this requirement shall not be construed to
24 require the release of any information which may disclose the
25 identity of the victim: *Provided, however*, That the institution
26 shall withhold the information required to be made available to
27 the public for a longer period upon certification of investigative
28 need that the information be withheld from the public, such
29 certification to be filed by an officer of one of the investigating
30 law-enforcement agencies with the president of the institution
31 or the designee to whom the duties required by this section have
32 been delegated: *Provided further*, That the required information

33 may in no event be withheld after an arrest has been made in
34 connection with the crime report.

35 For purposes of this section, "crime" is defined as those
36 offenses required to be reported under the federal Crime
37 Awareness and Campus Security Act of 1990, as amended, and
38 under section eight-a, article one of this chapter, and includes
39 murder, rape, robbery, aggravated assault, burglary, motor
40 vehicle theft and arrests for liquor, drug or weapons laws
41 violations.

42 The governing boards shall provide crime reporting forms
43 and promulgate such legislative rule pursuant to the provisions
44 of article three-a, chapter twenty-nine-a of this code as are
45 necessary for the implementation of this section. Such forms
46 and rules shall be provided by the central office to other
47 institutions of higher education in this state to assist them with
48 the implementation of this section.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-1. Definitions.

§30-29-5. Certification requirements.

§30-29-1. Definitions.

1 For the purposes of this article, unless a different meaning
2 clearly appears in the context:

3 "Approved law-enforcement training academy" means any
4 training facility which is approved and authorized to conduct
5 law-enforcement training as provided in this article;

6 "Chief executive" means the superintendent of the state
7 police; the chief conservation officer of the division of natural
8 resources; the sheriff of any West Virginia county; any admin-
9 istrative deputy appointed by the chief conservation officer of
10 natural resources; or the chief of any West Virginia municipal
11 law-enforcement agency;

12 "County" means the fifty-five major political subdivisions
13 of the state;

14 “Exempt rank” means any noncommissioned or commis-
15 sioned rank of sergeant or above;

16 “Governor’s committee on crime, delinquency and correc-
17 tion” or “governor’s committee” means the governor’s commit-
18 tee on crime, delinquency and correction established as a state
19 planning agency pursuant to section one, article nine, chapter
20 fifteen of this code;

21 “Law-enforcement officer” means any duly authorized
22 member of a law-enforcement agency who is authorized to
23 maintain public peace and order, prevent and detect crime,
24 make arrests and enforce the laws of the state or any county or
25 municipality thereof, other than parking ordinances, and
26 includes those persons employed as campus police officers at
27 state institutions of higher education in accordance with the
28 provisions of section five, article four, chapter eighteen-b of
29 this code, although those institutions may not be considered
30 law-enforcement agencies. The term also includes those persons
31 employed as rangers by the Hatfield-McCoy regional recreation
32 authority in accordance with the provisions of section six,
33 article fourteen, chapter twenty of this code, although the
34 authority may not be considered a law-enforcement agency:
35 *Provided*, That the subject rangers shall pay the tuition and
36 costs of training. As used in this article, the term
37 “law-enforcement officer” does not apply to the chief executive
38 of any West Virginia law-enforcement agency or any watchman
39 or special conservation officer;

40 “Law-enforcement official” means the duly appointed chief
41 administrator of a designated law-enforcement agency or a duly
42 authorized designee;

43 “Municipality” means any incorporated town or city whose
44 boundaries lie within the geographic boundaries of the state;

45 “Subcommittee” or “law-enforcement training subcommit-
46 tee” means the subcommittee of the governor’s committee on
47 crime, delinquency and correction created by section two of this
48 article; and

49 “West Virginia law-enforcement agency” means any duly
50 authorized state, county or municipal organization employing
51 one or more persons whose responsibility is the enforcement of
52 laws of the state or any county or municipality thereof: *Pro-*
53 *vided*, That neither the Hatfield-McCoy regional recreation
54 authority nor any state institution of higher education may be
55 deemed a law-enforcement agency.

§30-29-5. Certification requirements.

1 (a) Except as provided in subsections (b) and (g) below, no
2 person may be employed as a law-enforcement officer by any
3 West Virginia law-enforcement agency or by any state institu-
4 tion of higher education on or after the effective date of this
5 article unless the person is certified, or is certifiable in one of
6 the manners specified in subsections (c) through (e) below, by
7 the governor’s committee as having met the minimum entry
8 level law-enforcement qualification and training program
9 requirements promulgated pursuant to this article.

10 (b) Except as provided in subsection (g) below, a person
11 who is not certified, or certifiable in one of the manners
12 specified in subsections (c) through (e) below, may be condi-
13 tionally employed as a law-enforcement officer until certified:
14 *Provided*, That, within ninety calendar days of the commence-
15 ment of employment or the effective date of this article if the
16 person is already employed on the effective date, he or she
17 makes a written application to attend an approved law-enforce-
18 ment training academy. The academy shall notify the applicant
19 in writing of the receipt of the application and of the tentative
20 date of the applicant’s enrollment. Any applicant who, as the
21 result of extenuating circumstances acceptable to his or her law-
22 enforcement official, is unable to attend the scheduled training
23 program to which he or she was admitted may reapply and shall
24 be admitted to the next regularly scheduled training program.
25 An applicant who satisfactorily completes the program shall,
26 within thirty days of completion, make written application to
27 the governor’s committee requesting certification as having met
28 the minimum entry level law-enforcement qualification and
29 training program requirements. Upon determining that an

30 applicant has met the requirements for certification, the
31 governor's committee shall forward to the applicant documenta-
32 tion of certification. An applicant who fails to complete the
33 training program to which he or she is first admitted, or was
34 admitted upon reapplication, may not be certified by the
35 governor's committee.

36 (c) Any person who is employed as a law-enforcement
37 officer on the effective date of this article and is a graduate of
38 the West Virginia basic police training course, the West
39 Virginia department of public safety cadet training program, or
40 other approved law-enforcement training academy, is certifiable
41 as having met the minimum entry law-enforcement training
42 program requirements and is exempt from the requirement of
43 attending a law-enforcement training academy. To receive
44 certification, the person shall make written application within
45 ninety calendar days of the effective date of this article to the
46 governor's committee requesting certification. The governor's
47 committee shall review the applicant's relevant scholastic
48 records and, upon determining that the applicant has met the
49 requirements for certification, shall forward to the applicant
50 documentation of certification.

51 (d) Any person who is employed as a law-enforcement
52 officer on the effective date of this article and is not a graduate
53 of the West Virginia basic police training course, the West
54 Virginia department of public safety cadet training program, or
55 other approved law-enforcement training academy, is certifiable
56 as having met the minimum entry level law-enforcement
57 training program requirements and is exempt from the require-
58 ment of attending a law-enforcement training academy if the
59 person has been employed as a law-enforcement officer for a
60 period of not less than five consecutive years immediately
61 preceding the date of application for certification. To receive
62 certification, the person shall make written application within
63 ninety calendar days following the effective date of this article
64 to the governor's committee requesting certification. The
65 application shall include notarized statements as to the appli-
66 cant's years of employment as a law-enforcement officer. The

67 governor's committee shall review the application and, upon
68 determining that the applicant has met the requirements for
69 certification, shall forward to the applicant documentation of
70 certification.

71 (e) Any person who begins employment on or after the
72 effective date of this article as a law-enforcement officer is
73 certifiable as having met the minimum entry level law-enforce-
74 ment training program requirements and is exempt from
75 attending a law-enforcement training academy if the person has
76 satisfactorily completed a course of instruction in law enforce-
77 ment equivalent to or exceeding the minimum applicable law-
78 enforcement training curricula promulgated by the governor's
79 committee. To receive certification, the person shall make
80 written application within ninety calendar days following the
81 commencement of employment to the governor's committee
82 requesting certification. The application shall include a nota-
83 rized statement of the applicant's satisfactory completion of the
84 course of instruction in law enforcement, a notarized transcript
85 of the applicant's relevant scholastic records, and a notarized
86 copy of the curriculum of the completed course of instruction.
87 The governor's committee shall review the application and, if
88 it finds the applicant has met the requirements for certification
89 shall forward to the applicant documentation of certification.

90 (f) Any person who is employed as a law-enforcement
91 officer on or after the effective date of this article and fails to be
92 certified shall be automatically terminated and no further
93 emoluments shall be paid to such officer by his employer. Any
94 person terminated shall be entitled to reapply, as a private
95 citizen, to the subcommittee for training and certification, and
96 upon being certified may again be employed as a law-enforce-
97 ment officer in this state.

98 (g) Nothing in this article may be construed as prohibiting
99 any governing body, civil service commission or chief execu-
100 tive of any West Virginia law-enforcement agency from
101 requiring their law-enforcement officers to meet qualifications
102 and satisfactorily complete a course of law-enforcement
103 instruction which exceeds the minimum entry level law-

104 enforcement qualification and training curricula promulgated
105 by the governor's committee.

106 (h) The requirement of this section for qualification,
107 training and certification of law-enforcement officers shall not
108 be mandatory during the two years next succeeding the effec-
109 tive date of this article for the law-enforcement officers of a
110 law-enforcement agency which employs a civil service system
111 for its law-enforcement personnel, nor shall such provisions be
112 mandatory during the five years next succeeding the effective
113 date of this article for law-enforcement officers of a law-
114 enforcement agency which does not employ a civil service
115 system for its law-enforcement personnel: *Provided*, That such
116 requirements shall be mandatory for all such law-enforcement
117 officers until their law-enforcement officials apply for their
118 exemption by submitting a written plan to the governor's
119 committee which will reasonably assure compliance of all law-
120 enforcement officers of their agencies within the applicable two
121 or five-year period of exemption.

122 (i) Any person aggrieved by a decision of the governor's
123 committee made pursuant to this article may contest such
124 decision in accordance with the provisions of article five,
125 chapter twenty-nine-a of this code.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 5. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS.

§60A-5-501. Powers of enforcement personnel.

1 (a) Any member of the state police, any sheriff, any deputy
2 sheriff, any municipal police officer and any campus police
3 officer may in the enforcement of the provisions of this act:

4 (1) Carry firearms;

5 (2) Execute and serve search warrants, arrest warrants,
6 subpoenas, and summonses issued under the authority of this
7 state;

8 (3) Make arrests without warrant for any offense under this
9 act committed in his presence, or if he has probable cause to
10 believe that the person to be arrested has committed or is
11 committing a violation of this act which may constitute a
12 felony;

13 (4) Make seizures of property pursuant to this act; or

14 (5) Perform such other law-enforcement duties as said state
15 board of pharmacy or said appropriate department, board or
16 agency, as specified in section 301, designates.

17 (b) All officers, agents, inspectors, and representatives of
18 the said state board of pharmacy and of the said appropriate
19 department, board, or agency, as specified in section 301, and
20 members of the state police may execute and serve administra-
21 tive warrants issued incident to the enforcement of the provi-
22 sions of this act. Any such officer, agent, inspector, and
23 representative of the said state board of pharmacy and of the
24 said appropriate department, board, or agency, as specified in
25 said section 301, may:

26 (1) Execute and serve subpoenas and summonses issued
27 under the authority of this state;

28 (2) Make arrests without warrant for any offense under this
29 act committed in his presence, or if he has probable cause to
30 believe that the person to be arrested has committed or is
31 committing a violation of this act which may constitute a
32 felony; or

33 (3) Make seizures of property pursuant to this act.

34 (c) All prosecuting attorneys and the attorney general, or
35 any of their assistants, shall assist in the enforcement of all
36 provisions of this act and shall cooperate with all agencies
37 charged with the enforcement of the laws of the United States,
38 of this state, and of all other states relating to controlled
39 substances.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3B. TRESPASS.

§61-3B-4. Trespass on student residence premises or student facility premises of an institution of higher education.

1 (a) For the purposes of this section:

2 (1) "Residence hall" means housing or a unit of housing
3 provided primarily for students as a temporary or permanent
4 dwelling place or abode and owned, operated or controlled by
5 an institution of higher education.

6 (2) "Student facility" means a facility owned, operated or
7 controlled by an institution of higher education at which
8 alcoholic liquor or nonintoxicating beer is purchased, sold or
9 served to students enrolled at such institution, but does not
10 include facilities at which athletic events are regularly sched-
11 uled and an admission fee is generally charged.

12 (3) "Institution of higher education" means any state
13 university, state college or state community college under the
14 control, supervision and management of the West Virginia
15 board of trustees or West Virginia board of directors, or any
16 other university, college or institution of higher education in the
17 state subject to rules for accreditation under the provisions of
18 section seven, article four, chapter eighteen-b of this code.

19 (4) "Person authorized to have access to a residence hall or
20 student facility" means:

21 (A) A student who resides or dwells in the residence hall;
22 or

23 (B) An invited guest of a student who resides or dwells in
24 the residence hall; or

25 (C) A parent, guardian or person who has legal custody of
26 a student who resides or dwells in the residence hall; or

27 (D) An employee of the institution of higher education who
28 is required by such employment by such institution to be in the
29 residence hall or student facility and who is acting within the
30 scope of his or her employment; or

31 (E) A delivery person, repair person or other such person
32 who is not an employee of the institution of higher education
33 but who nonetheless has a legitimate commercial reason to be
34 in the residence hall or student facility and who is acting
35 pursuant to such legitimate commercial reason.

36 (b) If a person authorized to have access to a residence hall
37 or a student facility enters such residence hall or student facility
38 and by such presence or acts interferes with the peaceful or
39 orderly operation of such residence hall or student facility, such
40 person may be asked to leave such residence hall or student
41 facility. If a person not authorized to have access to a residence
42 hall or student facility enters such a residence hall or student
43 facility, that person may be asked to leave such residence hall
44 or student facility notwithstanding the fact that he or she has not
45 interfered with the peaceful or orderly operation of such
46 residence hall or student facility or otherwise committed a
47 breach of the peace or violated any statute or ordinance. Such
48 request to leave may be made by the president or other adminis-
49 trative head of the institution of higher education, an employee
50 designated by the president to maintain order in the residence
51 hall or student facility, a campus police officer appointed
52 pursuant to the provisions of section five, article four, chapter
53 eighteen-b of this code, or a municipal police officer, a sheriff
54 or deputy sheriff, or a member of the West Virginia state police.

55 (c) It shall be unlawful for a person to remain in a residence
56 hall or student facility after being asked to leave as provided for
57 in subsection (b) of this section.

58 (d) Any person who violates the provisions of subsection
59 (c) of this section shall be guilty of a misdemeanor and, upon
60 conviction thereof, shall be fined fifteen dollars. For any second
61 or subsequent conviction for a violation occurring within one
62 year after a previous violation for similar conduct, such person
63 shall be fined an amount not to exceed one hundred dollars.

64 (e) This section shall not be construed to be in derogation
65 of the common law, nor shall the provisions of this section
66 contravene or infringe upon existing statutes related to the same
67 subject.

CHAPTER 110

(S. B. 669 — By Senators Tomblin, Mr. President, Jackson, Boley, Ross, Unger, Wooton, Bailey, McKenzie, Kessler, Plymale, Fanning and Snyder)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-d, relating to increasing level of state-funded per pupil support for certain community and technical colleges.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-2d. Community and technical college allocation.

1 Each year the governing boards must request a special
2 appropriation from the Legislature to fund an additional
3 allocation to West Virginia Northern Community and Technical
4 College, Southern West Virginia Community and Technical
5 College, Potomac State College of West Virginia University
6 and West Virginia University at Parkersburg, or any other
7 community and technical college so designated in the appropri-
8 ations bill. The total amount requested must equal any differ-
9 ence in per student appropriations existing between the public
10 four-year baccalaureate institutions and the community and
11 technical colleges set out above, as calculated by the resource
12 allocation model and resource allocation policies of the
13 governing boards. Any appropriations received by the govern-
14 ing boards under this section must be allocated consistent with
15 the appropriation request or must be reduced proportionally for
16 each institution, if sufficient legislative appropriation is not
17 made.

CHAPTER 111

(Com. Sub. for S. B. 139 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed February 24, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to institutional boards of advisors; expanding the number of members; and allowing persons who are not citizens of the state to serve as members.

Be it enacted by the Legislature of West Virginia:

That section one, article six, 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 6. ADVISORY COUNCILS OF FACULTY.

§18B-6-1. Institutional boards of advisors.

1 (a) There is established at each state institution of higher
2 education, hereinafter referred to as the “institution”, excluding
3 centers and branches thereof, an institutional board of advisors.
4 The board of advisors consists of fifteen members, including an
5 administrative officer of the institution appointed by the
6 president of the institution; a full-time member of the faculty
7 with the rank of instructor or above duly elected by the faculty;
8 a member of the student body in good academic standing,
9 enrolled for college credit work and duly elected by the student
10 body; a member of the institutional classified staff duly elected
11 by the classified staff; and appointed by the appropriate
12 governing board, eleven lay persons who have demonstrated a
13 sincere interest in and concern for the welfare of that institution
14 and who are representative of its population and fields of study.
15 At least seven of the eleven lay persons appointed shall be
16 residents of the state. Of the lay members who are residents of

17 the state, at least two shall be alumni of the institution, and no
18 more than a simple majority may be of the same political party.

19 The administrative officer and student member shall serve
20 for a term of one year; the faculty member and the classified
21 staff member shall serve for a term of two years and the eleven
22 lay members shall serve terms of four years each. All members,
23 except the administrative officer, are eligible to succeed
24 themselves for no more than one additional term. A vacancy in
25 an unexpired term of a member shall be filled within sixty days
26 of the occurrence thereof in the same manner as the original
27 appointment or election. Except in the case of a vacancy, all
28 elections shall be held and all appointments shall be made no
29 later than the thirtieth day of April preceding the commence-
30 ment of the term.

31 Each board of advisors shall hold a regular meeting at least
32 quarterly, commencing in July of each year. Additional
33 meetings may be held upon the call of the chairman, president
34 of the institution or upon the written request of at least four
35 members. A majority of the members constitutes a quorum for
36 conducting the business of the board of advisors.

37 (b) One of the eleven lay members shall be elected as
38 chairman by the board of advisors in July of each year: *Pro-*
39 *vided*, That no member may serve as chairman for more than
40 two consecutive years at a time.

41 The president of the institution shall make available
42 resources of the institution for conducting the business of the
43 board of advisors. The members of the board of advisors shall
44 be reimbursed for all reasonable and necessary expenses
45 actually incurred in the performance of their official duties
46 under this section upon presentation of an itemized sworn
47 statement thereof. All expenses incurred by the board of
48 advisors and the institution under this section shall be paid from
49 funds allocated to the institution for that purpose.

50 (c) The board of advisors shall review, prior to the submis-
51 sion by the president to its governing board, all proposals of the
52 institution in the areas of mission, academic programs, budget,

53 capital facilities and such other matters as requested by the
54 president of the institution or its governing board or otherwise
55 assigned to it by law. The board of advisors shall comment on
56 each such proposal in writing, with such recommendations for
57 concurrence therein or revision or rejection thereof as it
58 considers proper. The written comments and recommendations
59 shall accompany the proposal to the governing board and the
60 governing board shall include the comments and recommenda-
61 tions in its consideration of and action on the proposal. The
62 governing board shall promptly acknowledge receipt of the
63 comments and recommendations and shall notify the board of
64 advisors in writing of any action taken thereon.

65 (d) The board of advisors shall review, prior to their
66 implementation by the president, all proposals regarding
67 institution-wide personnel policies. The board of advisors may
68 comment on the proposals in writing.

69 (e) The board of advisors shall provide advice and assis-
70 tance to the president in establishing closer connections
71 between higher education and business, labor, government,
72 community and economic development organizations to give
73 students greater opportunities to experience the world of work,
74 such as business and community service internships, appren-
75 ticeships and cooperative programs; to communicate better and
76 serve the current work force and work force development needs
77 of their service area, including the needs of nontraditional
78 students for college-level skills upgrading and retraining and
79 the needs of employers for specific programs of limited
80 duration; and to assess the performance of the institution's
81 graduates and assist in job placement. The administrative
82 officer of the institution serving on the advisory council may be
83 assigned the responsibility for coordinating the institution's
84 activities related to economic development.

85 (f) Upon the occurrence of a vacancy in the office of
86 president of the institution, the board of advisors shall serve as
87 a search and screening committee for candidates to fill the
88 vacancy under guidelines established by its governing board.
89 When serving as a search and screening committee, the board
90 of advisors and its governing board are each authorized to

91 appoint up to three additional persons to serve on the committee
92 as long as the search and screening process is in effect. The
93 three additional appointees of the board of advisors shall be
94 faculty members of the institution. Only for the purposes of the
95 search and screening process, the additional members shall
96 possess the same powers and rights as the regular members of
97 the board of advisors, including reimbursement for all reason-
98 able and necessary expenses actually incurred. Following the
99 search and screening process, the committee shall submit the
100 names of at least three candidates to the governing board for
101 consideration and appointment. If the governing board rejects
102 all candidates submitted, the committee shall submit the names
103 of at least three additional candidates, and this process shall be
104 repeated until the governing board appoints one of the candi-
105 dates submitted. The governing board shall provide all neces-
106 sary staff assistance to the board of advisors in its role as a
107 search and screening committee.

CHAPTER 112

(Com. Sub. for S. B. 161 — By Senators Jackson
and Tomblin, Mr. President)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article seven, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to deleting the limitation of one year relative to the application of certain seniority rights of employees involuntarily transferred to nonclassified positions.

Be it enacted by the Legislature of West Virginia:

That section one, article seven, 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 7. PERSONNEL GENERALLY.

§18B-7-1. Seniority for full-time classified personnel; seniority to be observed in reducing work force; preferred recall list; renewal of listing; notice of vacancies.

1 (a) Definitions for terms used in this section are in accordance with those provided in section two, article nine of this chapter except that the provisions of this section shall apply only to classified employees whose employment, if continued, accumulates to a minimum total of one thousand forty hours during a calendar year and extends over at least nine months of a calendar year: *Provided*, That this section also applies to any classified employee who is involuntarily transferred to a position in nonclassified status for which he or she did not apply: *Provided, however*, That any classified employee involuntarily transferred to a position in nonclassified status may only exercise the rights set out in this section for positions equivalent to or lower than the last job class the employee held.

14 (b) All decisions by the appropriate governing board or their agents at state institutions of higher education concerning reductions in work force of full-time classified personnel, whether by temporary furlough or permanent termination, shall be made in accordance with this section. For layoffs by classification for reason of lack of funds or work, or abolition of position or material changes in duties or organization and for recall of employees laid off, consideration shall be given to an employee's seniority as measured by permanent employment in the service of the state system of higher education. In the event that the institution wishes to lay off a more senior employee, the institution shall demonstrate that the senior employee cannot perform any other job duties held by less senior employees of that institution in the same job class or any other equivalent or lower job class for which the senior employee is qualified: *Provided*, That if an employee refuses to accept a position in a lower job class, the employee shall retain all rights of recall provided in this section. If two or more employees accumulate identical seniority, the priority shall be determined by a random selection system established by the employees and approved by the institution.

35 (c) Any employee laid off during a furlough or reduction in
36 work force shall be placed upon a preferred recall list and shall
37 be recalled to employment by the institution on the basis of
38 seniority. An employee's listing with an institution shall remain
39 active for a period of one calendar year from the date of
40 termination or furlough or from the date of the most recent
41 renewal. If an employee fails to renew the listing with the
42 institution, the employee's name may be removed from the list.
43 An employee placed upon the preferred list shall be recalled to
44 any position opening by the institution within the classifications
45 in which the employee had previously been employed or to any
46 lateral position for which the employee is qualified. An
47 employee on the preferred recall list shall not forfeit the right
48 to recall by the institution if compelling reasons require the
49 employee to refuse an offer of reemployment by the institution.

50 The institution shall notify all employees maintaining
51 active listings on the preferred recall list of all position open-
52 ings that from time to time exist. The notice shall be sent by
53 certified mail to the last known address of the employee. It is
54 the duty of each employee listed to notify the institution of any
55 change in address and to timely renew the listing with the
56 institution. No position openings shall be filled by the institu-
57 tion, whether temporary or permanent, until all employees on
58 the preferred recall list have been properly notified of existing
59 vacancies and have been given an opportunity to accept
60 reemployment.

61 (d) A nonexempt classified employee, including a nonex-
62 empt employee who has not accumulated a minimum total of
63 one thousand forty hours during the calendar year or whose
64 contract does not extend over at least nine months of a calendar
65 year, who meets the minimum qualifications for a job opening
66 at the institution where the employee is currently employed,
67 whether the job is a lateral transfer or a promotion, and applies
68 for the job shall be transferred or promoted before a new person
69 is hired unless the hiring is affected by mandates in affirmative
70 action plans or the requirements of Public Law 101-336, the
71 Americans With Disabilities Act. If more than one qualified,
72 nonexempt classified employee applies, the best-qualified

73 nonexempt classified employee shall be awarded the position.
74 In instances where the classified employees are equally
75 qualified, the nonexempt classified employee with the greatest
76 amount of continuous seniority at that state institution of higher
77 education shall be awarded the position. A nonexempt classi-
78 fied employee is one to whom the provisions of the Federal Fair
79 Labor Standards Act, as amended, apply.

80 (e) In addition to any other information required, any
81 application for personnel governed by the provisions of this
82 section shall include the applicant's social security number.

CHAPTER 113

(Com. Sub. for S. B. 40 — By Senators Jackson, Craigo, Unger,
Anderson, Redd, Bowman, Tomblin, Mr. President, Ross, Love,
Schoonover, Mlinear, Olliverio, Mitchell, Hunter, Kessler, Edgell,
Fanning, Prezioso, Plymale, Sharpe and Ball)

[Passed March 5, 1999; in effect July 1, 1999. Approved by the Governor.]

AN ACT to amend article ten, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to allowing members of the national guard participating in the national guard education services program who are not residents of West Virginia but who are active members of a national guard unit in this state to pay resident tuition rates at institutions of higher education.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-1a. Resident tuition rates for national guard members.

1 (a) The term “resident” or “residency”, or any other term or
2 expression used to designate a West Virginia resident student,
3 when used to determine the rate of tuition to be charged
4 students attending community colleges and state-related and
5 state-owned institutions of higher education shall be construed
6 to include members of the national guard who are not residents
7 of West Virginia but who are active members of a national
8 guard unit in West Virginia who are participating in the national
9 guard education services program.

10 (b) A member of the national guard who qualifies as a
11 resident, as that term is defined in subsection (a) of this section,
12 on the first day of the semester or term of the college or
13 institution, shall be charged resident tuition rates.

14 (c) The provisions of this section apply at the beginning of
15 the semester or term immediately following the effective date
16 of this section.

CHAPTER 114

(Com. Sub. for H. B. 2697 — By Delegates Pino, Doyle and Manuel)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article ten, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-a, relating to establishing programs at state institutions of higher education allowing residents who are at least sixty-five years old to audit, or take for credit, classes at reduced rates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.**§18B-10-7a. Tuition and fee waivers or adjustments for residents at least sixty-five years old.**

1 The board of trustees and the board of directors shall
2 promulgate a joint rule in accordance with article three-a,
3 chapter twenty-nine-a of this code that establishes a reduced
4 tuition and fee program for senior citizens. The joint rule shall
5 include at least the following:

6 (a) The program shall include one option for those who
7 attend undergraduate and graduate courses without receiving
8 credit and one option for individuals who attend undergraduate
9 and graduate courses for credit;

10 (b) A participant under either option of the program shall
11 meet the following requirements:

12 (1) The participant is a resident of West Virginia;

13 (2) The participant is sixty-five years of age or older;

14 (3) Classroom space is available; and

15 (4) The instructor of the class consents;

16 (c) A method of establishing priority for allowing a
17 participant to attend a class or course;

18 (d) A determination of whether to require participants to
19 pay special fees, including laboratory fees, if the fees are
20 required of all other students;

21 (e) A determination of whether to require participants to
22 pay for parking;

23 (f) For participants in the program under the no credit
24 option:

25 (1) A grade or credit may not be given; and

26 (2) The total tuition and fees charged for each course or
27 class, excluding laboratory and parking fees, may not exceed
28 fifty dollars: *Provided*, That after the first day of July, two

29 thousand four, the governing boards may by joint rule change
30 the maximum fee; and

31 (g) For participants in the program under the for credit
32 option, tuition and fee rates may not exceed fifty percent of the
33 normal rates charged to state residents by the institution.

CHAPTER 115

(H. B. 2455 — By Delegates Smirl and Romine)

[Passed March 11, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend article fourteen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven, relating to authorizing the university of West Virginia board of trustees on behalf of Marshall University to sell and convey a parcel of land located at University Heights in Huntington, Cabell County; and providing that the proceeds from the sale be deposited in a special revenue account for capital development on the downtown campus at Marshall University in Huntington.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. MISCELLANEOUS.

§18B-14-7. Marshall University authorization to sell property; use of net proceeds.

1 (a) Subject to the provisions of section five of this article,
2 relating to the authority of governing boards to sell any surplus
3 real property and deposit the net proceeds into a special revenue
4 account in the state treasury to be appropriated by the Legisla-
5 ture for the purchase of additional real property or technology,

6 or for capital improvements at the institution that sold the
7 surplus real property, the board of trustees is hereby authorized
8 and empowered to sell a parcel of land situate in Guyandotte
9 District, Cabell County, West Virginia, containing 8.31 acres,
10 more or less, bounded and described as follows:

11 A certain tract of land situate in the State of West Virginia,
12 Cabell County, Guyandotte District, and being more particu-
13 larly bounded and described as follows:

14 BEGINNING at a 5/8" x 32" rebar (recovered) on the
15 northwesterly right-of-way line of Norway Avenue, marking a
16 corner common to the lands now or formerly owned by R&J
17 Development (D.B. 1014, Pg. 504), and the lands now owned
18 by the State of West Virginia (D.B.116,Pg.304); thence, leaving
19 the northwesterly right-of-way line of the said Avenue, and
20 with the lands of the said R&J Development as follows:

21 North 22 degrees 01'00" East 71.69 feet to a 30" black
22 walnut tree (found),

23 North 00 degrees 25'00" East 336.64 feet to a 5/8" x 32"
24 rebar (recovered in a 30" white oak tree stump (found)),

25 North 65 degrees 35'00" East 42.00 feet to a 5/8" x 32"
26 rebar (recovered),

27 North 00 degrees 55'00" West 339.00 feet to a 5/8" x 32"
28 rebar (recovered),

29 North 02 degrees 36'00" East 111.60 feet to a 5/8" x 32"
30 rebar (recovered),

31 North 56 degrees 11'00" West 88.38 feet to a 5/8" x 32"
32 rebar (recovered),

33 North 77 degrees 51'00" West 152.51 feet to a 5/8" x 32"
34 rebar (recovered),

35 North 48 degrees 22'00" West 187.95 feet to a 5/8" x 32"
36 rebar (recovered),

37 North 25 degrees 23'00" West 109.01 feet to a 5/8" x 32"
38 rebar (recovered),

39 North 01 degrees 15'00" East 128.60 feet to a 5/8" x 32"
40 rebar (recovered),

41 North 24 degrees 14'57" East 117.90 feet to a 5/8" x 32"
42 rebar (set), marking a corner common to the lands now or
43 formerly owned by the Department of Public Safety of the State
44 of West Virginia, (D.B.606,Pg.267); thence, leaving the lands
45 of the said R&J Development, and with the lands of the said
46 Department of Public Safety,

47 North 87 degrees 09'00" East 50.35 feet to a 5/8" x 32"
48 rebar (set); thence, leaving the lands of the said Department of
49 Public Safety, and severing the lands of the said State of West
50 Virginia as follows:

51 South 12 degrees 21'49" East 96'88" feet to a 5/8" x 32"
52 rebar (set),

53 South 00 degrees 55'43" East 152.71 feet to a 5/8" x 32"
54 rebar (set),

55 South 42 degrees 36'21" East 47.57 feet to a 5/8" x 32"
56 rebar (set),

57 South 65 degrees 00'12" East 258.00 feet to a 5/8" x 32"
58 rebar (set),

59 North 88 degrees 43'34" East 123.41 feet to a 5/8" x 32"
60 rebar (set),

61 South 71 degrees 32'21" East 198.72 feet to a 5/8" x 32"
62 rebar (set),

63 South 83 degrees 20'07" East 198.91 feet to a 5/8" x 32"
64 rebar (set),

65 South 33 degrees 20'08" East 47.95 feet to a 5/8" x 32"
66 rebar (set),

67 South 10 degrees 49'48" East 92.63 feet to a 5/8" x 32"
68 rebar (set),

69 North 64 degrees 45'39" East 155.66 feet to a 5/8" x 32"
70 rebar (set),

71 North 53 degrees 59'35" East 128.14 feet to a 5/8" x 32"
72 rebar (set),

73 South 59 degrees 57'02" East 81.48 feet to a 5/8" x 32"
74 rebar (set),

75 South 24 degrees 28'34" East 85.49 feet to a 5/8" x 32"
76 rebar (set) on the north right-of-way line of the said Norway
77 Avenue; thence, with the north right-of-way line of the said
78 Avenue, with a curve to the right, having a radius of 694.80
79 feet, and an arc length of 163.20 feet, the long chord of which
80 bears:

81 South 70 degrees 17'04" West 162.82 feet; thence,

82 South 77 degrees 00'49" West 94.74 feet; thence, with a
83 curve to the left, having a radius of 620.00 feet, and an arc
84 length of 43.17 feet, the long chord of which bears:

85 South 75 degrees 01'08" West 43.17 feet; thence,

86 South 73 degrees 01'26" West 248.30 feet; thence, with a
87 curve to the left, having a radius of 320.00 feet, and an arc
88 length of 279.62 feet, the long chord of which bears:

89 South 47 degrees 59'27" West 270.81 feet; thence,

90 South 22 degrees 57'28" West 488.53 feet; thence,

91 South 41 degrees 00'52" West 53.78 feet to the BEGIN-
92 NING, containing 8.31 acres, more or less, as surveyed by
93 Ronald L. Eastham, West Virginia Registered Professional
94 Surveyor No. 150, on October 22, 1998.

95 The above described tract is a part of the same land as that
96 described in a deed from the Colored Orphans Home and
97 Industrial School, The State of West Virginia, dated August 4,
98 1911, and recorded in Deed Book 116, Page 304, in the office
99 of the Clerk of the County Commission of Cabell County, West
100 Virginia.

101 And being subject to all restrictions, reservations, rights-of-
102 ways, easements, utilities, covenants, exceptions, conveyances,
103 leases and exclusions previously imposed and appearing of
104 record.

105 (b) Prior to the sale, the board of trustees shall cause the
106 property to be appraised by two independent licensed appraisers
107 and may not sell the property for less than the average of the
108 two appraisals.

109 (c) The proceeds from the sale of the property referred to
110 shall be deposited in a special revenue account from which the
111 board of trustees is hereby authorized to expend funds for
112 capital development on the downtown campus at Marshall
113 University in Huntington.

CHAPTER 116

(Com. Sub. for H. B. 2482 — By Delegates Mezzatesta,
Michael, Doyle, Williams, Stemple, Manuel and Harrison)

[Passed March 13, 1999; in effect July 1, 1999. Approved by the Governor.]

AN ACT to amend and reenact sections three, four and six, article five, chapter eighteen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section seven, all relating to the higher education grant program; administration by the senior administrator; powers and duties of the senior administrator; recipients, awards and distribution of awards of grants; renewal of grant awards; creation of the higher education adult part-time student grant program; defined terms; eligibility criteria; legislative rules; authority of governing boards to promulgate emergency rules; and report to legislative oversight commission on education accountability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. HIGHER EDUCATION GRANT PROGRAM.

§18C-5-3. Grant program to be administered by senior administrator; higher education grant fund created.

§18C-5-4. Powers and duties of senior administrator.

§18C-5-6. Recipients, awards and distribution of awards of grants; authority of senior administrator to enter into reciprocal agreements with other states concerning grants.

§18C-5-7. Higher education adult part-time student grant program.

§18C-5-3. Grant program to be administered by senior administrator; higher education grant fund created.

1 The grant program established and authorized by this article
2 shall be administered by the senior administrator. Moneys
3 appropriated or otherwise available for this purpose, shall be
4 allocated by line item to an appropriate account.

§18C-5-4. Powers and duties of senior administrator.

1 Subject to the provisions of this article and within the limits
2 of appropriations made by the Legislature, the senior adminis-
3 trator is authorized and empowered to: (1) Prepare and super-
4 vise the issuance of public information concerning the grant
5 program; (2) prescribe the form and regulate the submission of
6 applications for grants; (3) administer or contract for the
7 administration of such examinations as may be prescribed by
8 the senior administrator; (4) select qualified recipients of
9 grants; (5) award grants; (6) accept grants, gifts, bequests and
10 devises of real and personal property for the purposes of the
11 grant program; (7) administer federal and state financial loan
12 programs; (8) cooperate with approved institutions of higher
13 education in the state and their governing boards in the adminis-
14 tration of the grant program; (9) make the final decision
15 pertaining to residency of an applicant for grant or renewal of
16 grant; (10) employ or engage such professional and administra-
17 tive employees as may be necessary to assist the senior admin-
18 istrator in the performance of the duties and responsibilities,
19 who shall serve at the will and pleasure and under the direction
20 and control of the senior administrator; (11) employ or engage
21 such clerical and other employees as may be necessary to assist
22 the senior administrator in the performance of the duties and
23 responsibilities, who shall be under the direction and control of

24 the senior administrator; (12) prescribe the duties and fix the
25 compensation of all such employees; (13) administer the adult
26 part-time student higher education grant program established
27 under section seven of this article; and (14) propose legislative
28 rules in accordance with the provisions of article three-a,
29 chapter twenty-nine-a of this code, not inconsistent with the
30 provisions of this article relating to the administration of the
31 higher education grant program.

§18C-5-6. Recipients, awards and distribution of awards of grants; authority of senior administrator to enter into reciprocal agreements with other states concerning grants.

1 The grant recipient is free to attend any approved institution
2 of higher education in this state or any three-year registered
3 nurse diploma program which is approved by the West Virginia
4 board of examiners for registered professional nurses and which
5 is offered at a nonprofit West Virginia hospital.

6 The institution is not required to accept the grant recipient
7 for enrollment, but is free to exact compliance with its own
8 admission requirements, standards and policies.

9 Grants may only be made to undergraduate students and to
10 students enrolled in approved three-year registered nurse
11 diploma programs, as provided in this article.

12 Each grant is renewable until the course of study is com-
13 pleted, but not to exceed an additional three academic years
14 beyond the first year of the award. These may not necessarily
15 be consecutive years, and the grant will be terminated if the
16 student receives a degree in a shorter period of time. Qualifica-
17 tions for renewal will include maintaining satisfactory academic
18 standing, making normal progress toward completion of the
19 course of study and continued eligibility, as determined by the
20 senior administrator.

21 Grant awards shall be made without regard to the appli-
22 cant's race, creed, color, sex, national origin or ancestry; and in
23 making grant awards, the senior administrator shall treat all
24 approved institutions of higher education in a fair and equitable
25 manner.

26 The senior administrator from time to time shall identify
27 areas of professional, vocational and technical expertise that
28 are, or will be, of critical need in this state and, to the extent
29 feasible, may direct grants to students that are pursuing instruc-
30 tion in those areas.

31 The senior administrator may enter into reciprocal agree-
32 ments with state grant and grant program agencies in other
33 states which provide financial assistance to their residents
34 attending institutions of higher education located in West
35 Virginia. In connection therewith, the senior administrator may
36 authorize residents of West Virginia to use financial assistance
37 under this article to attend institutions of higher education in
38 such other states. Residents of West Virginia requesting
39 financial assistance to attend institutions of higher education
40 located in any such states must meet all of the eligibility
41 standards set forth in section five of this article.

42 Grant awards are limited to the lesser of the payment of
43 tuition and those related compulsory fees charged by an
44 institution to all West Virginia undergraduate students or an
45 amount equal to the average state general fund support for each
46 full-time equivalent student at state institutions of higher
47 education for the preceding academic year as calculated by the
48 senior administrator. Payments of grants shall be made directly
49 to the institution.

50 In the event that a grant recipient transfers from one
51 approved institution of higher education or approved three-year
52 registered nurse diploma program, to another approved institu-
53 tion of higher education or approved three-year registered nurse
54 diploma program, the grant is transferable only with the
55 approval of the senior administrator.

56 Should the recipient terminate enrollment for any reason
57 during the academic year, the unused portion of the grant shall
58 be returned by the institution to the appropriate governing board
59 in accordance with the governing board's policy for issuing
60 refunds, for transfer to the appropriate account and allocation
61 for expenditure pursuant to the provisions of this article.

§18C-5-7. Higher education adult part-time student grant program.

1 (a) There is established the higher education adult part-time
2 student grant program, hereafter referred to as the HEAPS grant
3 program. The grant program established and authorized by this
4 section is administered by the senior administrator. Moneys
5 appropriated or otherwise available for such purpose shall be
6 allocated by line item to an appropriate account. Any moneys
7 remaining in the fund at the close of a fiscal year shall be
8 carried forward for use in the next fiscal year.

9 (b) As used in this section, the following terms have the
10 meanings ascribed to them:

11 (1) "Approved distance education" means a course of study
12 offered via electronic access that has been approved for
13 inclusion in the applicant's program of study by the eligible
14 institution of higher education at which the applicant is enrolled
15 or has been accepted for enrollment;

16 (2) "Part-time" means enrollment for not less than six nor
17 more than eleven semester or term hours: *Provided*, That for no
18 more than two semesters during the recipient's ten years of
19 eligibility, the recipient may be considered to be enrolled part-
20 time if he or she is enrolled for three or more semester or term
21 hours;

22 (3) "Satisfactory academic progress" means maintaining a
23 cumulative grade point average of at least 2.0 on a 4.0 grading
24 scale with a goal of obtaining a certificate, associate degree or
25 bachelor's degree;

26 (4) "Eligible institution of higher education" means any
27 community college; community and technical college; adult
28 technical preparatory education program or training, as that
29 term is defined in section one-b, article three-a, chapter
30 eighteen-b of this code; state college or university, as those
31 terms are defined in section two, article one, chapter eighteen-b
32 of this code; approved institution of higher education as that
33 term is defined in section two of this article; or any approved
34 distance education, including world wide web based courses;
35 and

36 (5) "State resident" means a student who has lived in West
37 Virginia continuously for a minimum of twelve months
38 immediately preceding the date of application for a HEAPS
39 grant or renewal of a grant.

40 (c) A person is eligible for consideration for a HEAPS grant
41 if the person:

42 (1) Demonstrates that he or she has applied for, accepted,
43 or both, other student financial assistance in compliance with
44 federal financial aid rules, including the federal Pell grant;

45 (2) Qualifies as an independent student according to current
46 federal financial aid criteria;

47 (3) Demonstrates financial need for funds, as defined by
48 legislative rule;

49 (4) Has not been enrolled in a high school diploma pro-
50 gram, other than general education development (GED), for at
51 least the two preceding years;

52 (5) Is a state resident and may not be considered a resident
53 of any other state;

54 (6) Is a United States citizen or permanent resident thereof;

55 (7) Is not incarcerated in a correctional facility;

56 (8) Is not in default on a higher education loan; and

57 (9) Is enrolled in a program of study as an undergraduate on
58 a part-time basis at an eligible institution of higher education
59 and is making satisfactory academic progress at the time of
60 application: *Provided*, That the requirement that the student be
61 making satisfactory academic progress may not preclude a
62 HEAPS grant award to a student who has been accepted for
63 enrollment in a program of study but has not yet been enrolled.

64 (d) Each HEAPS grant award is eligible for renewal until
65 the course of study is completed, but not to exceed an additional
66 nine years beyond the first year of the award.

67 (e) The governing boards shall propose a joint legislative
68 rule pursuant to article three-a, chapter twenty-nine-a to

69 implement the provisions of this section which shall be filed
70 with the legislative oversight commission on education ac-
71 countability by the first day of September, one thousand nine
72 hundred ninety-nine. The Legislature hereby declares that an
73 emergency situation exists and, therefore, the governing boards
74 jointly may establish by emergency rule, under the procedures
75 of article three-a, chapter twenty-nine-a of this code, legislative
76 rules to implement the provisions of this section, after approval
77 by the legislative oversight commission on education account-
78 ability.

79 (1) The joint legislative rules shall provide that consider-
80 ation of financial need, as required by subdivision (3), subsec-
81 tion (c) of this section, include the following factors:

82 (A) Whether the applicant has dependents as defined by
83 federal law;

84 (B) Whether the applicant has any personal hardship as
85 determined at the discretion of the senior administrator; and

86 (C) Whether the applicant will receive any other source of
87 student financial aid during the award period.

88 (2) The joint legislative rule shall provide for an appropriate
89 allocation process for distribution of funds directly to the
90 eligible institutions of higher education, and may include a
91 provision for making allocations directly to the community
92 college components of four-year institutions where appropriate,
93 based on the part-time enrollment figures of the prior year. The
94 rules shall further provide for any funds not expended by an
95 institution at the end of each fiscal year to be returned to the
96 senior administrator for distribution under the provisions of this
97 section.

98 (f) The amount of any HEAPS grant awarded per semester
99 or term hour to a student enrolled at a public institution of
100 higher education under the jurisdiction of the governing boards,
101 as defined in section two, article one, chapter eighteen-b of this
102 code, shall be based upon the actual per credit hour tuition and
103 fees charged. The amount of any HEAPS grant awarded per
104 semester or term hour to a student enrolled in any other

105 institution that qualifies under the provisions of this section
106 shall be based upon the average per credit or term hour tuition
107 and fee charges assessed by all public undergraduate institu-
108 tions of higher education, under the jurisdiction of the govern-
109 ing boards, during the previous year.

110 (g) The senior administrator shall report annually, by the
111 first day of December, on the status of the HEAPS grant
112 program to the legislative oversight commission on education
113 accountability.

114 (h) The HEAPS grant program is subject to any provision
115 of this article not inconsistent with the provisions of this
116 section.

CHAPTER 117

(Com. Sub. for H. B. 2695 — By Delegates Michael, Stemple,
Mezzatesta, Doyle, Williams, Leach and Givens)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six, relating to higher education governing boards; creating the West Virginia engineering, science and technology scholarship program; legislative findings; legislative rules; definitions; creating in the state treasury a special revolving fund; scholarship agreements, limitations, selection criteria, procedures, eligibility, compliance, noncompliance, renewal, amount and duration; and relation of scholarship award to other sources of financial aid.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA ENGINEERING, SCIENCE AND TECHNOLOGY SCHOLARSHIP PROGRAM.

§18C-6-1. Scholarship fund created; purposes; funding; limit on number of new scholarships per year.

§18C-6-2. Definitions.

§18C-6-3. Selection criteria and procedures.

§18C-6-4. Scholarship agreement.

§18C-6-5. Renewal conditions; noncompliance; deferral; excusal.

§18C-6-6. Amount and duration of scholarship; relation to other assistance.

§18C-6-1. Scholarship fund created; purposes; funding; limit on number of new scholarships per year.

1 (a) The purpose of this article is to attract talented students
2 to West Virginia colleges and universities to major in engineer-
3 ing, science and technology. The Legislature recognizes that a
4 larger pool of engineering, science and technology talent in
5 West Virginia will build the state's economy and businesses. In
6 addition, long-term population increases for West Virginia will
7 develop a strong economic base. The new economy requires
8 that West Virginia retain its education infrastructure in order to
9 maintain economic growth.

10 (b) The higher education governing boards shall propose a
11 joint legislative rule in accordance with the provisions of article
12 three-a, chapter twenty-nine-a of this code, to implement the
13 provisions of this article and shall file the rule with the legisla-
14 tive oversight commission on education accountability no later
15 than the first day of December, one thousand nine hundred
16 ninety-nine. The rule shall provide for the administration of the
17 West Virginia engineering, science and technology scholarship
18 program by the senior administrator in furtherance of the
19 purposes of this article, including, but not limited to, an
20 expression of legislative intent that academic ability be the
21 primary criteria for selecting scholarship recipients, scholarship
22 selection criteria and procedures, renewal, compliance, non-
23 compliance and repayment, deferral and excusal. The rules also
24 shall provide for appeal procedures under which a recipient
25 may appeal any determination of noncompliance. The rules
26 may provide for satisfaction of the work requirement provided
27 in paragraph (A), subdivision (2), subsection (a), section four

28 of this article through community service relating to engineer-
29 ing, science or technology. In accordance with the rules, the
30 senior administrator shall establish appropriate guidelines for
31 program operation.

32 (c) There is hereby created in the state treasury a special
33 revolving fund known as the "West Virginia Engineering,
34 Science and Technology Scholarship Fund" to be administered
35 by the senior administrator solely for granting scholarships to
36 prospective engineers, scientists and technologists in accor-
37 dance with this article. Any moneys which may be appropriated
38 by the Legislature, or received by the senior administrator from
39 other sources, for the purposes of this article shall be deposited
40 in the fund. Any moneys remaining in the fund at the close of
41 the fiscal year shall be carried forward for use in the next fiscal
42 year. Any moneys repaid to the senior administrator by reason
43 of default of a scholarship agreement under this article also
44 shall be deposited in the fund. Fund balances shall be invested
45 with the state's consolidated investment fund, and any and all
46 interest earnings on these investments shall be used solely for
47 the purposes for which moneys invested were appropriated or
48 otherwise received.

49 (d) The senior administrator may accept and expend any
50 gift, grant, contribution, bequest, endowment or other money
51 for the purposes of this article and shall make a reasonable
52 effort to encourage external support for the scholarship pro-
53 gram.

54 (e) For the purpose of encouraging support for the scholar-
55 ship program from private sources, the senior administrator
56 may set aside no more than half of the funds appropriated by
57 the Legislature for West Virginia engineering, science and
58 technology scholarships to be used to match two state dollars to
59 each private dollar from a nonstate source contributed on behalf
60 of a specific institution of higher education in this state.

61 (f) West Virginia engineering, science and technology
62 scholarships are limited to three hundred new scholarships per
63 year and a maximum of one thousand outstanding scholarships
64 during any year.

65 (g) Nothing in this article requires any specific level of
66 funding by the Legislature.

§18C-6-2. Definitions.

1 When used in this article the following terms have the
2 following meanings, unless the context clearly indicates a
3 different meaning:

4 (a) "ABET" means the accrediting board for engineering
5 and technology.

6 (b) "ABET approved engineering major" means a major
7 approved by ABET's engineering accreditation commission.

8 (c) "ABET approved technology major" means a major
9 approved by ABET's technology accreditation commission.

10 (d) "Eligible institution of higher education" means:

11 (1) A state institution of higher education as defined in
12 section two, article one, chapter eighteen-b of this code; and

13 (2) Alderson-Broadus College, Appalachian Bible
14 College, Bethany College, the College of West Virginia, Davis
15 and Elkins College, Ohio Valley College, Salem-Teikyo
16 College, the University of Charleston, West Virginia Wesleyan
17 College and Wheeling Jesuit College, all in West Virginia, and
18 any other institution of higher education in this state, public or
19 private, approved by the senior administrator: *Provided*, That
20 if any institution listed in this paragraph is not regionally
21 accredited, it shall not be included as an eligible institution;

22 (e) "Engineering, science and technology-related field"
23 means any position for which the employer provides a written
24 statement that engineering, science or technology skill, knowl-
25 edge and ability, as evidenced by the attainment of a certificate,
26 associate or baccalaureate degree in engineering, science or
27 technology, are preferred or required or where an industry-
28 based certification requirement exists.

29 (f) "Industry-based certification" means any special
30 certification required, necessary or deemed preferred for
31 employment in the field.

32 (g) "Science" means a major in biology, chemistry,
33 computer science, physics or mathematics at an eligible
34 institution of higher education or any other major as approved
35 by the higher education governing boards by rule.

§18C-6-3. Selection criteria and procedures.

1 (a) The higher education governing boards shall designate
2 an existing scholarship selection agency or panel to select the
3 recipients of West Virginia engineering, science and technology
4 scholarships from among those applicants who meet eligibility
5 criteria set forth in subsection (b) of this section. If no such
6 agency or panel exists, the higher education governing boards
7 shall appoint a scholarship selection panel for this purpose
8 which shall consist of seven persons representative of West
9 Virginia engineering, science and technology higher education
10 administrators and educators, with a minimum of one voting
11 member representing community colleges, and one member
12 representing West Virginia engineering, science and technology
13 professionals.

14 (b) To be eligible to receive a scholarship under the
15 provisions of this article, applicants must meet the following
16 conditions:

17 (1) Be a United States citizen or resident alien who meets
18 the definition of an eligible noncitizen under federal Title IV
19 requirements;

20 (2) Have a cumulative grade point average of 3.0 on a 4.0
21 grading scale upon graduation from high school or the equiva-
22 lent or have a cumulative grade point average of at least 3.0 on
23 a 4.0 grading scale after completing two semesters of course
24 work at an eligible institution of higher education; and

25 (3) Be enrolled or accepted for enrollment in an engineer-
26 ing, science or technology program leading to a certificate,
27 associate or baccalaureate degree at an eligible institution of
28 higher education. The program must be:

29 (A) An ABET approved technology major;

30 (B) An ABET approved engineering major;

31 (C) A science major;

32 (D) An engineering or technology program or major that
33 has been approved by the senior administrator; or

34 (E) A program leading directly to specialized certification
35 as established by appropriate industry standards.

36 (c) In accordance with the rules of the governing boards,
37 and the intent of this article, the senior administrator shall
38 develop criteria and procedures for the selection of scholarship
39 recipients that reflect the purposes of this article and the areas
40 in which particular efforts will be made in the selection of
41 recipients as set forth in section one of this article and which
42 may include, but not be limited to:

43 (1) The grade point average of the applicant,

44 (2) Involvement in extracurricular activities,

45 (3) Financial need,

46 (4) Current academic standing, and

47 (5) An expression of interest in a career in engineering,
48 science or technology as demonstrated in an essay written by
49 the applicant.

50 The criteria and procedures further may require the
51 applicant to furnish letters of recommendation from teachers
52 and others.

53 (d) In developing the selection criteria and procedures to be
54 used by the panel, the senior administrator shall solicit the
55 views of public and private engineering, science and technology
56 agencies and institutions and other interested parties. The senior
57 administrator shall collect this information by means of written
58 and published selection criteria and procedures in final form for
59 implementation. The senior administrator may call public
60 hearings on the present and projected engineering, science and
61 technology needs of the state or may use other appropriate
62 methods to gather such information.

63 (e) The senior administrator shall make application forms
64 for West Virginia engineering, science and technology scholar-
65 ships available to public and private high schools in the state
66 and other locations convenient to applicants, parents and others
67 and shall make an effort to attract students from low-income
68 backgrounds, ethnic or racial minority students, students with
69 disabilities and women or minority students who show interest
70 in pursuing careers in engineering, science and technology and
71 who are under-represented in those fields.

72 (f) In awarding the scholarships, the panel shall give
73 preference to applicants who are West Virginia residents.

74 (g) In awarding scholarships, not less than twenty percent
75 of appropriated funds may be awarded to students enrolled in
76 certificate and associate degree programs. Further awards will
77 be determined based on established statewide need.

§18C-6-4. Scholarship agreement.

1 (a) Each recipient of a West Virginia engineering, science
2 and technology scholarship shall enter into an agreement with
3 the senior administrator under which the recipient shall:

4 (1) Provide the governing boards with evidence of compli-
5 ance with subsection (a), section five of this article;

6 (2) Agree that within one year following the date the
7 recipient ceases to be a full-time student at an eligible institu-
8 tion in a program of engineering, science or technology
9 education for which the scholarship was awarded he or she will:

10 (A) Begin working full-time in an engineering, science or
11 technology-related field in this state for a duration of not less
12 than one year for each year the scholarship was received; or

13 (B) Begin repayment of all or part of the West Virginia
14 engineering, science and technology scholarship received under
15 this article plus interest and, if applicable, reasonable collection
16 fees, in accordance with subsection (b), section five-b of this
17 article, except as provided in subsections (c) and (d), section
18 five of this article.

19 (b) A scholarship agreement shall disclose fully the terms
20 and conditions of this article under which the scholarship is
21 provided and under which repayment of the scholarship may be
22 required.

§18C-6-5. Renewal conditions; noncompliance; deferral; excusal.

1 (a) The recipient of a West Virginia engineering, science
2 and technology scholarship is eligible for scholarship renewal
3 if the recipient is:

4 (1) Enrolled as a full-time student in an eligible institution
5 of higher education;

6 (2) Pursuing a course of study leading to a certificate,
7 associate or baccalaureate degree in engineering, science or
8 technology or leading to specialized certification as established
9 by industry-based standards;

10 (3) Maintaining satisfactory progress as determined by the
11 eligible institution of higher education the recipient is attend-
12 ing; and

13 (4) Complying with any other standards established by the
14 governing boards by rule.

15 (b) A recipient who violates a scholarship agreement is
16 required to repay the amount of any scholarship award received,
17 plus interest, and, where applicable, reasonable collection fees,
18 on a schedule and at a rate of interest prescribed in the guide-
19 lines of the senior administrator. The legislative rules required
20 in section one of this article shall provide for a method of
21 prorating repayment amounts against any amount of the work
22 requirement that has been fulfilled by the recipient.

23 (c) A recipient is not in violation of the agreement entered
24 into under section three of this article during any period in
25 which the recipient is:

26 (1) Pursuing a full-time course of study at an accredited
27 institution of higher education;

28 (2) Serving as a member of the armed services of the
29 United States for a period not in excess of four years; or

30 (3) Satisfying the provisions of additional repayment
31 exemptions that may be prescribed by the governing boards by
32 rule.

33 (d) A recipient is excused from repayment of a West
34 Virginia engineering, science and technology scholarship
35 received under this article if the recipient dies or becomes
36 permanently and totally disabled as established by sworn
37 affidavit of a physician qualified to make such a determination
38 as determined by the rules established by the governing boards.

39 (e) The rules adopted by the governing boards shall provide
40 that the length of the repayment period may not exceed ten
41 years: *Provided*, That the rules may include provisions under
42 which the senior administrator may, if extenuating circum-
43 stances exist, extend the period for fulfilling the obligation to
44 fifteen years.

§18C-6-6. Amount and duration of scholarship; relation to other assistance.

1 (a) Subject to subsection (b) of this section, each recipient
2 of a West Virginia engineering, science and technology
3 scholarship is eligible to receive an award of up to three
4 thousand dollars for each academic year of higher education.
5 No individual may receive a scholarship award for more than
6 four academic years for the completion of a baccalaureate
7 degree.

8 (b) No individual may receive a scholarship award under
9 this article which exceeds the cost of attendance at the institu-
10 tion the individual is attending. The cost of attendance shall be
11 based upon the actual cost of tuition and fees. If the amount of
12 the West Virginia engineering, science and technology scholar-
13 ship award and the amount of financial assistance which the
14 recipient has received from all other sources exceed the cost of
15 attendance, the institution's financial aid officer, in consultation
16 with the recipient, will determine which source of financial aid
17 is to be reduced and shall do so in a manner to the best advan-
18 tage of the recipient.

CHAPTER 118

(S. B. 591 — By Senators Hunter, Wooton, Ball, Dittmar, Kessler, McCabe, Milnard, Mitchell, Oliverio, Redd, Schoonover, Snyder and McKenzie)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections thirty-four, thirty-seven and forty-four, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two-a and five-b, article three of said chapter; to amend and reenact sections ten and twenty-three, article five of said chapter; to amend and reenact section three, article six of said chapter; and to amend and reenact sections two, two-a, five, five-a, five-b, five-f, nine, ten and twelve, article eight of said chapter, all relating to election law reform generally; authorizing certain voting from an automobile; authorizing children fourteen years of age or younger to accompany a parent, grandparent or legal guardian to the polls; increasing the compensation for ballot commissioners and poll clerks; changing mileage reimbursement limitations for election supply clerks; modifying prohibition on electioneering within certain distances of circuit clerk's office during absentee voting period; allowing the use of federal write-in ballots in general, special and primary elections for local, state and federal offices; authorizing ballot commissioners to publish facsimile ballot or list of candidates for second publication before any election; increasing the percentage of signatures required on a nomination certificate; eliminating criminal penalty for persons who sign nomination certificate and vote in primary election; imposing reporting requirements on certain independent expenditures; defining term "independent expenditure"; setting forth requirements of communication; establishing limitations on contributions to inaugural events; establishing additional reporting requirements; limiting the expenditure of excess inaugural funds; creating the inaugural expense account for certain excess inaugural funds for inaugural events for a person elected gover-

nor; providing for the filing of an additional financial statement during general elections; limiting the information required in a financial statement; clarifying that contributions and loans need not be distinguished between individuals and firms, associations or committees; requiring that expenditures made by agents of candidates need to be included in filing; requiring the secretary of state to post filings on the internet; establishing restrictions and limitations on loans; clarifying allowable campaign expenses; allowing payment of dues, subscriptions or contributions to political parties from campaign funds; disallowing contributions to charitable organizations, political parties or candidates out of excess campaign funds until after the general election; allowing intraparty transfers with certain limitations; and prohibiting the placement of election paraphernalia in roadside receptacles under certain circumstances and providing a penalty for such placement.

Be it enacted by the Legislature of West Virginia:

That sections thirty-four, thirty-seven and forty-four, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections two-a and five-b, article three of said chapter be amended and reenacted; that sections ten and twenty-three, article five of said chapter be amended and reenacted; that section three, article six of said chapter be amended and reenacted; and that sections two, two-a, five, five-a, five-b, five-f, nine, ten and twelve, article eight of said chapter be amended and reenacted, all to read as follows:

Article

1. **General Provisions and Definitions.**
3. **Voting by Absentees.**
5. **Primary Elections and Nominating Procedures.**
6. **Conduct and Administration of Elections.**
8. **Regulation and Control of Elections.**

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.

§3-1-37. Restrictions on presence and conduct at polls.

§3-1-44. Compensation of election officials; expenses.

§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.

1 (a) Any person desiring to vote in an election shall, upon
2 entering the election room, clearly state his or her name and
3 residence to one of the poll clerks who shall thereupon an-
4 nounce the same in a clear and distinct tone of voice. If such
5 person is found to be duly registered as a voter at that precinct,
6 he or she shall be required to sign his or her name in the space
7 marked "signature of voter" on the pollbook prescribed and
8 provided for the precinct. If such person be physically or
9 otherwise unable to sign his name, his or her mark shall be
10 affixed by one of the poll clerks in the presence of the other and
11 the name of the poll clerk affixing the voter's mark shall be
12 indicated immediately under such affixation. No ballot shall be
13 given to such person until he or she so signs his or her name on
14 the pollbook or his or her signature is so affixed thereon.

15 (b) The clerk of the county commission is authorized, upon
16 verification that the precinct at which a handicapped person is
17 registered to vote is not handicap accessible, to transfer such
18 person's registration to the nearest polling place in the county
19 which is handicap accessible. Requests by such persons for a
20 transfer of registration shall be received by the county clerk no
21 later than thirty days prior to the date of the election. Any
22 handicapped person who has not made a request for a transfer
23 of registration at least thirty days prior to the date of the
24 election may vote a challenged ballot, at a handicap accessible
25 polling place in the county of his or her registration, and, if
26 during the canvass the county commission determines that the
27 person had been registered in a precinct not handicap accessi-
28 ble, the voted ballot, if otherwise valid, shall be counted. The
29 handicapped person may vote in the precinct to which the
30 registration was transferred only as long as the disability exists
31 or the precinct from which the handicapped person was
32 transferred remains inaccessible to the handicapped. To ensure
33 confidentiality of such transferred ballot, the county clerk
34 processing the ballot shall provide the voter with an unmarked
35 envelope and an outer envelope designated "challenged
36 ballot/handicapped voter". After validation of the ballot at the
37 canvass, the outer envelope shall be destroyed and the handi-
38 capped voter's ballot shall be placed with other approved

39 challenged ballots prior to removal of the ballot from the
40 unmarked envelope.

41 (c) When the voter's signature is properly on the pollbook,
42 the two poll clerks shall sign their names in the places indicated
43 on the back of the official ballot and shall deliver the ballot to
44 the voter to be voted by him or her then without leaving the
45 election room. If he or she returns the ballot spoiled to the
46 clerks, they shall immediately mark such ballot "spoiled" and
47 the same shall be preserved and placed in a spoiled ballot
48 envelope together with other spoiled ballots to be delivered to
49 the board of canvassers and deliver to the voter another official
50 ballot, signed by the clerks on the reverse side as before done.
51 The voter shall thereupon retire alone to the booth or compart-
52 ment prepared within the election room for voting purposes and
53 there prepare his or her ballot, using a ballpoint pen of not less
54 than five inches in length or other indelible marking device of
55 not less than five inches in length. In voting for candidates in
56 general and special elections, the voter shall comply with the
57 rules and procedures prescribed in section five, article six of
58 this chapter.

59 (d) It shall be the duty of a poll clerk, in the presence of the
60 other poll clerk, to indicate by a check mark inserted in the
61 appropriate place on the registration record of each voter the
62 fact that such voter voted in the election. In primary elections
63 the clerk shall also insert thereon a distinguishing initial or
64 initials of the political party for whose candidates the voter
65 voted. If a person is challenged at the polls, such fact shall be
66 indicated by the poll clerks on the registration record together
67 with the name of the challenger. The subsequent removal of the
68 challenge shall be recorded on the registration record by the
69 clerk of the county commission.

70 (e)(1) No voter shall receive any assistance in voting
71 unless, by reason of blindness, disability, advanced age or
72 inability to read and write, that voter is unable to vote without
73 assistance. Any voter qualified to receive assistance in voting
74 under the provisions of this section may:

75 (A) Declare his or her choice of candidates to an election
76 commissioner of each political party who, in the presence of the
77 voter and in the presence of each other, shall prepare the ballot
78 for voting in the manner hereinbefore provided, and, on request,
79 shall read over to such voter the names of candidates on the
80 ballot as so prepared;

81 (B) Require the election commissioners to indicate to him
82 or her the relative position of the names of the candidates on the
83 ballot, whereupon the voter shall retire to one of the booths or
84 compartments to prepare his or her ballot in the manner
85 hereinbefore provided;

86 (C) Be assisted by any person of the voter's choice:
87 *Provided*, That such assistance may not be given by the voter's
88 present or former employer or agent of that employer or by the
89 officer or agent of a labor union of which the voter is a past or
90 present member; or

91 (D) If he or she is handicapped, vote from an automobile,
92 outside the polling place or precinct, in the presence of an
93 election commissioner of each political party.

94 (2) Any voter who requests assistance in voting but who is
95 believed not to be qualified for such assistance under the
96 provisions of this section shall nevertheless be permitted to vote
97 a challenged ballot with the assistance of any person herein
98 authorized to render assistance.

99 (3) Any one or more of the election commissioners or poll
100 clerks in the precinct may challenge such ballot on the ground
101 that the voter thereof received assistance in voting it when in
102 his or their opinion that the person who received assistance in
103 voting is not so illiterate, blind, disabled or of such advanced
104 age as to have been unable to vote without assistance. The
105 election commissioner or poll clerk or commissioners or poll
106 clerks making such challenge shall enter the challenge and
107 reason therefor on the form and in the manner prescribed or
108 authorized by article three of this chapter.

109 (4) An election commissioner or other person who assists
110 a voter in voting:

111 (A) Shall not in any manner request, or seek to persuade, or
112 induce the voter to vote any particular ticket or for any particu-
113 lar candidate or for or against any public question, and shall not
114 keep or make any memorandum or entry of anything occurring
115 within the voting booth or compartment, and shall not, directly
116 or indirectly, reveal to any person the name of any candidate
117 voted for by the voter, or which ticket he or she had voted, or
118 how he or she had voted on any public question, or anything
119 occurring within the voting booth or compartment or voting
120 machine booth, except when required pursuant to law to give
121 testimony as to such matter in a judicial proceeding; and

122 (B) Shall sign a written oath or affirmation before assisting
123 such voter on a form prescribed by the secretary of state stating
124 that he or she will not override the actual preference of the voter
125 being assisted, attempt to influence the voter's choice or
126 mislead the voter into voting for someone other than the
127 candidate of voter's choice. Such person assisting the voter
128 shall also swear or affirm that he or she believes that the voter
129 is voting free of intimidation or manipulation: *Provided*, That
130 no person providing assistance to such voter shall be required
131 to sign such oath or affirmation where the reason for requesting
132 such assistance is the voter's inability to vote without assistance
133 because of blindness as defined in section three, article fifteen,
134 chapter five of this code, and such inability to vote without
135 assistance because of blindness is certified in writing by a
136 physician of the voter's choice and is on file in the office of the
137 clerk of the county commission.

138 (5) In accordance with instructions issued by the secretary
139 of state, the clerk of the county commission shall provide a
140 form entitled "list of assisted voters", the form of which list
141 shall likewise be prescribed by the secretary of state. The
142 commissioners shall enter the name of each voter receiving
143 assistance in voting the ballot, together with the poll slip
144 number of that voter and the signature of the person or the
145 commissioner from each party who assisted the voter. If no
146 voter shall have been assisted in voting the ballot as herein
147 provided, the commissioners shall likewise make and subscribe
148 to an oath of that fact on such list.

149 (f) After preparing the ballot the voter shall fold the same
150 so that the face shall not be exposed and so that the names of
151 the poll clerks thereon shall be seen. The voter shall then
152 announce his or her name and present his or her ballot to one of
153 the commissioners who shall hand the same to another commis-
154 sioner, of a different political party, who shall deposit it in the
155 ballot box, if such ballot is the official one and properly signed.
156 The commissioner of election may inspect every ballot before
157 it is deposited in the ballot box, to ascertain whether it is single,
158 but without unfolding or unrolling it, so as to disclose its
159 content. When the voter has voted, he or she shall retire
160 immediately from the election room, and beyond the sixty-foot
161 limit thereof, and shall not return, except by permission of the
162 commissioners.

163 (g) Following the election, the oaths or affirmations
164 required by this section from those assisting voters together
165 with the "list of assisted voters", shall be returned by the
166 election commissioners to the clerk of the county commission
167 along with the election supplies, records and returns, who shall
168 make such oaths, affirmations and list available for public
169 inspection and who shall preserve the same for a period of
170 twenty-two months or until disposition is authorized or directed
171 by the secretary of state, or court of record.

172 (h) Any person making an oath or affirmation required
173 under the provisions of this section who shall therein knowingly
174 swear falsely, or any person who shall counsel, or advise, aid or
175 abet another in the commission of false swearing under this
176 section, shall be guilty of a misdemeanor and, upon conviction
177 thereof, shall be fined not more than one thousand dollars, or
178 imprisoned in the county jail for a period of not more than one
179 year, or both.

180 (i) Any election commissioner or poll clerk who authorizes
181 or provides unchallenged assistance to a voter when such voter
182 is known to such election commissioner or poll clerk not to
183 require assistance in voting, shall be guilty of a felony and,
184 upon conviction thereof, shall be fined not more than five
185 thousand dollars, or imprisoned in the penitentiary for a period

186 of not less than one year nor more than five years, or both fined
187 and imprisoned.

§3-1-37. Restrictions on presence and conduct at polls.

1 (a) Except as otherwise provided in this section, no person,
2 other than the election officers and voters going to the election
3 room to vote and returning therefrom, may be or remain within
4 three hundred feet of the outside entrance to the building
5 housing the polling place while the polls are open. This
6 subsection does not apply to persons who reside or conduct
7 business within such distance of the entrance to the building
8 housing the polling place, while in the discharge of their
9 legitimate business, or to persons whose business requires them
10 to pass and repass within three hundred feet of such entrance.

11 (b) A person who is delivering a voter to a polling place by
12 motor vehicle may drive such vehicle to a convenient and
13 accessible location to discharge the voter, notwithstanding that
14 the location is within three hundred feet of the outside entrance
15 to the building housing the polling place. Upon discharging
16 such voter from the vehicle, the person shall remove the vehicle
17 from within three hundred feet of the entrance until such time
18 as the voter is to be transported from the polling place or
19 another voter delivered: *Provided*, That vehicles delivering
20 voters who require assistance by reason of blindness, disability
21 or advanced age may remain within three hundred feet of the
22 entrance until such time as the voter is to be transported from
23 the polling place.

24 (c) The election commissions shall limit the number of
25 voters in the election room so as to preserve order. No person
26 may approach nearer than five feet to any booth or compart-
27 ment while the election is being held, except the voters to
28 prepare their ballots, or the poll clerks when called on by a
29 voter to assist in the preparation of his ballot, and no person,
30 other than election officers and voters engaged in receiving,
31 preparing and depositing their ballots, may be permitted to be
32 within five feet of any ballot box, except by authority of the
33 board of election commissioners, and then only for the purpose
34 of keeping order and enforcing the law.

35 (d) Not more than one person may be permitted to occupy
36 any booth or compartment at one time. No person may remain
37 in or occupy a booth or compartment longer than may be
38 necessary to prepare his ballot, and in no event longer than five
39 minutes, except that any person who claims a disability
40 pursuant to section thirty-four of this article shall have addi-
41 tional time up to ten additional minutes to prepare his ballot. No
42 voter, or person offering to vote, may hold any conversation or
43 communication with any person other than the poll clerks or
44 commissioners of election, while in the election room.

45 (e) The provisions of this section do not apply to persons
46 rendering assistance to blind voters as provided in section
47 thirty-four of this article or to any child fourteen years of age or
48 younger who accompanies a parent, grandparent or legal
49 guardian who is voting. Any dispute concerning the age of a
50 child accompanying a parent, grandparent or legal guardian
51 who is voting shall be determined by the election commission-
52 ers.

§3-1-44. Compensation of election officials; expenses.

1 Each ballot commissioner shall be allowed and paid a sum,
2 to be fixed by the county commission, not exceeding one
3 hundred dollars for each day he or she shall serve as such, but,
4 in no case shall a ballot commissioner receive allowance for
5 more than ten days' services for any one primary, general or
6 special election. Each commissioner of election and poll clerk
7 shall be allowed and paid a sum, to be fixed by the county
8 commission, not exceeding one hundred dollars for one day's
9 services for attending the school of instruction for election
10 officials if the commissioner or poll clerk provides at least one
11 day's service during an election and a sum not exceeding one
12 hundred fifty dollars for his or her services at any one election:
13 *Provided*, That each commissioner of election and poll clerk
14 shall be paid and allowed a sum not exceeding one hundred
15 fifty dollars for his or her services at any of the three special
16 elections hereinafter specified and described. The commission-
17 ers of election obtaining and delivering the election supplies, as
18 provided in section twenty-four of this article, and returning

19 them as provided in articles five and six of this chapter, shall be
20 allowed and paid an additional sum, likewise fixed by the
21 county commission, not exceeding one hundred dollars for all
22 such services at any one election and, in addition, shall be
23 allowed and paid mileage up to the rate of reimbursement
24 authorized per mile as set by the travel management office of
25 the department of administration per mile necessarily traveled
26 in the performance of such services. The rate paid for mileage
27 pursuant to this section may change from time to time in
28 accordance with changes in the reimbursement rates established
29 by the travel management office, or its successor agency. The
30 compensation of election officers, cost of printing ballots and
31 all other expenses incurred in holding and making the return of
32 elections, other than the three special elections hereinafter
33 specified and described, shall be audited by the county commis-
34 sion and paid out of the county treasury.

35 The compensation of election officers, cost of printing
36 ballots and all other reasonable and necessary expenses in
37 holding and making the return of a special election for the
38 purpose of taking the sense of the voters on the question of
39 calling a constitutional convention, of a special election to elect
40 members of a constitutional convention, and of a special
41 election to ratify or reject the proposals, acts and ordinances of
42 a constitutional convention shall be obligations of the state
43 incurred by the ballot commissioners, clerks of the circuit
44 courts, clerks of the county commissions and county commis-
45 sions of the various counties as agents of the state, and all such
46 expenses shall be audited by the secretary of state. The secre-
47 tary of state shall prepare and transmit to the county commis-
48 sions forms on which the county commissions shall certify all
49 such expenses of such special elections to the secretary of state.
50 If satisfied that such expenses as certified by the county
51 commissions are reasonable and were necessarily incurred, the
52 secretary of state shall requisition the necessary warrants from
53 the auditor of the state to be drawn on the state treasurer, and
54 shall mail such warrants directly to the vendors of such special
55 election services, supplies and facilities.

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-2a. Voting booths within public view to be provided by clerk; prohibition against display of campaign material.

§3-3-5b. Procedures for voting a special write-in absentee ballot by qualified persons.

§3-3-2a. Voting booths within public view to be provided by clerk; prohibition against display of campaign material.

1 Throughout the period of absentee voting in person in the
2 clerk's office as provided in this article, the circuit clerk shall
3 make the following provisions for voting:

4 (a) The clerk shall provide a sufficient number of voting
5 booths or devices appropriate to the voting system at which
6 voters may prepare their ballots. The booths or devices shall be
7 in an area separate from but within clear view of the public
8 entrance area of the clerk's office, and shall be arranged to
9 ensure the voter complete privacy in casting the ballot.

10 (b) The clerk shall make the voting area secure from
11 interference with the voter and shall ensure that voted and
12 unvoted ballots are at all times secure from tampering. No
13 person, other than a person lawfully assisting the voter accord-
14 ing to the provisions of this chapter, may be permitted to come
15 within five feet of the voting booth while the voter is voting. No
16 person, other than the clerk or deputy clerks or members of the
17 board of ballot commissioners assigned to conduct absentee
18 voting, shall enter the area or room set aside for voting.

19 (c) When the voting area of the office of the clerk is not
20 fully accessible to voters with physical disabilities, the clerk
21 shall request the county commission to designate an accessible
22 room within the same building as a portion of the clerk's office
23 for the purpose of absentee voting only by persons unable to use
24 the regular area. The area shall be subject to the same require-
25 ments as the regular voting area.

26 (d) No person may do any electioneering, nor may any
27 person display or distribute in any manner, or authorize the
28 display or distribution of, any literature, posters or material of

29 any kind which tends to influence the voting for or against any
30 candidate or any public question on the property of the county
31 courthouse or judicial annex facilities thereof during the entire
32 period of regular in person absentee voting. The clerk is hereby
33 authorized to remove such material and to direct the sheriff of
34 the county to enforce the prohibition.

**§3-3-5b. Procedures for voting a special write-in absentee ballot
by qualified persons.**

1 (a) Notwithstanding any other provisions of this chapter, a
2 person qualified to vote an absentee ballot in accordance with
3 subdivision (3), subsection (d), section one of this article may
4 apply not earlier than the first day of January of an election year
5 for a special write-in absentee ballot for a primary or general
6 election, in conjunction with the application for a regular
7 absentee ballot or ballots. If the application is received after the
8 forty-ninth day preceding the election, the clerk of the circuit
9 court shall honor only the application for local, state and federal
10 offices in general, special and primary elections.

11 (b) The application for a special write-in absentee ballot
12 may be made on the federal postcard application form.

13 (c) In order to qualify for a special write-in absentee ballot,
14 the voter must state that he or she is unable to vote by regular
15 absentee ballot or in person due to requirements of military
16 service or due to living in isolated areas or extremely remote
17 areas of the world. This statement may be made on the federal
18 postcard application or on a form prepared by the secretary of
19 state and supplied and returned with the special write-in
20 absentee ballot.

21 (d) Upon receipt of said application within the time
22 required, the clerk shall issue the special write-in absentee
23 ballot which shall be the same ballot issued under the provi-
24 sions of the Uniformed and Overseas Citizens Absentee Voting
25 Act of 1986 (Public Law 99-410, 42 U.S.C. 1973, et seq.). Such
26 ballot shall permit the elector to vote in a primary election by
27 indicating his or her political party affiliation and the names of
28 the specific candidates for each office, and in a general election

29 by writing in a party preference for each office, the names of
30 specific candidates for each office, or the name of the person
31 whom the voter prefers for each office.

32 (e) When a special federal write-in ballot is received by the
33 clerk from a voter: (1) Who mailed the write-in ballot from any
34 location within the United States; (2) who did not apply for a
35 regular absentee ballot; (3) who did not apply for a regular
36 absentee ballot by mail; or (4) whose application for a regular
37 absentee ballot by mail was received less than thirty days before
38 the election, the write-in ballot shall not be counted.

39 (f) Any write-in absentee ballot must be received by the
40 clerk prior to the close of the polls on election day or it may not
41 be counted.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-10. Publication of sample ballots and lists of candidates.

§3-5-23. Certificate nominations; requirements and control; penalties.

§3-5-10. Publication of sample ballots and lists of candidates.

1 (a) The ballot commissioners of each county shall prepare
2 a sample official primary ballot for each party, and, as the case
3 may be, for the nonpartisan candidates to be voted for at the
4 primary election, according to the provisions of articles four,
5 four-a and five, chapter three, as appropriate to the voting
6 system. If any ballot issue is to be voted on in the primary
7 election, the ballot commissioners shall likewise prepare a
8 sample official ballot for that issue according to the provisions
9 of law authorizing such election.

10 (b) The facsimile sample ballot for each political party and
11 for nonpartisan candidates or ballot issues shall be published as
12 follows:

13 (1) For counties in which two or more qualified newspapers
14 publish a daily newspaper, not more than fourteen nor less than
15 eight days preceding the primary election, the ballot commis-
16 sioners shall publish each sample official primary election
17 ballot as a Class I-0 legal advertisement in the two qualified
18 daily newspapers of different political parties within the county

19 having the largest circulation in compliance with the provisions
20 of article three, chapter fifty-nine of this code;

21 (2) For counties having no more than one daily newspaper,
22 or having only one or more qualified newspapers which publish
23 weekly, not more than fourteen nor less than eight days
24 preceding the primary election, the ballot commissioners shall
25 publish the sample official primary election ballot as a Class I
26 legal advertisement in the qualified newspaper within the
27 county having the largest circulation in compliance with the
28 provisions of article three, chapter fifty-nine of this code; and

29 (3) Each facsimile sample ballot shall be a photographic
30 reproduction of the official sample ballot or ballot pages, and
31 shall be printed in a size no less than eighty percent of the
32 actual size of the ballot, at the discretion of the ballot commis-
33 sioners: *Provided*, That when the ballots for the precincts within
34 the county contain different senatorial, delegate, magisterial or
35 executive committee districts or when the ballots for precincts
36 within a city contain different municipal wards, the facsimile
37 shall be altered to include each of the various districts in the
38 appropriate order. If, in order to accommodate the size of each
39 ballot, the ballot or ballot pages must be divided onto more than
40 one page, the arrangement and order shall be made to conform
41 as nearly as possible to the arrangement of the ballot. The
42 publisher of the newspaper shall submit a proof of the ballot
43 and the arrangement to the ballot commissioners for approval
44 prior to publication.

45 (c) The ballot commissioners of each county shall prepare,
46 in the form and manner prescribed by the secretary of state, an
47 official list of offices and candidates for each office which will
48 appear on the primary election ballot for each party, and, as the
49 case may be, for the nonpartisan candidates to be voted for at
50 such primary election. All information which appears on the
51 ballot, including instructions as to the number of candidates for
52 whom votes may be cast for the office, any additional language
53 which will appear on the ballot below the name of the office,
54 any identifying information relating to the candidates, such as
55 residence, magisterial district or presidential preference and the

56 ballot numbers of the candidates for punch card systems, shall
57 be included in the list, in the same order in which it appears on
58 the ballot. Following the names of all candidates, the list shall
59 include the full title, text and voting positions of any issue to
60 appear on the ballot.

61 (d) The official list of candidates and issues as provided in
62 subsection (c) of this section shall be published as follows:

63 (1) For counties in which two or more qualified newspapers
64 publish a daily newspaper, on the last day on which a newspa-
65 per is published immediately preceding the primary election,
66 the ballot commissioners shall publish the official list of
67 candidates and issues as a Class I-0 legal advertisement in the
68 two qualified daily newspapers of different political parties
69 within the county having the largest circulation in compliance
70 with the provisions of article three, chapter fifty-nine of this
71 code;

72 (2) For counties having no more than one daily newspaper,
73 or having only one or more qualified newspapers which publish
74 weekly, on the last day on which a newspaper is published
75 immediately preceding the primary election, the ballot commis-
76 sioners shall publish the sample official list of nominees and
77 issues as a Class I legal advertisement in the qualified newspa-
78 per within the county having the largest circulation in compli-
79 ance with the provisions of article three, chapter fifty-nine of
80 this code;

81 (3) The publication of the official list of candidates for each
82 party and for nonpartisan candidates shall be in single or double
83 columns, as required to accommodate the type size require-
84 ments as follows: (A) The words "official list of candidates",
85 the name of the county, the words "primary election", the date
86 of the election, the name of the political party or the designation
87 of nonpartisan candidates shall be printed in all capital letters
88 and in bold type no smaller than fourteen point. The designation
89 of the national, state, district or other tickets shall be printed in
90 all capital letters in type no smaller than fourteen point; (B) the
91 title of the office shall be printed in bold type no smaller than
92 twelve point and any voting instructions or other language

93 printed below the title shall be printed in bold type no smaller
94 than ten point; and (C) the names of the candidates shall be
95 printed in all capital letters in bold type no smaller than ten
96 point, and the residence information shall be printed in type no
97 smaller than ten point; and

98 (4) When any ballot issue is to appear on the ballot, the title
99 of that ballot shall be printed in all capital letters in bold type no
100 smaller than fourteen point. The text of the ballot issue shall
101 appear in no smaller than ten point type. The ballot commis-
102 sioners may require the publication of the ballot issue under this
103 subsection in the facsimile sample ballot format in lieu of the
104 alternate format.

105 (e) Notwithstanding the provisions of subsections (c) and
106 (d) of this section, beginning with the primary election to be
107 held in the year two thousand, the ballot commissioners of any
108 county may choose to publish a facsimile sample ballot for each
109 political party and for nonpartisan candidates or ballot issues
110 instead of the official list of offices and candidates for each
111 office for purposes of the last publication required before any
112 primary election.

**§3-5-23. Certificate nominations; requirements and control;
penalties.**

1 (a) Groups of citizens having no party organization may
2 nominate candidates for public office otherwise than by
3 conventions or primary elections. In such case, the candidate or
4 candidates, jointly or severally, shall file a declaration with the
5 secretary of state if the office is to be filled by the voters of
6 more than one county, or with the clerk of the circuit court of
7 the county if the office is to be filled by the voters of one
8 county or political subdivision thereof; such declaration to be
9 filed at least thirty days prior to the time of filing the certificate
10 provided by section twenty-four of this article: *Provided*, That
11 the deadline for filing the certificate for persons seeking ballot
12 access as a candidate for the office of president or vice presi-
13 dent shall be filed not later than the first day of August preced-
14 ing the general election. At the time of filing of such declara-
15 tion each candidate shall pay the filing fee required by law, and

16 if such declaration is not so filed or the filing fee so paid, the
17 certificate shall not be received by the secretary of state, or
18 clerk of the circuit court, as the case may be.

19 (b) The person or persons soliciting or canvassing signa-
20 tures of duly qualified voters on such certificate or certificates,
21 may solicit or canvass duly registered voters residing within the
22 county, district or other political division represented by the
23 office sought, but must first obtain from the clerk of the county
24 commission credentials which must be exhibited to each voter
25 canvassed or solicited, which credentials may be in the follow-
26 ing form or effect:

27 State of West Virginia, County of, ss:

28 This certifies that, a duly registered
29 voter of this State; whose post-office address is,
30 is hereby authorized to solicit and canvass duly registered
31 voters residing in (here place the county,
32 district or other political division represented by the office
33 sought) to sign a certificate purporting to nominate
34 (here place name of candidate heading
35 list on certificate) for the office of and
36 others, at the general election to be held on,
37 19.....

38 Given under my hand and the seal of my office this
39 day of, 19.....

40

41 Clerk, County Commission of County.

42 The clerk of each county commission, upon proper applica-
43 tion made as herein provided, shall issue such credentials and
44 shall keep a record thereof.

45 (c) The certificate shall be personally signed by duly
46 registered voters, in their own proper handwriting or by their
47 marks duly witnessed, who must be residents within the county,
48 district or other political division represented by the office
49 sought wherein such canvass or solicitation is made by the
50 person or persons duly authorized. Such signatures need not all

51 be on one certificate. The number of such signatures shall be
52 equal to not less than two percent of the entire vote cast at the
53 last preceding general election for the office in the state,
54 district, county or other political division for which the nomina-
55 tion is to be made, but in no event shall the number be less than
56 twenty-five. The number of such signatures shall be equal to
57 not less than two percent of the entire vote cast at the last
58 preceding general election for any statewide, congressional or
59 presidential candidate, but in no event shall the number be less
60 than twenty-five. Where two or more nominations may be made
61 for the same office, the total of the votes cast at the last
62 preceding general election for the candidates receiving the
63 highest number of votes on each ticket for such office shall
64 constitute the entire vote. No signature on such certificate shall
65 be counted unless it be that of a duly registered voter of the
66 county, district or other political division represented by the
67 office sought wherein such certificate was presented. It shall be
68 the duty of those soliciting signatures to read to each voter
69 whose signature is solicited the statement written on the
70 certificate which gives notice that no person signing such
71 certificate shall vote at any primary election to be held to
72 nominate candidates for office to be voted for at the election to
73 be held next after the date of signing such certificate.

74 (d) Such certificates shall state the name and residence of
75 each of such candidates; that he is legally qualified to hold such
76 office; that the subscribers are legally qualified and duly
77 registered as voters and desire to vote for such candidates; and
78 may designate, by not more than five words, a brief name of the
79 party which such candidates represent and may adopt a device
80 or emblem to be printed on the official ballot. All candidates
81 nominated by the signing of such certificates shall have their
82 names placed on the official ballot as candidates, as if otherwise
83 nominated under the provisions of this chapter.

84 The secretary of state shall prescribe the form and content
85 of the nomination certificates to be used for soliciting signa-
86 tures. The content shall include the language to be used in
87 giving written and oral notice to each voter that signing of the

88 nominating certificate forfeits that voter's right to vote in the
89 corresponding primary election.

90 Offices to be filled by the voters of more than one county
91 shall use separate petition forms for the signatures of qualified
92 voters for each county.

93 (e) The secretary of state, or the clerk of the circuit court,
94 as the case may be, may investigate the validity of such
95 certificates and the signatures thereon, and if upon such
96 investigation there may be doubt as to the legitimacy and the
97 validity of such certificate, he may request the attorney general
98 of the state, or the prosecuting attorney of the county, to
99 institute a quo warranto proceeding against the nominee or
100 nominees by certificate to determine his or their right to such
101 nomination to public office, and upon request being made, the
102 attorney general or prosecuting attorney shall institute such quo
103 warranto proceeding.

104 (f) Any person violating the provisions of this section, in
105 addition to penalties prescribed elsewhere for violation of this
106 chapter, is guilty of a misdemeanor and, upon conviction, shall
107 be fined not more than one thousand dollars, or confined in the
108 county or regional jail for not more than one year, or both, in
109 the discretion of the court: *Provided*, That no criminal penalty
110 may be imposed upon anyone who signs a nomination certifi-
111 cate and votes in the primary election held after the date the
112 certificate was signed.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-3. Publication of sample ballots and lists of candidates.

1 (a) The ballot commissioners of each county shall prepare
2 a sample official general election ballot for all political party or
3 independent nominees, nonpartisan candidates for election, if
4 any, and all ballot issues to be voted for at the general election,
5 according to the provisions of articles four, four-a and six of
6 this chapter, as appropriate to the voting system, and for any
7 ballot issue, according to the provisions of law authorizing such
8 election.

9 (b) The facsimile sample general election ballot shall be
10 published as follows:

11 (1) For counties in which two or more qualified newspapers
12 publish a daily newspaper, not more than fourteen nor less than
13 eight days preceding the general election, the ballot commis-
14 sioners shall publish the sample official general election ballot
15 as a Class I-0 legal advertisement in the two qualified daily
16 newspapers of different political parties within the county
17 having the largest circulation in compliance with the provisions
18 of article three, chapter fifty-nine of this code;

19 (2) For counties having no more than one daily newspaper,
20 or having only one or more qualified newspapers which publish
21 weekly, not more than fourteen nor less than eight days
22 preceding the primary election, the ballot commissioners shall
23 publish the sample official general election ballot as a Class I
24 legal advertisement in the qualified newspaper within the
25 county having the largest circulation in compliance with the
26 provisions of article three, chapter fifty-nine of this code; and

27 (3) Each facsimile sample ballot shall be a photographic
28 reproduction of the official sample ballot or ballot pages, and
29 shall be printed in a size no less than eighty percent of the
30 actual size of the ballot, at the discretion of the ballot commis-
31 sioners: *Provided*, That when the ballots for the precincts within
32 the county contain different senatorial, delegate, magisterial or
33 executive committee districts or when the ballots for precincts
34 within a city contain different municipal wards, the facsimile
35 shall be altered to include each of the various districts in the
36 appropriate order. If, in order to accommodate the size of each
37 ballot, the ballot or ballot pages must be divided onto more than
38 one page, the arrangement and order shall be made to conform
39 as nearly as possible to the arrangement of the ballot. The
40 publisher of the newspaper shall submit a proof of the ballot
41 and the arrangement to the ballot commissioners for approval
42 prior to publication.

43 (c) The ballot commissioners of each county shall prepare,
44 in the form and manner prescribed by the secretary of state, an
45 official list of offices and nominees for each office which will

46 appear on the general election ballot for each political party, or
47 as independent nominees, and, as the case may be, for the
48 nonpartisan candidates to be voted for at the general election:

49 (1) All information which appears on the ballot, including
50 the names of parties for which a straight ticket may be cast,
51 instructions relating to straight ticket voting, instructions as to
52 the number of candidates for whom votes may be cast for the
53 office, any additional language which will appear on the ballot
54 below the name of the office, any identifying information
55 relating to the candidates, such as residence, magisterial district,
56 or presidential preference, and the ballot numbers of the
57 candidates for punch card systems, shall be included in the list,
58 in the order specified in subdivision (2) of this subsection.
59 Following the names of all candidates, the list shall include the
60 full title, text and voting positions of any issue to appear on the
61 ballot.

62 (2) The order of the straight ticket positions, offices and
63 candidates for each office, and the manner of designating the
64 parties, shall be as follows: (A) The straight ticket positions
65 shall be designated "straight (party name) ticket", with the
66 parties listed in the order in which they appear on the ballot,
67 from left to right or from top to bottom, as the case may be; (B)
68 the offices shall be listed in the same order in which they appear
69 on the ballot; (C) the candidates within each office for which
70 one is to be elected shall be listed in the order they appear on
71 the ballot, from left to right or from top to bottom, as the case
72 may be, and the candidate's political party affiliation or
73 independent status shall be indicated by the one or two letter
74 initial specifying the affiliation, placed in parenthesis to the
75 right of the candidate's name; and (D) the candidates within
76 each office for which more than one is to be elected shall be
77 arranged by political party groups in the order they appear on
78 the ballot and the candidate's affiliation shall be indicated as
79 provided in part (C) of this subdivision.

80 (d) The official list of candidates and issues as provided in
81 subsection (c) of this section shall be published as follows:

82 (1) For counties in which two or more qualified newspapers
83 publish a daily newspaper, on the last day on which a newspa-
84 per is published immediately preceding the general election, the
85 ballot commissioners shall publish the official list of nominees
86 and issues as a Class I-0 legal advertisement in the two quali-
87 fied daily newspapers of different political parties within the
88 county having the largest circulation in compliance with the
89 provisions of article three, chapter fifty-nine of this code;

90 (2) For counties having no more than one daily paper, or
91 having only one or more qualified newspapers which publish
92 weekly, on the last day on which a newspaper is published
93 immediately preceding the general election, the ballot commis-
94 sioners shall publish the sample official list of nominees and
95 issues as a Class I legal advertisement in the qualified newspa-
96 per within the county having the largest circulation in compli-
97 ance with the provisions of article three, chapter fifty-nine of
98 this code;

99 (3) The publication of the official list of nominees for each
100 party and for nonpartisan candidates shall be in single or double
101 columns, as required to accommodate the type size require-
102 ments as follows: (A) The words "official list of nominees and
103 issues", the name of the county, the words "general election"
104 and the date of the election shall be printed in all capital letters
105 and in bold type no smaller than fourteen point; (B) the
106 designation of the straight ticket party positions shall be printed
107 in all capital letters in bold type no smaller than twelve point,
108 and the title of the office shall be printed in bold type no
109 smaller than twelve point, and any voting instructions or other
110 language printed below the title shall be printed in bold type no
111 smaller than ten point; and (C) the names of the candidates and
112 the initial within parenthesis designating the candidate's
113 affiliation shall be printed in all capital letters in bold type no
114 smaller than ten point, and the residence information shall be
115 printed in type no smaller than ten point; and

116 (4) When any ballot issue is to appear on the ballot, the title
117 of that ballot shall be printed in all capital letters in bold type no
118 smaller than twelve point. The text of the ballot issue shall

119 appear in no smaller than ten point type. The ballot commis-
 120 sioners may require the publication of the ballot issue under this
 121 subsection in the facsimile sample ballot format in lieu of the
 122 alternate format.

123 (e) Notwithstanding the provisions of subsections (c) and
 124 (d) of this section, beginning with the general election to be
 125 held in the year two thousand, the ballot commissioners of any
 126 county may choose to publish a facsimile sample general
 127 election ballot, instead of the official list of candidates and
 128 issues, for purposes of the last publication required before any
 129 general election.

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-2. Accounts for receipts and expenditures in elections; requirements for reporting independent expenditures.

§3-8-2a. Detailed accounts and verified financial statements for certain inaugural events; limitations; reporting requirements.

§3-8-5. Detailed accounts and verified financial statements required.

§3-8-5a. Information required in financial statement.

§3-8-5b. Where financial statements shall be filed; filing date prescribed.

§3-8-5f. Loans to candidates, organizations or persons for election purposes.

§3-8-9. Lawful and unlawful election expenses; public opinion polls and limiting their purposes; limitation upon expenses; use of advertising agencies and reporting requirements; delegation of expenditures.

§3-8-10. Use of certain contributions.

§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.

§3-8-2. Accounts for receipts and expenditures in elections; requirements for reporting independent expenditures.

1 (a) Except candidates for party committeemen and commit-
 2 teewomen, in primary and other elections, all candidates for
 3 nomination or election and all persons or organizations of any
 4 kind advocating or opposing a nomination, election or defeat of
 5 any candidate, or the passage or defeat of any issue, shall keep
 6 records of receipts and expenditures which are made for
 7 political purposes. All such receipts and expenditures shall be
 8 subject to regulation by the provisions of this article. Verified

9 financial statements of such records and expenditures shall be
10 made and filed as public records by all candidates and by their
11 financial agents, representatives, or any person acting for and
12 on behalf of any candidate, or the passage or defeat of any
13 issue, and by the treasurers of all political party committees.

14 (b) In addition to any other reporting required by the
15 provisions of this chapter, any independent expenditure in the
16 amount of one thousand dollars or more for any statewide,
17 legislative or multi-county judicial candidate or in the amount
18 of five hundred dollars or more for any county office, single-
19 county judicial candidate, committee supporting or opposing an
20 issue or candidate on the ballot in more than one county, any
21 municipal candidate or issue on a municipal election ballot,
22 which is made after the eleventh day but more than twelve
23 hours before the day of any election shall be reported, on a form
24 prescribed by the secretary of state, within twenty-four hours
25 after the expenditure is made or debt is incurred for a communi-
26 cation, to the secretary of state by hand-delivery, facsimile or
27 other means to assure receipt by the secretary of state within
28 such twenty-four hour period.

29 (c) For purposes of this section, "independent expenditure"
30 means an expenditure made by a person other than a candidate
31 or committee for a communication which expressly advocates
32 the election or defeat of a clearly identified candidate but which
33 is made independently of a candidate's campaign and which has
34 not been made with the cooperation or consent of, or in
35 consultation with, or at the request or suggestion of, any
36 candidate or any of his or her agents or authorized committees.
37 An expenditure which does not meet the criteria for independ-
38 ence established in this subsection is considered a contribution.

39 (d) Any independent expenditure must include a clear and
40 conspicuous public notice which identifies the name of the
41 person who paid for the expenditure and states that the commu-
42 nication is not authorized by the candidate or his or her commit-
43 tee.

§3-8-2a. Detailed accounts and verified financial statements for certain inaugural events; limitations; reporting requirements.

1 (a) For purposes of this section:

2 (1) "Inaugural committee" includes any person, organiza-
3 tion or group of persons soliciting or receiving contributions for
4 the purpose of funding an inaugural event for a person elected
5 to a statewide public office; and

6 (2) "Inaugural event" means any event or events held
7 between the general election of a person elected to a statewide
8 public office and ninety days after the general election, whether
9 the event is sponsored by the inaugural committee or the state
10 political party committee representing the party of the person
11 elected and for which the person elected is a prominent partici-
12 pant or for which solicitations of contributions include the name
13 of the person elected in prominent display.

14 (b) Any inaugural committee soliciting or receiving
15 contributions for the funding of all or any part of an inaugural
16 event for any person elected to a statewide office that receives
17 an individual contribution in excess of two hundred fifty dollars
18 for any such event shall file and retain detailed records of any
19 such contribution.

20 (c) No person may contribute more than five thousand
21 dollars for any inaugural event. For purposes of this section,
22 "contribution" does not include volunteer personal services but
23 does include in-kind contributions of materials or supplies.

24 (d) Any inaugural committee, financial agent or any person
25 or officer acting on behalf of such committee which is subject
26 to the provisions of this section, shall file a verified financial
27 statement with the secretary of state on a form prescribed by the
28 state election commission within ninety days of the event. The
29 financial statement shall contain information as may be
30 required by the provisions of this section relating to any
31 contribution in excess of two hundred fifty dollars. The
32 secretary of state shall file and retain such statements as public
33 records for a period of not less than six years.

34 (e) In addition to any other information required by the
35 state election commission, the report of contributions required
36 by the provisions of this section shall include the methodology

37 of the fund raising, the nature of the expenditures made and the
38 names, addresses and amounts paid to any person.

39 (f) Amounts received by an inaugural committee for any
40 person elected to a statewide public office in excess of the
41 amount expended for an inaugural event may be contributed to
42 any educational, cultural or charitable organization. The
43 inaugural committee shall, within sixty days after filing the
44 report required by subsection (d) of this section, expend any
45 excess moneys and report, on a form prescribed by the secretary
46 of state, the names of the organizations to which such excess
47 moneys were donated. The secretary of state shall file and
48 retain such records as public records for a period of not less
49 than six years.

**§3-8-5. Detailed accounts and verified financial statements
required.**

1 (a) Every candidate, financial agent, person and association
2 of persons, organization of any kind, including every corpora-
3 tion, directly or indirectly, supporting a political committee
4 established pursuant to paragraph (C), subdivision (1), subsec-
5 tion (b), section eight of this article or engaging in other
6 activities permitted by said section and also including the
7 treasurer or equivalent officer of such association or organiza-
8 tion, advocating or opposing the nomination, election or defeat
9 of any candidate or the passage or defeat of any issue, thing or
10 item to be voted upon, and the treasurer of every political party
11 committee shall keep detailed accounts of every sum of money
12 or other thing of value received by him, including all loans of
13 money or things of value, and of all expenditures and disburse-
14 ments made, liabilities incurred, by such candidate, financial
15 agent, person, association or organization or committee, for
16 political purposes, or by any of the officers or members of such
17 committee, or any person acting under its authority or on its
18 behalf.

19 (b) Every person or association of persons required to keep
20 detailed accounts under this section shall file with the officers
21 hereinafter prescribed a detailed itemized statement, subscribed

22 and sworn to before an officer authorized to administer oaths,
23 according to the following provisions and times:

24 (1) On the last Saturday in March or within fifteen days
25 thereafter next preceding the primary election day whenever the
26 total of all financial transactions relating to an election exceed
27 five hundred dollars a statement which shall include all
28 financial transactions which have taken place by the date of that
29 statement, subsequent to any previous statement filed within the
30 previous five years under this section, or if no previous state-
31 ment was filed, all financial transactions made within the
32 preceding five years; and

33 (2) Not less than seven nor more than ten days preceding
34 each primary or other election, a statement which shall include
35 all financial transactions which have taken place by the date of
36 such statement, subsequent to the previous statement, if any;
37 and

38 (3) Not less than twenty-five nor more than thirty days after
39 each primary or other election, a statement which shall include
40 all financial transactions which have taken place by the date of
41 such statement, subsequent to the previous statement; and

42 (4) On the first day of July, one thousand nine hundred
43 eighty-five, and thereafter on the last Saturday in March or
44 within fifteen days thereafter annually, whenever contributions
45 or expenditures relating to an election exceed five hundred
46 dollars or whenever any loans are outstanding, a statement
47 which shall include all financial transactions which have taken
48 place by the date of such report, subsequent to any previous
49 report; and

50 (5) On the last Saturday in September or within fifteen days
51 thereafter next preceding the general election day whenever the
52 total of all financial transactions relating to an election exceed
53 five hundred dollars or whenever any loans are outstanding, a
54 statement which shall include all financial transactions which
55 have taken place by the date of such statement, subsequent to
56 the previous statement.

57 (c) Every person who shall announce as a write-in candi-
58 date for any elective office and his financial agent or election
59 organization of any kind shall comply with all of the require-
60 ments of this section after public announcement of such
61 person's candidacy has been made.

62 (d) For purposes of this section, the term "financial
63 transactions" includes all contributions or loans received and all
64 repayments of loans or expenditures made to promote the
65 candidacy of any person by any candidate or any organization
66 advocating or opposing the nomination, election or defeat of
67 any candidate or to promote the passage or defeat of any issue,
68 thing or item to be voted on.

69 (e)(1) Except as provided in subdivision (2) of this subsec-
70 tion, any person, association, organization, corporation or other
71 legal entity who publishes, distributes or disseminates any
72 scorecard, voter guide or other written analysis of a candidate's
73 position or votes on specific issues within sixty days of an
74 election is presumed to be engaging in such activity for the
75 purpose of advocating or opposing the nomination, election or
76 defeat of any candidate.

77 (2) The provisions of subdivision (1) of this subsection
78 shall not apply to:

79 (A) The publication, distribution or dissemination of such
80 materials in the form of a news release to broadcast or print
81 media;

82 (B) Persons who engage in news or feature reporting
83 activities and editorial comment as working members of the
84 press, radio or television, and persons who publish, distribute
85 or disseminate such news, features or editorial comment
86 through a newspaper, book, regularly published periodical,
87 radio station or television station;

88 (C) The members of a nonprofit corporation or other
89 organization who have such membership in accordance with the
90 provisions of the articles of incorporation, bylaws or other
91 instruments creating its form of organization and who have
92 bona fide rights and privileges in the organization such as the

93 right to vote, to elect officers, directors and issues, to hold
94 office or otherwise as ordinarily conferred on members of such
95 organizations who publish, distribute or disseminate materials
96 described in subdivision (1) of this subsection to other such
97 members; or

98 (D) The employees of a church or synagogue which
99 currently holds or is eligible to hold an exemption as a church
100 issued by the internal revenue service under the provisions of
101 §26 U.S.C. 501(c)(3) who publish, distribute or disseminate
102 materials described in subdivision (1) of this subsection within
103 the membership of the church or synagogue or upon the
104 premises of any facility owned or controlled by the church or
105 synagogue: *Provided*, That the exemption from the presumption
106 provided by this subparagraph shall not apply to such employ-
107 ees of a church when the church or synagogue otherwise
108 advocates or opposes the nomination, election or defeat of any
09 candidate, or the passage of any issue, thing or item to be voted
0 upon.

1 (f) No scorecard, voter guide or other written analysis of a
2 candidate's position or votes on specific issues shall be pub-
113 lished, distributed or disseminated within sixty days of an
114 election unless it shall state thereon the name of the person,
115 association, organization, corporation or other legal entity
116 authorizing its publication, distribution or dissemination.

§3-8-5a. Information required in financial statement.

1 (a) Each financial statement required by the provisions of
2 this article shall contain only the following information:

3 (1) The first name, middle initial, if any, and last name,
4 residence and mailing address and telephone number of each
5 candidate, financial agent, treasurer or person, and the full
6 name, address and telephone number of each association,
7 organization or committee filing a financial statement.

8 (2) The balance of cash and any other sum of money on
9 hand at the beginning and the end of the period covered by the
10 financial statement.

11 (3) The first name, middle initial, if any, and the last name
12 in the case of an individual, and the full name of each firm,
13 association or committee, and the amount of such contribution
14 of such individual, firm, association or committee, and, if the
15 aggregate of the sum or sums contributed by any one such
16 individual, firm, association or committee exceeds two hundred
17 fifty dollars, there shall also be reported the residence and
18 mailing address and, in the case of an individual, the major
19 business affiliation and occupation. A contribution totaling
20 more than fifty dollars of currency of the United States or
21 currency of any foreign country by any one contributor is
22 prohibited and a violation of this provision is subject to section
23 five-d of this article. The report on which contributions required
24 by this subdivision shall not distinguish between contributions
25 made by individuals and contributions made by firms, associa-
26 tions or committees.

27 (4) The total amount of contributions received during the
28 period covered by the financial statement.

29 (5) The first name, middle initial, if any, and the last name,
30 residence and mailing address of any individual or the full name
31 and mailing address of each lending institution making a loan
32 or of the spouse cosigning a loan, as appropriate, the amount of
33 any loan received, the date and terms of the loan, including the
34 interest and repayment schedule, and a copy of the loan
35 agreement.

36 (6) The first name, middle initial, if any, and the last name,
37 residence and mailing address of any individual or the full name
38 and mailing address of each firm, association or committee
39 having previously made or cosigned a loan for which payment
40 is made or a balance is outstanding at the end of the period,
41 together with the amount of repayment on the loan made during
42 the period and the balance at the end of the period.

43 (7) The total outstanding balance of all loans at the end of
44 the period.

45 (8) The first name, middle initial, if any, and the last name,
46 residence and mailing address of any individual, or the full

47 name and mailing address of each firm, association or commit-
48 tee to whom each expenditure was made or liability incurred,
49 together with the amount and purpose of each expenditure or
50 liability incurred and the date of each transaction.

51 (9) The total expenditure for the nomination, election or
52 defeat of a candidate or any person or organization advocating
53 or opposing the nomination, election or defeat of any candidate,
54 or the passage or defeat of any issue, thing or item to be voted
55 upon, in whose behalf an expenditure was made or a contribu-
56 tion was given for the primary or other election.

57 (10) The total amount of expenditures made during the
58 period covered by the financial statement.

59 (b) Any unexpended balance at the time of making the
60 financial statements herein provided for shall be properly
61 accounted for in that financial statement and shall appear as a
62 balance in the next following financial statement.

63 (c) Each financial statement required by this section shall
64 contain a separate section setting forth the following informa-
65 tion for each fund-raising event held during the period covered
66 by the financial statement:

67 (1) The type of event, date held, and address and name, if
68 any, of the place where the event was held.

69 (2) All of the information required by subdivision (3),
70 subsection (a) of this section.

71 (3) The total of all moneys received at the fund-raising
72 event.

73 (4) The expenditures incident to the fund-raising event.

74 (5) The net receipts of the fund-raising event.

75 (d) When any lump sum payment is made to any advertis-
76 ing agency or other disbursing person who does not file a report
77 of detailed accounts and verified financial statements as
78 required in this section, such lump sum expenditures shall be
79 accounted for in the same manner as provided for herein.

80 (e) Any contribution or expenditure made by or on behalf
81 of a candidate for public office, to any other candidate, or
82 committee for a candidate for any public office in the same
83 election shall be accounted for in accordance with the provi-
84 sions of this section.

85 (f) No person, firm, association or committee may make
86 any contribution except from their own funds, unless such
87 person, firm, association or committee discloses in writing to
88 the person required to report under this section the first name,
89 middle initial, if any, and the last name in the case of an
90 individual, or the full name in case of a firm, association or
91 committee, residence and mailing address and the major
92 business affiliation and occupation of the person, firm, associa-
93 tion or committee which furnished the funds to such contribu-
94 tor. All such disclosures shall be included in the statement
95 required by this section.

96 (g) Any firm, association, committee or fund permitted by
97 section eight of this article to be a political committee shall
98 disclose on the financial statement its corporate or other
99 affiliation.

100 (h) No contribution may be made, directly or indirectly, in
101 a fictitious name, anonymously or by one person through an
102 agent, relative or other person so as to conceal the identity of
103 the source of the contribution or in any other manner so as to
104 effect concealment of the contributor's identity.

105 (i) No person, firm, association or committee may accept
106 any contribution for the purpose of influencing the nomination,
107 election or defeat of a candidate or for the passage or defeat of
108 any issue or thing to be voted upon unless the identity of the
109 donor and the amount of the contribution is known and re-
110 ported.

111 (j) When any candidate, organization, committee or person
112 receives any anonymous contribution which cannot be returned
113 because the donor cannot be identified, that contribution shall
114 be donated to the general revenue fund of the state. Any
115 anonymous contribution shall be recorded as such on the

116 candidate's financial statement, but may not be expended for
117 election expenses. At the time of filing, the financial statement
118 shall include a statement of distribution of anonymous contribu-
119 tions, which total amount shall equal the total of all anonymous
120 contributions received during the period.

121 (k) Any membership organization which raises funds for
122 political purposes by payroll deduction assessing them as part
123 of its membership dues or as a separate assessment may report
124 the amount raised as follows:

125 (1) If the portion of dues or assessments designated for
126 political purposes equals twenty-five dollars or less per member
127 over the course of a calendar year, the total amount raised for
128 political purposes through membership dues or assessments
129 during the period is reported by showing the amount required
130 to be paid by each member and the number of members.

131 (2) If the total payroll deduction for political purposes of
132 each participating member equals twenty-five dollars or less
133 over the course of a calendar or fiscal year, as specified by the
134 organization, the organization shall report the total amount
135 received for political purposes through such payroll deductions
136 during the reporting period, and to the maximum extent
137 possible, the amount of each yearly payroll deduction contribu-
138 tion level and the number of members contributing at each such
139 specified level. The membership organization shall maintain
140 records of the name and yearly payroll deduction amounts of
141 each participating member.

142 (3) If any member contributes to the membership organiza-
143 tion through individual voluntary contributions by means other
144 than payroll deduction, membership dues, or assessments as
145 provided in this subsection, the reporting requirements of
146 subdivision (3), subsection (a) of this section shall apply. Funds
147 raised for political purposes must be segregated from the funds
148 for other purposes and listed in its report.

149 (l) For purposes of this section:

150 (1) "Political purposes" means advocating or opposing the
151 nomination, election or defeat of one or more candidates,

152 supporting the retirement of the debt of a candidate or activities
153 of an established political party or an organization which has
154 declared itself a political party, supporting the administration or
155 activities of a political committee or advocating or opposing the
156 passage of a ballot issue.

157 (2) "Membership organization" means a group that grants
158 bona fide rights and privileges, such as the right to vote, to elect
159 officers or directors, and the ability to hold office, to its
160 members, and which uses a majority of its membership dues for
161 purposes other than political purposes. This term shall not
162 include organizations that grant membership upon receiving a
163 contribution.

164 (3) "Fund-raising event" means an event such as a dinner,
165 reception, testimonial, cocktail party, auction or similar affair
166 through which contributions are solicited or received by such
167 means as the purchase of a ticket, payment of an attendance fee
168 or by the purchase of goods or services.

169 (m) Notwithstanding the provisions of section five of this
170 article or of the provisions of this section to the contrary, an
171 alternative reporting procedure may be followed by a political
172 party executive committee or a political action committee
173 representing a political party in filing financial reports for fund-
174 raising events if the total profit does not exceed five thousand
175 dollars per year. A political party executive committee or a
176 political action committee representing a political party may
177 report gross receipts for the sale of food, beverages, services,
178 novelty items, raffle tickets or memorabilia, except that any
179 receipt of more than fifty dollars from an individual or organi-
180 zation shall be reported as a contribution. A political party
181 executive committee or a political action committee represent-
182 ing a political party using this alternative method of reporting
183 shall report: (i) The name of the committee; (ii) the type of
184 fund-raising activity undertaken; (iii) the location where the
185 activity occurred; (iv) the date of the fund raiser; (v) the name
186 of any individual who contributed more than fifty dollars worth
187 of items to be sold; (vi) the name and amount received from any
188 person or organization purchasing more than fifty dollars worth

189 of food, beverages, services, novelty items, raffle tickets or
190 memorabilia; (vii) the gross receipts of the fund raiser; and
191 (viii) the date, amount, purpose and name and address of each
192 person or organization from whom items with a fair market
193 value of more than fifty dollars were purchased for resale.

§3-8-5b. Where financial statements shall be filed; filing date prescribed.

1 (a) The sworn financial statements provided for in this
2 article shall be filed, by or on behalf of candidates, with the
3 secretary of state for legislative offices and for state and other
4 offices to be nominated or elected by the voters of a political
5 division greater than a county, and with the clerk of the county
6 commission by all other candidates for offices to be nominated
7 or elected.

8 (b) The statements may be filed by mail, in person, or by
9 facsimile or other electronic means of transmission.

10 (c) For purposes of this article, the filing date of a financial
11 statement shall, in the case of mailing, be the date of the
12 postmark of the United States postal service, and in the case of
13 hand delivery or delivery by facsimile or other electronic means
14 of transmission, the date delivered to the office of the secretary
15 of state or to the office of the clerk of the county commission,
16 in accordance with the provisions of subsection (a) of this
17 section, during regular business hours of such office.

18 (d) The sworn financial statements required to be filed by
19 this section with the secretary of state shall be posted on the
20 internet by the secretary of state within forty-five days from the
21 date the financial statement was filed.

§3-8-5f. Loans to candidates, organizations or persons for election purposes.

1 (a) No candidate, financial agent, person or association of
2 persons or organization advocating or opposing the nomination
3 or election of any candidate or the passage or defeat of any
4 issue or item to be voted upon may receive any money or any
5 other thing of value as a loan toward election expenses except

6 from the candidate, his or her spouse or a lending institution.
7 All loans shall be evidenced by a written agreement executed
8 by the lender, whether the candidate, his or her spouse, or the
9 lending institution. Such agreement shall state the date and
10 amount of the loan, the terms, including interest and repayment
11 schedule, and a description of the collateral, if any, and the full
12 names and addresses of all parties to the agreement. A copy of
13 the agreement shall be filed with the financial statement next
14 required after the loan is executed.

15 (b) Loans may only be made in the regular course of
16 business by a lending institution which is a state bank, a
17 federally chartered depository institution (including a national
18 bank) or a depository institution whose deposits are insured by
19 the federal deposit insurance corporation or the national credit
20 union administration. Such loans shall be subject to the follow-
21 ing requirements:

22 (1) Endorsements or guarantees of such loans may be made
23 by the candidate or his or her spouse;

24 (2) Endorsements or guarantees of such loans by parties
25 other than the candidate or his or her spouse may be made only
26 to the extent of the contribution limits established in this article;
27 and

28 (3) No other form of security shall be furnished in connec-
29 tion with such loans by any party other than the candidate or his
30 or her spouse.

31 (c) The provisions of this section shall not be construed to
32 prohibit a candidate or his or her spouse from lending money to
33 the candidate or to the candidate's political committee: *Pro-*
34 *vided*, That the spouse of a candidate may not borrow money
35 from a third party other than a lending institution authorized to
36 make loans under this section for the purposes of lending
37 money to the candidate or the candidate's political committee.

**§3-8-9. Lawful and unlawful election expenses; public opinion
polls and limiting their purposes; limitation upon
expenses; use of advertising agencies and reporting
requirements; delegation of expenditures.**

1 (a) No candidate, financial agent or treasurer of a political
2 party committee shall pay, give or lend, either directly or
3 indirectly, any money or other thing of value for any election
4 expenses, except for the following purposes:

5 (1) For rent, maintenance, office equipment and other
6 furnishing of offices to be used as political headquarters and for
7 the payment of necessary clerks, stenographers, typists, janitors
8 and messengers actually employed therein;

9 (2) In the case of a candidate who does not maintain a
10 headquarters, for reasonable office expenses, including, but not
11 limited to, filing cabinets and other office equipment and
12 furnishings, computers, computer hardware and software,
13 scanners, typewriters, calculators, audio visual equipment, the
14 rental of the use of the same, or for the payment for the shared
15 use of same with the candidate's business and for the payment
16 of necessary clerks, stenographers and typists, actually em-
17 ployed;

18 (3) For printing and distributing books, pamphlets, circulars
19 and other printed matter and radio and television broadcasting
20 and painting, printing and posting signs, banners and other
21 advertisements, including contributions to charitable, educa-
22 tional or cultural events, for the promotion of the candidate, the
23 candidate's name or an issue on the ballot;

24 (4) For renting and decorating halls for public meetings and
25 political conventions, for advertising public meetings, and for
26 the payment of traveling expenses of speakers and musicians at
27 such meetings;

28 (5) For the necessary traveling and hotel expenses of
29 candidates, political agents and committees, and for stationery,
30 postage, telegrams, telephone, express, freight and public
31 messenger service;

32 (6) For preparing, circulating and filing petitions for
33 nomination of candidates;

34 (7) For examining the lists of registered voters, securing
35 copies thereof, investigating the right to vote of the persons

36 listed therein and conducting proceedings to prevent unlawful
37 registration or voting;

38 (8) For conveying voters to and from the polls;

39 (9) For securing publication in newspapers and by radio and
40 television broadcasting of documents, articles, speeches,
41 arguments and any information relating to any political issue,
42 candidate or question or proposition submitted to a vote;

43 (10) For conducting public opinion poll or polls. For the
44 purpose of this section, the phrase "conducting of public
45 opinion poll or polls" shall mean and be limited to the gather-
46 ing, collection, collation and evaluation of information reflect-
47 ing public opinion, needs and preferences as to any candidate,
48 group of candidates, party, issue or issues. No such poll shall be
49 deceptively designed or intentionally conducted in a manner
50 calculated to advocate the election or defeat of any candidate or
51 group of candidates or calculated to influence any person or
52 persons so polled to vote for or against any candidate, group of
53 candidates, proposition or other matter to be voted on by the
54 public at any election: *Provided*, That nothing herein shall
55 prevent the use of the results of any such poll or polls to further,
56 promote or enhance the election of any candidate or group of
57 candidates or the approval or defeat of any proposition or other
58 matter to be voted on by the public at any election;

59 (11) For legitimate advertising agency services, including
60 commissions, in connection with any campaign activity for
61 which payment is authorized by subdivisions (3), (4), (5), (6),
62 (7), (9) and (10) of this subsection;

63 (12) For the purchase of memorials, flowers or citations by
64 political party executive committees or political action commit-
65 tees representing a political party;

66 (13) For the purchase of nominal noncash expressions of
67 appreciation following the close of the polls of an election or
68 within thirty days thereafter;

69 (14) For the payment of dues or subscriptions to any
70 national, state or local committee of any political party; and

71 (15) For contributions to a county party executive commit-
72 tee, state party executive committee or a state party legislative
73 caucus political committee.

74 (b) Every liability incurred and payment made shall be at a
75 rate and for a total amount which is proper and reasonable and
76 fairly commensurate with the services rendered.

77 (c) Every advertising agency subject to the provisions of
78 this article shall file, in the manner and form required by
79 section five-a of this article, the financial statements required
80 by section five of this article at the times required therein and
81 include therein, in itemized detail, all receipts from and
82 expenditures made on behalf of a candidate, financial agent or
83 treasurer of a political party committee.

84 (d) Any candidate may designate a financial agent by a
85 writing duly subscribed by him which shall be in such form and
86 filed in accordance with the provisions of section four of this
87 article.

§3-8-10. Use of certain contributions.

1 After the first day of July, two thousand, amounts received
2 by a candidate as contributions that are in excess of any amount
3 necessary to defray his or her expenditures may be used by the
4 candidate to defray any ordinary and necessary expenses
5 incurred in connection with his or her duties as a holder of
6 public office, may be contributed after the general election to
7 any charitable organization, or may be transferred, without
8 limitation, to any national, state or local committee of any
9 political party or to any candidate for public office.

10 The state election commission shall promulgate legislative
11 rules, in accordance with the provisions of chapter twenty-nine-
12 a of this code, to establish guidelines for the administration of
13 this section.

§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of

employment or other benefits; limitations on contributions; public contractors; penalty.

1 (a) No person shall publish, issue or circulate, or cause to
2 be published, issued or circulated, any anonymous letter,
3 circular, placard, or other publication tending to influence
4 voting at any election.

5 (b) No owner, publisher, editor or employee of a newspaper
6 or other periodical shall insert, either in its advertising or
7 reading columns, any matter, paid for or to be paid for, which
8 tends to influence the voting at any election, unless directly
9 designating it as a paid advertisement and stating the name of
10 the person authorizing its publication and the candidate in
11 whose behalf it is published.

12 (c) No person shall, in any room or building occupied for
13 the discharge of official duties by any officer or employee of
14 the state or a political subdivision thereof, solicit orally or by
15 written communication delivered therein, or in any other
16 manner, any contribution of money or other thing of value for
17 any party or political purpose, from any postmaster or any other
18 officer or employee of the federal government, or officer or
19 employee of the state, or a political subdivision thereof. No
20 officer, agent, clerk or employee of the federal government, or
21 of this state, or any political subdivision thereof, who may have
22 charge or control of any building, office or room, occupied for
23 any official purpose, shall knowingly permit any person to enter
24 the same for the purpose of therein soliciting or receiving any
25 political assessments from, or delivering or giving written
26 solicitations for, or any notice of, any political assessments to,
27 any officer or employee of the state, or a political subdivision
28 thereof.

29 (d) Except as provided in section eight of this article, no
30 person entering into any contract with the state or its subdivi-
31 sions, or any department or agency thereof, either for rendition
32 of personal services or furnishing any material, supplies or
33 equipment or selling any land or building to the state, or its
34 subdivisions, or any department or agency thereof, if payment
35 for the performance of such contract or payment for such

36 material, supplies, equipment, land or building is to be made, in
37 whole or in part, from public funds shall, during the period of
38 negotiation for or performance under such contract or furnish-
39 ing of materials, supplies, equipment, land or buildings, directly
40 or indirectly, make any contribution to any political party,
41 committee or candidate for public office or to any person for
42 political purposes or use; nor shall any person or firm solicit
43 any contributions for any such purpose during any such period.

44 (e) No person shall, directly or indirectly, promise any
45 employment, position, work, compensation or other benefit
46 provided for, or made possible, in whole or in part, by act of the
47 Legislature, to any person as consideration, favor or reward for
48 any political activity for the support of or opposition to any
49 candidate, or any political party in any election.

50 (f) No person shall, directly or indirectly, make any
51 contribution in excess of the value of one thousand dollars in
52 connection with any campaign for nomination or election to or
53 on behalf of any statewide or national elective office, or in
54 excess of the value of one thousand dollars, in connection with
55 any other campaign for nomination or election to or on behalf
56 of any other elective office in the state or any of its subdivi-
57 sions, or in connection with or on behalf of any committee or
58 other organization or person engaged in furthering, advancing
59 or advocating the nomination or election of any candidate for
60 any such office.

61 (g)(1) Notwithstanding the provisions of subsection (f) of
62 this section to the contrary, the aggregate contributions made to
63 a state party executive committee shall be permitted only
64 pursuant to the limitations imposed by the provisions of this
65 subsection.

66 (2) No person shall, directly or indirectly, make contribu-
67 tions to a state party executive committee which, in the aggre-
68 gate, exceed the value of one thousand dollars in any calendar
69 year.

70 (h) The limitations on contributions contained in this
71 section do not apply to transfers between and among a state

72 party executive committee or a state party's legislative caucus
73 political committee from national committees of the same
74 political party: *Provided*, That transfers permitted herein shall
75 not exceed fifty thousand dollars in the aggregate in any
76 calendar year to any such state party executive committee or
77 state party legislative caucus political committee: *Provided*,
78 *however*, That such moneys transferred shall only be used for
79 voter registration and get-out-the-vote activities of the state
80 committees.

81 (i) No person shall solicit any contribution from any
82 nonelective salaried employee of the state government or of any
83 of its subdivisions or coerce or intimidate any such employee
84 into making such contribution. No person shall coerce or
85 intimidate any nonsalaried employee of the state government or
86 any of its subdivisions into engaging in any form of political
87 activity. The provisions hereof shall not be construed to prevent
88 any such employee from making such a contribution or from
89 engaging in political activity voluntarily, without coercion,
90 intimidation or solicitation.

91 (j) No person shall solicit a contribution from any other
92 person without informing such other person at the time of such
93 solicitation of the amount of any commission, remuneration or
94 other compensation that the solicitor or any other person will
95 receive or expect to receive as a direct result of such contribu-
96 tion being successfully collected. Nothing in this subsection
97 shall be construed to apply to solicitations of contributions
98 made by any person serving as an unpaid volunteer.

99 (k) No person shall place any letter, circular, flyer, adver-
100 tisement, election paraphernalia, solicitation material or other
101 printed or published item tending to influence voting at any
102 election in a roadside receptacle unless it is: (1) Approved for
103 placement into a roadside receptacle by the business or entity
104 owning the receptacle; and (2) contains a written acknowledg-
105 ment of such approval. This subdivision does not apply to any
106 printed material contained in a newspaper or periodical pub-
107 lished or distributed by the owner of the receptacle. The term
108 "roadside receptacle" means any container placed by a newspa-

109 per or periodical business or entity to facilitate home or
110 personal delivery of a designated newspaper or periodical to its
111 customers.

112 (l) Any person violating any provision of this section is
113 guilty of a misdemeanor and, upon conviction thereof, shall be
114 fined not more than one thousand dollars, or confined in jail for
115 not more than one year, or, in the discretion of the court, be
116 subject to both such fine and confinement.

CHAPTER 119

(Com. Sub. for H. B. 2627 — By Delegates Mahan,
Coleman, Johnson, Pino, Linch, Capito and Faircloth)

[Passed March 13, 1999; 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-g, relating to mailing of certain unsolicited electronic mail messages and establishing prohibitions relating thereto; defining terms; establishing that certain internet messages are prohibited under this article; specifying contents of prohibited messages; prohibiting misrepresenting or falsifying certain information; requiring prior approval, certain disclosures for certain messages activities; authorizing interactive computer services to limit transmissions of any bulk electronic mail which violates this article; limiting liability of interactive computer services for terminating service to persons that violate this article; and establishing a penalty for violations of this article.

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-g, to read as follows:

ARTICLE 6G. ELECTRONIC MAIL PROTECTION ACT.

§46A-6G-1. Definitions.

§46A-6G-2. Limitations on unauthorized electronic mail.

§46A-6G-3. Interactive computer service authority; liability.

§46A-6G-4. Sale or possession of enabling software prohibited.

§46A-6G-5. Violations; right of action for injunction, damages.

§46A-6G-1. Definitions.

1 As used in this article:

2 (1) "Bulk electronic mail message" means an electronic
3 mail message sent in bulk to users of an interactive computer
4 service who have not requested or solicited the message.
5 Unauthorized for purposes of a bulk electronic mail message,
6 means a bulk electronic mail message sent in quantity in
7 contravention of the authorization granted by or in violation of
8 the policies or contractual rights of the electronic mail service
9 provider.

10 (2) "Electronic mail address" means a destination, com-
11 monly expressed as a string of characters, to which electronic
12 mail may be sent or delivered.

13 (3) "Initiate the transmission" means the action by the
14 original sender of an electronic mail message, not the action by
15 any intervening interactive computer service that may handle or
16 retransmit the message.

17 (4) "Interactive computer service" means any information
18 service, system, or access software provider that provides or
19 enables computer access by multiple users to a computer server,
20 including specifically a service or system that provides access
21 to the internet.

22 (5) "Internet domain name" means a globally unique,
23 hierarchical reference to an internet host or service, assigned
24 through centralized internet naming authorities, comprising a
25 series of character strings separated by periods, with the right-
26 most string specifying the top of the hierarchy.

27 (6) "Person" means any individual, corporation, partner-
28 ship, association, limited liability company or any other form
29 or business association.

§46A-6G-2. Limitations on unauthorized electronic mail.

1 No person may initiate the transmission of an unauthorized
2 electronic mail message with the intent to deceive and defraud,
3 or a bulk electronic mail message from a computer located in
4 the state of West Virginia or to an electronic mail address that
5 the sender knows, or has reason to know, is held by a West
6 Virginia resident that:

7 (1) Uses a third party's internet domain name without the
8 permission of the third party, or otherwise misrepresents any
9 information in identifying the point of origin or the transmis-
10 sion path of a commercial electronic mail message;

11 (2) Contains false or misleading information in the subject
12 line;

13 (3) Does not clearly provide the date and time the message
14 is sent, the identity of the person sending the message, and the
15 return electronic mail address of that person; or

16 (4) Contains "sexually explicit materials" which are defined
17 as a visual depiction, in actual or simulated form, or an explicit
18 description in a predominately sexual context, nudity, human
19 genitalia, or any act of natural or unnatural sexual intercourse.

§46A-6G-3. Interactive computer service authority; liability.

1 (1) An interactive computer service may block the receipt
2 or transmission through its service of any bulk electronic mail
3 that it reasonably believes is, or will be, sent in violation of this
4 article.

5 (2) An interactive computer service may disconnect or
6 terminate the service of any person that is in violation of this
7 article.

8 (3) No interactive computer service may be held liable for
9 any action voluntarily taken in good faith to block the receipt or
10 transmission through its service of any bulk electronic mail
11 which it reasonably believes is, or will be, sent in violation of
12 this article; nor will any interactive computer service be held
13 liable for any action voluntarily taken in good faith to discon-

14 nect or terminate the service of any person that is in violation
15 of this article.

16 (4) No interactive computer service or public utility will be
17 liable for merely transmitting a bulk electronic mail message on
18 its network.

§46A-6G-4. Sale or possession of enabling software prohibited.

1 No person may sell, give or otherwise distribute or possess
2 with the intent to sell, give or distribute software that:

3 (1) Is primarily designed or produced for the purpose of
4 facilitating or enabling the falsification of electronic mail
5 transmission information or other routing information;

6 (2) Has only a limited commercially significant purpose or
7 use other than to facilitate or enable the falsification of elec-
8 tronic mail transmission information or other routing informa-
9 tion; or

10 (3) That is marketed by that person or another acting in
11 concert with that person with that person's knowledge for use
12 in facilitating or enabling the falsification of electronic mail
13 transmission information or other routing information.

§46A-6G-5. Violations; right of action for injunction, damages.

1 (a) No person or organization may initiate an unauthorized
2 bulk electronic mail message in violation of this article.

3 (b) A recipient of an unauthorized bulk electronic mail
4 message in violation of this article may bring an action to
5 recover actual damages for any injury sustained by the receipt
6 of an unauthorized bulk electronic mail message. In lieu of
7 actual damages, a minimum damage assessment of one thou-
8 sand dollars may be recovered for violations of this article.
9 Punitive damages may be awarded for the willful failure to
10 cease initiating unauthorized bulk electronic mail messages.
11 Court costs and reasonable attorney fees may be awarded for
12 violations of this article.

13 (c) A recipient of an unauthorized bulk electronic mail
14 message initiated in violation of this article may bring an action

15 to enjoin the initiator from sending any further unauthorized
16 bulk electronic mail messages. Any court costs or other costs
17 incident to such action including reasonable attorney fees may
18 be awarded.

19 (d) Initiating an unauthorized bulk electronic mail message
20 to any computer or computer network located in this state shall
21 constitute an act in the state for the purposes of section thirty-
22 three, article three, chapter fifty-six of this code.

23 (e) Any interactive computer service provider or public
24 utility whose property or person is injured by any violation of
25 this article may bring an action to recover for any damages
26 sustained, including, but not limited to, loss of profits. In
27 addition, court costs and attorney fees may be recovered. The
28 service provider may elect, in lieu of actual damages, to recover
29 ten dollars for each and every unauthorized bulk electronic mail
30 message transmitted in violation of this article, or twenty-five
31 thousand dollars per day, whichever is greater.

32 (f) The provisions of this section shall not be construed to
33 limit any person's right to pursue any additional civil remedy
34 otherwise allowed by law.

CHAPTER 120

(S. B. 681 — Originating in the Committee on Energy, Industry and Mining.)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter five-b 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 and reenact section seven, article one, chapter twenty-two of said code; to amend and reenact sections thirteen, twenty-three and twenty-four, article three of said chapter; to further amend said article by adding thereto three new sections, designated sections thirteen-a, twenty-two-a and thirty-a; to further amend said chapter by

adding thereto a new article, designated article three-a; and to amend and reenact section seven-a, article eleven of said chapter, all relating to surface mining; creating the office of coalfield community development within the West Virginia development office; office of coalfield community development's powers and duties; promulgation of rules; requiring a community impact statement; requiring a coalfield community development statement; determining and developing needed community assets; addressing land and infrastructure needs; annual reports; land acquisition process; continuation of offices; creating the office of explosives and blasting within the division of environmental protection; office of explosives and blasting's duties, powers and responsibilities; promulgation of rules; enforcement of blasting laws and pre-blast surveys by the office of explosives and blasting; education, training, examination, certification and disciplinary procedures for blasters; establishing a claims process for blasting damage; requirements for a pre-blast survey; recordation of notice of pre-blast survey and waiver; prohibiting production blasting within three hundred feet of a protected structure; requiring site-specific blast designs within one thousand feet of a protected structure; requiring studies by the office of blasting; requiring mining operators to replace an owner's damaged underground water supply within a specific area and within a certain amount of time; provision for an emergency water supply; promulgation of rules; requiring compliance with blasting laws; civil liability and penalties; reducing the acreage and monetary amount for mitigation of watersheds by mining operators; and authorizing a study of the impact of mountaintop mining and valley fills upon the state of West Virginia.

Be it enacted by the Legislature of West Virginia:

That chapter five-b 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 section seven, article one, chapter twenty-two of said code be amended and reenacted; that sections thirteen, twenty-three and twenty-four, article three of said chapter be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections thirteen-a, twenty-two-a and thirty-a; that said chapter be further

amended by adding thereto a new article, designated article three-a; and that section seven-a, article eleven of said chapter be amended and reenacted, all to read as follows:

Chapter

5B. Economic Development Act of 1985.

22. Environmental Resources.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2A. Office of Coalfield Community Development.

- §5B-2A-1. Legislative findings and declaration.
- §5B-2A-2. Application of article.
- §5B-2A-3. Definitions.
- §5B-2A-4. Office of coalfield community development.
- §5B-2A-5. Powers and duties.
- §5B-2A-6. Community impact statement.
- §5B-2A-7. Coalfield community development statement.
- §5B-2A-8. Determining and developing needed community assets.
- §5B-2A-9. Securing developable land and infrastructure.
- §5B-2A-10. Action report; annual update.
- §5B-2A-11. Land acquisitions.
- §5B-2A-12. Rule making.
- §5B-2A-13. Termination of office.

§5B-2A-1. Legislative findings and declaration.

1 The Legislature hereby finds and declares the following:

- 2 (a) Coal mining has made and continues to make significant
3 contributions to the economy of West Virginia. These contribu-
4 tions include the creation of quality jobs that pay high wages
5 and provide good benefits; the consequent stimulation and
6 support of mining contractors, suppliers of mining equipment
7 and services, other mining-related industries and numerous
8 providers of goods and services that are indirectly related to
9 coal mining and dependent upon its existence and prosperity;
10 the generation of significant severance and other tax revenues
11 that support important economic development, infrastructure
12 and education initiatives in mining communities and throughout
13 the state; the support of civic, education and service groups in
14 mining communities; and in the case of surface-mining opera-
15 tions, including mountaintop mining, the creation of much-
16 needed flat land for economic development and recreational
17 uses.

18 (b) The development and increasing prominence of surface-
19 mining operations, including mountaintop mining, has brought
20 increasingly high levels of productivity, safety and efficiency
21 to the state's mining industry, enabling the recovery of coal that
22 could not otherwise be mined and marketed profitably, increas-
23 ing the severance tax revenues and other economic benefits
24 described in subsection (a) above and ensuring the competitive-
25 ness of the state's coal industry from a national and interna-
26 tional perspective.

27 (c) Where implemented, surface-mining operations,
28 particularly mountaintop mining, tend to extract most, if not all,
29 of the recoverable coal reserves in an accelerated fashion. For
30 a state long dependent on the employment and revenue coal
31 mining provides, this reality should be sobering and there is no
32 place in which the comprehension of this reality is more crucial
33 than the coalfields of West Virginia. Long dependent primarily
34 on mining, this area must plan for a future without coal. The
35 state and its subdivisions have a legitimate interest in securing
36 that future.

37 (d) The coal industry and those related to the extraction of
38 mineral resources benefit from the mining of our state's coal
39 through mining practices which impact its citizens — some in
40 a negative way — and through practices which will extract
41 significant portions of coal reserves in an accelerated fashion.
42 Those industries must therefore accept a greater responsibility
43 to help address the long-term needs of the communities and
44 citizens impacted by their activities.

45 (e) Once it becomes public knowledge that a permit is being
46 sought, the marketability of property may change and the
47 relative bargaining power of the parties may change with it. The
48 potential for negative impact on those living in communities
49 near surface-mining operations may limit the options and
50 bargaining power of the property owners.

51 (f) Surface-mining operations, including mountaintop
52 mining, present unique challenges to the coal mining industry
53 and the state and its citizens, especially those living and

54 working in communities that rely heavily upon these methods
55 of mining. This requires that these communities, in conjunction
56 with county commissions, state, local, county and regional
57 development authorities, landowners and civic, community and
58 business groups and interested citizens, develop plans related to
59 the communities' long-term economic viability.

60 (g) The West Virginia development office, as the state
61 agency charged with economic development activities, shall
62 take a more active role in the long-term economic development
63 of communities in which these mining methods are prevalent
64 and shall establish a formal process to assist property owners in
65 the determination of the fair market value where the property
66 owner and the coal company voluntarily enter into an agree-
67 ment relating to the purchase and sale of such property.

§5B-2A-2. Application of article.

1 (a) The provisions of this article shall apply to all surface-
2 mining operations, except:

3 (1) The surface operations and surface impacts incident to
4 an underground coal mine; and

5 (2) Surface-mining operations of operators that: (A)
6 Establish that their probable total annual coal production from
7 all locations during any consecutive twelve-month period,
8 either during the term of the permit or during the first five years
9 after issuance of the permit, whichever period is shorter, will
10 not exceed three hundred thousand tons, as determined pursuant
11 to rules promulgated by the division; and (B) otherwise qualify
12 for the small operator assistance program authorized under the
13 federal Surface-Mining Control and Reclamation Act of 1977,
14 as amended, and the federal regulations promulgated thereun-
15 der, as amended.

16 (b) The provisions of this article shall not apply: (1) To
17 underground coal mining operations; or (2) to the extraction of
18 minerals by underground mining methods or the surface
19 impacts thereof.

§5B-2A-3. Definitions.

1 (a) For the purpose of this article, the following terms have
2 the meanings ascribed to them:

3 (1) "Division" means the division of environmental
4 protection established in article one, chapter twenty-two of this
5 code;

6 (2) "Office" means the office of coalfield community
7 development; and

8 (3) "West Virginia development office" means the office
9 established in article two of this chapter.

10 (b) Unless used in a context that clearly requires a different
11 meaning or as otherwise defined herein, terms used in this
12 article shall have the definitions set forth in this section.

§5B-2A-4. Office of coalfield community development.

1 (a) The office of coalfield community development is
2 hereby established within the West Virginia development
3 office.

4 (b) The executive director shall appoint a chief to adminis-
5 ter the office, who will serve at the will and pleasure of the
6 executive director of the West Virginia development office.

§5B-2A-5. Powers and duties.

1 The office shall have and exercise the following duties,
2 powers and responsibilities:

3 (1) To establish a procedure for developing a community
4 impact statement as provided in section six of this article and to
5 administer the procedure so established;

6 (2) To establish a procedure for developing and implement-
7 ing coalfield community development statements as provided
8 in section seven of this article and to administer the procedure
9 so established;

10 (3) To establish a procedure for determining the assets that
11 could be developed in and maintained by the community to

12 foster its long-term viability as provided in section eight of this
13 article and to administer the procedure so established;

14 (4) To establish a procedure for determining the land and
15 infrastructure needs in the general area of the surface-mining
16 operations as provided in section nine of this article and to
17 administer the procedure so established;

18 (5) To establish a procedure to develop action reports and
19 annual updates as provided in section ten of this article and to
20 administer the procedure so established;

21 (6) To determine the need for meetings to be held among
22 the various interested parties in the communities impacted by
23 surface-mining operations and, when appropriate, to facilitate
24 such meetings;

25 (7) To establish a procedure to assist property owners in the
26 sale of their property as provided in section eleven of this
27 article and to administer the procedure so established; and

28 (8) In conjunction with the division, to maintain and
29 operate a system to receive and address questions, concerns and
30 complaints relating to surface mining.

§5B-2A-6. Community impact statement.

1 (a) (1) The operator shall develop a community impact
2 statement as described in this section, which shall be submitted
3 to the office within sixty days of the filing of a surface-mining
4 application pursuant to the provisions of article three of chapter
5 twenty-two of this code. Failure to submit a community impact
6 statement to the office shall be considered a violation under the
7 provisions of section seventeen, article three, chapter twenty-
8 two of this code; and

9 (2) The operator shall provide copies of the community
10 impact statement to the division's office of mining reclamation
11 and office of explosives and blasting and to the county commis-
12 sions, county clerks' offices and local or regional economic
13 development authorities of the areas to be affected by the
14 surface-mining operations.

15 (b) The community impact statement, where practicable,
16 shall not be a highly technical or legalistic document, but shall
17 be written in a clear and concise manner understandable to all
18 citizens. The community impact statement shall include the
19 following:

20 (1) The amount and location of land to be mined or used in
21 the actual mining operations;

22 (2) The expected duration of the mining operations in each
23 area of the community;

24 (3) The extent of anticipated mining-related property
25 acquisitions, to the extent that such acquisitions are known or
26 knowable;

27 (4) The intentions of the surface and mineral owners
28 relative to the acquired property, to the extent that such
29 intentions are known or knowable;

30 (5) A statement of the post-mining land use for all land
31 within the permit boundary;

32 (6) The intended blasting plan and the expected time and
33 duration it will affect each community;

34 (7) Information concerning the extent and nature of valley
35 fills and the watersheds to be affected; and

36 (8) Economic information, such as the number of jobs
37 created and annual coal production resulting from the surface-
38 mining operation, the anticipated life of the mining operation
39 and such other information as may be deemed appropriate.

40 (c) Where the operator makes any significant revision to the
41 permit application under section eighteen, article three, chapter
42 twenty-two of this code, which revision substantially affects
43 any of the information provided in subsection (b) of this
44 section, the operator shall revise the affected provisions of its
45 community impact statement and shall submit such revisions as
46 set forth in subsection (a) of this section.

47 (d) The provisions of this section shall apply as follows:

48 (1) To all surface-mining permits granted after the effective
49 date of this article; and

50 (2) At the first renewal date of all previously issued
51 permits: *Provided*, That the permittee shall be afforded ninety
52 days from said date to comply with the provisions of this
53 section.

§5B-2A-7. Coalfield community development statement.

1 (a) At the time that the operator applies for any permit
2 pursuant to article three, chapter twenty-two of this code, the
3 office shall coordinate the development of a coalfield commu-
4 nity development statement as described in this section.

5 (b) The office shall establish a procedure for the develop-
6 ment of the coalfield community development statement, which
7 procedure shall include the following:

8 (1) A method for giving adequate notice to affected persons
9 and entities about the coalfield community development
10 statement process and how they can participate. Notice shall be
11 given to at least the following:

12 (A) The permit applicant;

13 (B) The individuals living in the affected communities;

14 (C) Business owners and operators doing business in the
15 affected communities;

16 (D) Any company owning land or resources on the property
17 to be mined, including the surface and mineral owners of such
18 property; and

19 (E) State and local government agencies such as county
20 commissions, city or town governments and local or regional
21 economic development authorities; and

22 (2) A procedure to follow which provides for fair and
23 reasonable input into the development of the coalfield commu-
24 nity development statement by those persons and entities listed
25 in subdivision (1) of this subsection.

26 (c) The office shall determine what information, findings
27 and recommendations shall be contained in the coalfield

28 community development statement, which shall include, but not
29 be limited to, the following:

30 (1) An evaluation of the future of the community once
31 mining operations are completed;

32 (2) A method to measure compliance with the provisions of
33 section eight of this article; and

34 (3) A method to measure compliance with the provisions of
35 section nine of this article.

36 (d) The Legislature hereby finds that, while the preparation
37 of a coalfield community development statement is important
38 to addressing the legitimate needs and concerns of the commu-
39 nities, individuals and entities which may be affected by
40 surface-mining operations, such a statement as required by this
41 section is in part subjective in nature. The Legislature further
42 finds that, because of such subjectivity, the development of a
43 coalfield community development statement shall not be an
44 element of or in any way related to the application for and
45 approval of any surface-mining permit under article three,
46 chapter twenty-two of this code. Therefore, the following shall
47 apply to this section:

48 (1) The office alone shall have authority over the coordina-
49 tion and development of the coalfield community development
50 statement; and

51 (2) The development of the coalfield community develop-
52 ment statement shall be a collaborative effort among those
53 persons and entities identified in subdivision (1), subsection (b)
54 of this section.

§5B-2A-8. Determining and developing needed community assets.

1 (a) As a part of the coalfield community development
2 statement required by section seven of this article, the office, in
3 a collaborative effort with those persons and entities identified
4 in subdivision (1), subsection (b), section seven of this article,
5 shall determine the community assets that may be developed by
6 the community, county or region to foster its viability when
7 surface-mining operations are completed.

8 (b) Community assets to be identified pursuant to subsec-
9 tion (a) of this section may include the following:

10 (1) Water and wastewater services;

11 (2) Developable land for housing, commercial development
12 or other community purposes;

13 (3) Recreation facilities and opportunities; and

14 (4) Education facilities and opportunities.

15 (c) To assist the office in the development of the coalfield
16 community development statement, the operator shall be
17 required to prepare and submit to the office the information set
18 forth in this subsection, as follows:

19 (1) A map of the area for which a permit under article three,
20 chapter twenty-two of this code is being sought or has been
21 obtained;

22 (2) The names of the surface and mineral owners of the
23 property to be mined pursuant to the permit; and

24 (3) A statement of the post-mining land use for all land
25 which may be affected by the mining operations.

26 (d) In determining the nature and extent of the needed
27 community assets, the office shall consider at least the follow-
28 ing:

29 (1) An evaluation of the future of the community once
30 mining operations are completed as required to be determined
31 in the coalfield community development statement;

32 (2) The prospects for the long-term viability of any asset
33 developed under this section;

34 (3) The desirability of foregoing some or all of the asset
35 development required by this section in lieu of the requirements
36 of section nine of this article;

37 (4) The determinations made during the development of the
38 coalfield community development statement of the impacts of
39 the mining operations on the community; and

40 (5) The extent to which the community, local, state or the
41 federal government may participate in the development of
42 assets the community needs to assure its viability.

§5B-2A-9. Securing developable land and infrastructure.

1 (a) As a part of the coalfield community development
2 statement required by section seven of this article, the office, in
3 a collaborative effort with those persons and entities identified
4 in subdivision (1), subsection (b), section seven of this article,
5 shall determine the land and infrastructure needs in the general
6 area of the surface-mining operations.

7 (b) For the purposes of this section, the term "general area"
8 shall mean the county or counties in which the mining opera-
9 tions are being conducted, or any adjacent county.

10 (c) To assist the office in the development of the coalfield
11 community development statement, the operator shall be
12 required to prepare and submit to the office the information set
13 forth in this subsection, as follows:

14 (1) A map of the area for which a permit under article three,
15 chapter twenty-two of this code is being sought or has been
16 obtained;

17 (2) The names of the surface and mineral owners of the
18 property to be mined pursuant to the permit; and

19 (3) A statement of the post-mining land use for all land
20 which may be affected by the mining operations.

21 (d) In making a determination of the land and infrastructure
22 needs in the general area of the mining operations, the office
23 shall consider at least the following:

24 (1) The availability of developable land in the general area;

25 (2) The needs of the general area for developable land;

26 (3) The availability of infrastructure including, but not
27 limited to, access roads, water service, wastewater service, and
28 other utilities;

29 (4) The amount of land to be mined and the amount of
30 valley to be filled;

31 (5) The amount, nature and cost to develop and maintain
32 the community assets identified in section eight of this article;
33 and

34 (6) The availability of federal, state and local grants and
35 low-interest loans to finance all or a portion of the acquisition
36 and construction of the identified land and infrastructure needs
37 of the general area.

38 (e) In making a determination of the land and infrastructure
39 needs in the general area of the surface-mining operations, the
40 office shall give significant weight to developable land on or
41 near existing or planned multi-lane highways.

§5B-2A-10. Action report; annual update.

1 (a) Based upon the information developed under sections
2 eight and nine of this article, the office shall prepare an action
3 report which shall make recommendations for achieving
4 economic development initiatives, including identifying sources
5 of potential funding.

6 (b) The office shall prepare an annual status update of the
7 action report which shall describe accomplishments and
8 prospects for continued economic development.

§5B-2A-11. Land acquisitions.

1 The office shall establish a procedure to assist property
2 owners who desire voluntarily to sell their property to the
3 operator or any person, firm or corporation directly or indirectly
4 affiliated with the operator. The procedure developed shall be
5 subject to the following:

6 (1) The procedure only shall apply if all the following
7 conditions are met:

8 (A) The operator or any person, firm or corporation directly
9 or indirectly affiliated with the operator, makes an offer in
10 writing to purchase the property stating all the terms and
11 conditions of the proposed purchase;

12 (B) The property to be purchased is located within one
13 thousand feet of property which actually is or will be mined;
14 and

15 (C) The structures are actually being used for commercial
16 purposes or are occupied residences situate on the property to
17 be purchased;

18 (2) Once a permit application has been filed, the operator
19 shall notify the office of any intended property acquisitions to
20 which this section applies;

21 (3) The office shall cause notice to be given to potential
22 sellers of the procedure established by this section, but shall
23 provide no other assistance unless requested by the potential
24 seller;

25 (4) If requested by the potential seller, the office shall make
26 a determination as to whether the value of the property intended
27 to be acquired is diminished by ongoing or intended mining
28 operations and that the purchase price offered by the purchaser
29 is less than the value the property would have had prior to any
30 diminution of value. The office only shall provide assistance if
31 it determines that the value of such property is diminished and
32 that the offer made by the operator is less than the value the
33 property would have had prior to any diminution of value; and

34 (5) If the office determines that the value of such property
35 is diminished and that the offer made by the operator is less
36 than the value the property would have had prior to any
37 diminution of value, then the office shall establish the value of
38 such property prior to any diminution and shall certify the same
39 to the parties.

§5B-2A-12. Rule making.

1 The office shall propose rules for legislative approval in
2 accordance with article three, chapter twenty-nine-a of this
3 code, to establish, implement and enforce the provisions of this
4 article, which rules shall include, but not be limited to:

5 (1) The development of standards for establishing the value
6 of property by the office; and

7 (2) A process for the development of a coalfield community
8 development statement when multiple permit applications are
9 applied for by one or more operators in any single county or
10 contiguous area of an adjacent county.

§5B-2A-13. Termination of office.

- 1 The office of coalfield community development is contin-
- 2 ued until the first day of July, two thousand two, pursuant to the
- 3 provisions of article ten, chapter four of this code.

CHAPTER 22. ENVIRONMENTAL RESOURCES.**Article**

1. **Division of Environmental Protection.**
3. **Surface Coal Mining and Reclamation Act.**
- 3A. **Office of Explosives and Blasting.**
11. **Water Pollution Control Act.**

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.***§22-1-7. Offices within division; continuation of the office of water resources.**

- 1 (a) Consistent with the provisions of this article the director
- 2 shall, at a minimum, maintain the following offices within the
- 3 division:

- 4 (1) The office of abandoned mine lands and reclamation,
- 5 which is charged, at a minimum, with administering and
- 6 enforcing, under the supervision of the director, the provisions
- 7 of article two of this chapter;

- 8 (2) The office of mining and reclamation, which is charged,
- 9 at a minimum, with administering and enforcing, under the
- 10 supervision of the director, the provisions of articles three and
- 11 four of this chapter;

- 12 (3) The office of air quality, which is charged, at a mini-
- 13 mum, with administering and enforcing, under the supervision
- 14 of the director, the provisions of article five of this chapter;

- 15 (4) The office of oil and gas, which is charged, at a mini-
- 16 mum, with administering and enforcing, under the supervision
- 17 of the director, the provisions of articles six, seven, eight, nine
- 18 and ten of this chapter;

- 19 (5) The office of water resources, which is charged, at a
- 20 minimum, with administering and enforcing, under the supervi-

*** Clerk's Note:** This section was also amended by SB 513 (Chapter 255), which passed prior to this act.

21 sion of the director, the provisions of articles eleven, twelve,
22 thirteen and fourteen of this chapter;

23 (6) The office of waste management, which is charged, at
24 a minimum, with administering and enforcing, under the
25 supervision of the director, the provisions of articles fifteen,
26 sixteen, seventeen, eighteen, nineteen and twenty of this
27 chapter; and

28 (7) The office of explosives and blasting, which is charged,
29 at a minimum, with administering and enforcing, under the
30 supervision of the director, the provisions of article three-a of
31 this chapter.

32 (b) Pursuant to the provisions of article ten, chapter four of
33 this code, the office of water resources within the division of
34 environmental protection shall continue to exist until the first
35 day of July, two thousand one.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-13. General environmental protection performance standards for surface mining; variances.

§22-3-13a. Pre-blast survey requirements.

§22-3-22a. Blasting restrictions; site specific blasting design requirement.

§22-3-23. Release of bond or deposits; application; notice; duties of director; public hearings; final maps on grade release.

§22-3-24. Water rights and replacement; waiver of replacement.

§22-3-30a. Blasting requirements; liability and civil penalties in the event of property damage.

§22-3-13. General environmental protection performance standards for surface mining; variances.

1 (a) Any permit issued by the director pursuant to this article
2 to conduct surface-mining operations shall require that the
3 surface-mining operations will meet all applicable performance
4 standards of this article and other requirements set forth in
5 legislative rules proposed by the director.

6 (b) The following general performance standards are
7 applicable to all surface mines and require the operation, at a
8 minimum to:

9 (1) Maximize the utilization and conservation of the solid
10 fuel resource being recovered to minimize re-affecting the land
11 in the future through surface mining;

12 (2) Restore the land affected to a condition capable of
13 supporting the uses which it was capable of supporting prior to
14 any mining, or higher or better uses of which there is reasonable
15 likelihood so long as the use or uses do not present any actual
16 or probable hazard to public health or safety or pose any actual
17 or probable threat of water diminution or pollution, and the
18 permit applicants' declared proposed land use following
19 reclamation is not considered to be impractical or unreasonable,
20 inconsistent with applicable land use policies and plans,
21 involves unreasonable delay in implementation, or is violative
22 of federal, state or local law;

23 (3) Except as provided in subsection (c) of this section, with
24 respect to all surface mines, backfill, compact where advisable
25 to ensure stability or to prevent leaching of toxic materials, and
26 grade in order to restore the approximate original contour:
27 *Provided*, That in surface mining which is carried out at the
28 same location over a substantial period of time where the
29 operation transects the coal deposit, and the thickness of the
30 coal deposits relative to the volume of the overburden is large
31 and where the operator demonstrates that the overburden and
32 other spoil and waste materials at a particular point in the
33 permit area or otherwise available from the entire permit area
34 is insufficient, giving due consideration to volumetric expansion,
35 to restore the approximate original contour, the operator,
36 at a minimum, shall backfill, grade and compact, where
37 advisable, using all available overburden and other spoil and
38 waste materials to attain the lowest practicable grade, but not
39 more than the angle of repose, to provide adequate drainage and
40 to cover all acid-forming and other toxic materials, in order to
41 achieve an ecologically sound land use compatible with the
42 surrounding region: *Provided, however*, That in surface mining
43 where the volume of overburden is large relative to the thick-
44 ness of the coal deposit and where the operator demonstrates
45 that due to volumetric expansion the amount of overburden and
46 other spoil and waste materials removed in the course of the

47 mining operation is more than sufficient to restore the approxi-
48 mate original contour, the operator shall, after restoring the
49 approximate contour, backfill, grade and compact, where
50 advisable, the excess overburden and other spoil and waste
51 materials to attain the lowest grade, but not more than the angle
52 of repose, and to cover all acid-forming and other toxic
53 materials, in order to achieve an ecologically sound land use
54 compatible with the surrounding region and, the overburden or
55 spoil shall be shaped and graded in such a way as to prevent
56 slides, erosion and water pollution and revegetated in accor-
57 dance with the requirements of this article: *Provided further*,
58 That the director shall propose rules for legislative approval in
59 accordance with article three, chapter twenty-nine-a of this
60 code, governing variances to the requirements for return to
61 approximate original contour or highwall elimination and where
62 adequate material is not available from surface-mining opera-
63 tions permitted after the effective date of this article for: (A)
64 Underground mining operations existing prior to the third day
65 of August, one thousand nine hundred seventy-seven; or (B) for
66 areas upon which surface mining prior to the first day of July,
67 one thousand nine hundred seventy-seven, created highwalls;

68 (4) Stabilize and protect all surface areas, including spoil
69 piles, affected by the surface-mining operation to effectively
70 control erosion and attendant air and water pollution;

71 (5) Remove the topsoil from the land in a separate layer,
72 replace it on the backfill area, or if not utilized immediately,
73 segregate it in a separate pile from other spoil and, when the
74 topsoil is not replaced on a backfill area within a time short
75 enough to avoid deterioration of the topsoil, maintain a success-
76 ful vegetative cover by quick growing plants or by other similar
77 means in order to protect topsoil from wind and water erosion
78 and keep it free of any contamination by other acid or toxic
79 material: *Provided*, That if topsoil is of insufficient quantity or
80 of poor quality for sustaining vegetation, or if other strata can
81 be shown to be more suitable for vegetation requirements, then
82 the operator shall remove, segregate and preserve in a like
83 manner any other strata which is best able to support vegeta-
84 tion;

9 (1) Maximize the utilization and conservation of the solid
10 fuel resource being recovered to minimize re-affecting the land
11 in the future through surface mining;

12 (2) Restore the land affected to a condition capable of
13 supporting the uses which it was capable of supporting prior to
14 any mining, or higher or better uses of which there is reasonable
15 likelihood so long as the use or uses do not present any actual
16 or probable hazard to public health or safety or pose any actual
17 or probable threat of water diminution or pollution, and the
18 permit applicants' declared proposed land use following
19 reclamation is not considered to be impractical or unreasonable,
20 inconsistent with applicable land use policies and plans,
21 involves unreasonable delay in implementation, or is violative
22 of federal, state or local law;

23 (3) Except as provided in subsection (c) of this section, with
24 respect to all surface mines, backfill, compact where advisable
25 to ensure stability or to prevent leaching of toxic materials, and
26 grade in order to restore the approximate original contour:
27 *Provided*, That in surface mining which is carried out at the
28 same location over a substantial period of time where the
29 operation transects the coal deposit, and the thickness of the
30 coal deposits relative to the volume of the overburden is large
31 and where the operator demonstrates that the overburden and
32 other spoil and waste materials at a particular point in the
33 permit area or otherwise available from the entire permit area
34 is insufficient, giving due consideration to volumetric expansion,
35 to restore the approximate original contour, the operator,
36 at a minimum, shall backfill, grade and compact, where
37 advisable, using all available overburden and other spoil and
38 waste materials to attain the lowest practicable grade, but not
39 more than the angle of repose, to provide adequate drainage and
40 to cover all acid-forming and other toxic materials, in order to
41 achieve an ecologically sound land use compatible with the
42 surrounding region: *Provided, however*, That in surface mining
43 where the volume of overburden is large relative to the thick-
44 ness of the coal deposit and where the operator demonstrates
45 that due to volumetric expansion the amount of overburden and
46 other spoil and waste materials removed in the course of the

47 mining operation is more than sufficient to restore the approxi-
48 mate original contour, the operator shall, after restoring the
49 approximate contour, backfill, grade and compact, where
50 advisable, the excess overburden and other spoil and waste
51 materials to attain the lowest grade, but not more than the angle
52 of repose, and to cover all acid-forming and other toxic
53 materials, in order to achieve an ecologically sound land use
54 compatible with the surrounding region and, the overburden or
55 spoil shall be shaped and graded in such a way as to prevent
56 slides, erosion and water pollution and revegetated in accor-
57 dance with the requirements of this article: *Provided further,*
58 That the director shall propose rules for legislative approval in
59 accordance with article three, chapter twenty-nine-a of this
60 code, governing variances to the requirements for return to
61 approximate original contour or highwall elimination and where
62 adequate material is not available from surface-mining opera-
63 tions permitted after the effective date of this article for: (A)
64 Underground mining operations existing prior to the third day
65 of August, one thousand nine hundred seventy-seven; or (B) for
66 areas upon which surface mining prior to the first day of July,
67 one thousand nine hundred seventy-seven, created highwalls;

68 (4) Stabilize and protect all surface areas, including spoil
69 piles, affected by the surface-mining operation to effectively
70 control erosion and attendant air and water pollution;

71 (5) Remove the topsoil from the land in a separate layer,
72 replace it on the backfill area, or if not utilized immediately,
73 segregate it in a separate pile from other spoil and, when the
74 topsoil is not replaced on a backfill area within a time short
75 enough to avoid deterioration of the topsoil, maintain a success-
76 ful vegetative cover by quick growing plants or by other similar
77 means in order to protect topsoil from wind and water erosion
78 and keep it free of any contamination by other acid or toxic
79 material: *Provided,* That if topsoil is of insufficient quantity or
80 of poor quality for sustaining vegetation, or if other strata can
81 be shown to be more suitable for vegetation requirements, then
82 the operator shall remove, segregate and preserve in a like
83 manner any other strata which is best able to support vegeta-
84 tion;

85 (6) Restore the topsoil or the best available subsoil which
86 is best able to support vegetation;

87 (7) Ensure that all prime farmlands are mined and re-
88 claimed in accordance with the specifications for soil removal,
89 storage, replacement and reconstruction established by the
90 United States secretary of agriculture and the soil conservation
91 service pertaining thereto. The operator, at a minimum, shall:
92 (A) Segregate the A horizon of the natural soil, except where it
93 can be shown that other available soil materials will create a
94 final soil having a greater productive capacity, and if not
95 utilized immediately, stockpile this material separately from
96 other spoil, and provide needed protection from wind and water
97 erosion or contamination by other acid or toxic material; (B)
98 segregate the B horizon of the natural soil, or underlying C
99 horizons or other strata, or a combination of the horizons or
100 other strata that are shown to be both texturally and chemically
101 suitable for plant growth and that can be shown to be equally or
102 more favorable for plant growth than the B horizon, in suffi-
103 cient quantities to create in the regraded final soil a root zone of
104 comparable depth and quality to that which existed in the
105 natural soil, and if not utilized immediately, stockpile this
106 material separately from other spoil and provide needed
107 protection from wind and water erosion or contamination by
108 other acid or toxic material; (C) replace and regrade the root
109 zone material described in paragraph (B) of this subdivision,
110 with proper compaction and uniform depth over the regraded
111 spoil material; and (D) redistribute and grade in a uniform
112 manner the surface soil horizon described in paragraph (A) of
113 this subdivision;

114 (8) Create, if authorized in the approved surface-mining and
115 reclamation plan and permit, permanent impoundments of water
116 on mining sites as part of reclamation activities in accordance
117 with rules promulgated by the director;

118 (9) Where augering is the method of recovery, seal all auger
119 holes with an impervious and noncombustible material in order
120 to prevent drainage except where the director determines that
121 the resulting impoundment of water in the auger holes may

122 create a hazard to the environment or the public welfare and
123 safety: *Provided*, That the director may prohibit augering if
124 necessary to maximize the utilization, recoverability or conser-
125 vation of the mineral resources or to protect against adverse
126 water quality impacts;

127 (10) Minimize the disturbances to the prevailing hydrologic
128 balance at the mine site and in associated off-site areas and to
129 the quality and quantity of water in surface and groundwater
130 systems both during and after surface-mining operations and
131 during reclamation by: (A) Avoiding acid or other toxic mine
132 drainage by such measures as, but not limited to: (i) Preventing
133 or removing water from contact with toxic producing deposits;
134 (ii) treating drainage to reduce toxic content which adversely
135 affects downstream water upon being released to water courses;
136 and (iii) casing, sealing or otherwise managing boreholes, shafts
137 and wells and keep acid or other toxic drainage from entering
138 ground and surface waters; (B) conducting surface-mining
139 operations so as to prevent to the extent possible, using the best
140 technology currently available, additional contributions of
141 suspended solids to streamflow or runoff outside the permit
142 area, but in no event shall contributions be in excess of require-
143 ments set by applicable state or federal law; (C) constructing an
144 approved drainage system pursuant to paragraph (B) of this
145 subdivision, prior to commencement of surface-mining opera-
146 tions, the system to be certified by a person approved by the
147 director to be constructed as designed and as approved in the
148 reclamation plan; (D) avoiding channel deepening or enlarge-
149 ment in operations requiring the discharge of water from mines;
150 (E) unless otherwise authorized by the director, cleaning out
151 and removing temporary or large settling ponds or other
152 siltation structures after disturbed areas are revegetated and
153 stabilized, and depositing the silt and debris at a site and in a
154 manner approved by the director; (F) restoring recharge
155 capacity of the mined area to approximate premining condi-
156 tions; and (G) any other actions prescribed by the director;

157 (11) With respect to surface disposal of mine wastes,
158 tailings, coal processing wastes and other wastes in areas other
159 than the mine working excavations, stabilize all waste piles in

160 designated areas through construction in compacted layers,
161 including the use of noncombustible and impervious materials
162 if necessary, and assure the final contour of the waste pile will
163 be compatible with natural surroundings and that the site will
164 be stabilized and revegetated according to the provisions of this
165 article;

166 (12) Design, locate, construct, operate, maintain, enlarge,
167 modify and remove or abandon, in accordance with standards
168 and criteria developed pursuant to subsection (f) of this section,
169 all existing and new coal mine waste piles consisting of mine
170 wastes, tailings, coal processing wastes or other liquid and solid
171 wastes, and used either temporarily or permanently as dams or
172 embankments;

173 (13) Refrain from surface mining within five hundred feet
174 of any active and abandoned underground mines in order to
175 prevent breakthroughs and to protect health or safety of miners:
176 *Provided*, That the director shall permit an operator to mine
177 near, through or partially through an abandoned underground
178 mine or closer to an active underground mine if: (A) The
179 nature, timing and sequencing of the approximate coincidence
180 of specific surface mine activities with specific underground
181 mine activities are coordinated jointly by the operators involved
182 and approved by the director; and (B) the operations will result
183 in improved resource recovery, abatement of water pollution or
184 elimination of hazards to the health and safety of the public:
185 *Provided, however*, That any breakthrough which does occur
186 shall be sealed;

187 (14) Ensure that all debris, acid-forming materials, toxic
188 materials or materials constituting a fire hazard are treated or
189 buried and compacted, or otherwise disposed of in a manner
190 designed to prevent contamination of ground or surface waters,
191 and that contingency plans are developed to prevent sustained
192 combustion: *Provided*, That the operator shall remove or bury
193 all metal, lumber, equipment and other debris resulting from the
194 operation before grading release;

195 (15) Ensure that explosives are used only in accordance
196 with existing state and federal law and the rules promulgated by
197 the director, which shall include provisions to:

198 (A) Maintain for a period of at least three years and make
199 available for public inspection, upon written request, a log
200 detailing the location of the blasts, the pattern and depth of the
201 drill holes, the amount of explosives used per hole and the order
202 and length of delay in the blasts; and

203 (B) Require that all blasting operations be conducted by
204 persons certified by the office of explosives and blasting.

205 (16) Ensure that all reclamation efforts proceed in an
206 environmentally sound manner and as contemporaneously as
207 practicable with the surface-mining operations. Time limits
208 shall be established by the director requiring backfilling,
209 grading and planting to be kept current: *Provided*, That where
210 surface-mining operations and underground mining operations
211 are proposed on the same area, which operations must be
212 conducted under separate permits, the director may grant a
213 variance from the requirement that reclamation efforts proceed
214 as contemporaneously as practicable to permit underground
215 mining operations prior to reclamation:

216 (A) If the director finds in writing that:

217 (i) The applicant has presented, as part of the permit
218 application, specific, feasible plans for the proposed under-
219 ground mining operations;

220 (ii) The proposed underground mining operations are
221 necessary or desirable to assure maximum practical recovery of
222 the mineral resource and will avoid multiple disturbance of the
223 surface;

224 (iii) The applicant has satisfactorily demonstrated that the
225 plan for the underground mining operations conforms to
226 requirements for underground mining in the jurisdiction and
227 that permits necessary for the underground mining operations
228 have been issued by the appropriate authority;

229 (iv) The areas proposed for the variance have been shown
230 by the applicant to be necessary for the implementing of the
231 proposed underground mining operations;

232 (v) No substantial adverse environmental damage, either
233 on-site or off-site, will result from the delay in completion of
234 reclamation as required by this article; and

235 (vi) Provisions for the off-site storage of spoil will comply
236 with subdivision (22), subsection (b) of this section;

237 (B) If the director has promulgated specific rules to govern
238 the granting of the variances in accordance with the provisions
239 of this subparagraph and has imposed any additional require-
240 ments as the director considers necessary;

241 (C) If variances granted under the provisions of this
242 paragraph are reviewed by the director not more than three
243 years from the date of issuance of the permit: *Provided*, That
244 the underground mining permit shall terminate if the under-
245 ground operations have not commenced within three years of
246 the date the permit was issued, unless extended as set forth in
247 subdivision (3), section eight of this article; and

248 (D) If liability under the bond filed by the applicant with
249 the director pursuant to subsection (b), section eleven of this
250 article is for the duration of the underground mining operations
251 and until the requirements of subsection (g), section eleven and
252 section twenty-three of this article have been fully complied
253 with;

254 (17) Ensure that the construction, maintenance and
255 postmining conditions of access and haul roads into and across
256 the site of operations will control or prevent erosion and
257 siltation, pollution of water, damage to fish or wildlife or their
258 habitat, or public or private property: *Provided*, That access
259 roads constructed for and used to provide infrequent service to
260 surface facilities, such as ventilators or monitoring devices, are
261 exempt from specific construction criteria provided adequate
262 stabilization to control erosion is achieved through alternative
263 measures;

264 (18) Refrain from the construction of roads or other access
265 ways up a stream bed or drainage channel or in proximity to the
266 channel so as to significantly alter the normal flow of water;

267 (19) Establish on the regraded areas, and all other lands
268 affected, a diverse, effective and permanent vegetative cover of
269 the same seasonal variety native to the area of land to be
270 affected or of a fruit, grape or berry producing variety suitable
271 for human consumption and capable of self-regeneration and
272 plant succession at least equal in extent of cover to the natural
273 vegetation of the area, except that introduced species may be
274 used in the revegetation process where desirable or when
275 necessary to achieve the approved postmining land use plan;

276 (20) Assume the responsibility for successful revegetation,
277 as required by subdivision (19) of this subsection, for a period
278 of not less than five growing seasons, as defined by the director,
279 after the last year of augmented seeding, fertilizing, irrigation
280 or other work in order to assure compliance with subdivision
281 (19) of this subsection: *Provided*, That when the director issues
282 a written finding approving a long-term agricultural postmining
283 land use as a part of the mining and reclamation plan, the
284 director may grant exception to the provisions of subdivision
285 (19) of this subsection: *Provided, however*, That when the
286 director approves an agricultural postmining land use, the
287 applicable five growing seasons of responsibility for
288 revegetation begins on the date of initial planting for the
289 agricultural postmining land use;

290 On lands eligible for remining assume the responsibility for
291 successful revegetation, as required by subdivision (19) of this
292 subsection, for a period of not less than two growing seasons,
293 as defined by the director after the last year of augmented
294 seeding, fertilizing, irrigation or other work in order to assure
295 compliance with subdivision (19) of this subsection;

296 (21) Protect off-site areas from slides or damage occurring
297 during surface-mining operations and not deposit spoil material
298 or locate any part of the operations or waste accumulations
299 outside the permit area: *Provided*, That spoil material may be
300 placed outside the permit area, if approved by the director after
301 a finding that environmental benefits will result from the
302 placing of spoil material outside the permit area;

303 (22) Place all excess spoil material resulting from surface-
304 mining activities in a manner that: (A) Spoil is transported and
305 placed in a controlled manner in position for concurrent
306 compaction and in a way as to assure mass stability and to
307 prevent mass movement; (B) the areas of disposal are within the
308 bonded permit areas and all organic matter is removed immedi-
309 ately prior to spoil placements; (C) appropriate surface and
310 internal drainage system or diversion ditches are used to
311 prevent spoil erosion and movement; (D) the disposal area does
312 not contain springs, natural water courses or wet weather seeps,
313 unless lateral drains are constructed from the wet areas to the
314 main under drains in a manner that filtration of the water into
315 the spoil pile will be prevented; (E) if placed on a slope, the
316 spoil is placed upon the most moderate slope among those upon
317 which, in the judgment of the director, the spoil could be placed
318 in compliance with all the requirements of this article, and is
319 placed, where possible, upon, or above, a natural terrace, bench
320 or berm, if placement provides additional stability and prevents
321 mass movement; (F) where the toe of the spoil rests on a
322 downslope, a rock toe buttress, of sufficient size to prevent
323 mass movement, is constructed; (G) the final configuration is
324 compatible with the natural drainage pattern and surroundings
325 and suitable for intended uses; (H) the design of the spoil
326 disposal area is certified by a qualified registered professional
327 engineer in conformance with professional standards; and (I) all
328 other provisions of this article are met: *Provided*, That where
329 the excess spoil material consists of at least eighty percent, by
330 volume, sandstone, limestone or other rocks that do not slake in
331 water and will not degrade to soil material, the director may
332 approve alternate methods for disposal of excess spoil material,
333 including fill placement by dumping in a single lift, on a site
334 specific basis: *Provided, however*, That the services of a
335 qualified registered professional engineer experienced in the
336 design and construction of earth and rockfill embankment are
337 utilized: *Provided further*, That the approval may not be
338 unreasonably withheld if the site is suitable;

339 (23) Meet any other criteria necessary to achieve reclama-
340 tion in accordance with the purposes of this article, taking into

341 consideration the physical, climatological and other characteris-
342 tics of the site;

343 (24) To the extent possible, using the best technology
344 currently available, minimize disturbances and adverse impacts
345 of the operation on fish, wildlife and related environmental
346 values, and achieve enhancement of these resources where
347 practicable; and

348 (25) Retain a natural barrier to inhibit slides and erosion on
349 permit areas where outcrop barriers are required: *Provided*,
350 That constructed barriers may be allowed where: (A) Natural
351 barriers do not provide adequate stability; (B) natural barriers
352 would result in potential future water quality deterioration; and
353 (C) natural barriers would conflict with the goal of maximum
354 utilization of the mineral resource: *Provided, however*, That at
355 a minimum, the constructed barrier shall be of sufficient width
356 and height to provide adequate stability and the stability factor
357 shall equal or exceed that of the natural outcrop barrier:
358 *Provided further*, That where water quality is paramount, the
359 constructed barrier shall be composed of impervious material
360 with controlled discharge points.

361 (c) (1) The director may prescribe procedures pursuant to
362 which he or she may permit surface-mining operations for the
363 purposes set forth in subdivision (3) of this subsection.

364 (2) Where an applicant meets the requirements of subdivi-
365 sions (3) and (4) of this subsection, a permit without regard to
366 the requirement to restore to approximate original contour set
367 forth in subsection (b) or (d) of this section may be granted for
368 the surface mining of coal where the mining operation will
369 remove an entire coal seam or seams running through the upper
370 fraction of a mountain, ridge or hill, except as provided in
371 subparagraph (A), subdivision (4) of this subsection, by
372 removing all of the overburden and creating a level plateau or
373 a gently rolling contour with no highwalls remaining, and
374 capable of supporting postmining uses in accordance with the
375 requirements of this subsection.

376 (3) In cases where an industrial, commercial, woodland,
377 agricultural, residential, public or fish and wildlife habitat and

378 recreation lands use is proposed for the postmining use of the
379 affected land, the director may grant a permit for a surface-
380 mining operation of the nature described in subdivision (2) of
381 this subsection where: (A) The proposed postmining land use
382 is determined to constitute an equal or better use of the affected
383 land, as compared with premining use; (B) the applicant
384 presents specific plans for the proposed postmining land use
385 and appropriate assurances that the use will be: (i) Compatible
386 with adjacent land uses; (ii) practicable with respect to achiev-
387 ing the proposed use; (iii) supported by commitments from
388 public agencies where appropriate; (iv) practicable with respect
389 to private financial capability for completion of the proposed
390 use; (v) planned pursuant to a schedule attached to the reclama-
391 tion plan so as to integrate the mining operation and reclama-
392 tion with the postmining land use; and (vi) designed by a person
393 approved by the director in conformance with standards
394 established to assure the stability, drainage and configuration
395 necessary for the intended use of the site; (C) the proposed use
396 would be compatible with adjacent land uses, and existing state
397 and local land use plans and programs; (D) the director provides
398 the county commission of the county in which the land is
399 located and any state or federal agency which the director, in
400 his or her discretion, determines to have an interest in the
401 proposed use, an opportunity of not more than sixty days to
402 review and comment on the proposed use; and (E) all other
403 requirements of this article will be met.

404 (4) In granting any permit pursuant to this subsection, the
405 director shall require that: (A) A natural barrier be retained to
406 inhibit slides and erosion on permit areas where outcrop
407 barriers are required: *Provided*, That constructed barriers may
408 be allowed where: (i) Natural barriers do not provide adequate
409 stability; (ii) natural barriers would result in potential future
410 water quality deterioration; and (iii) natural barriers would
411 conflict with the goal of maximum utilization of the mineral
412 resource: *Provided, however*, That, at a minimum, the con-
413 structed barrier shall be sufficient in width and height to
414 provide adequate stability and the stability factor shall equal or
415 exceed that of the natural outcrop barrier: *Provided further*,

416 That where water quality is paramount, the constructed barrier
417 shall be composed of impervious material with controlled
418 discharge points; (B) the reclaimed area is stable; (C) the
419 resulting plateau or rolling contour drains inward from the
420 outslopes except at specific points; (D) no damage will be done
421 to natural watercourses; (E) spoil will be placed on the moun-
422 taintop bench as is necessary to achieve the planned postmining
423 land use: *And provided further*, That all excess spoil material
424 not retained on the mountaintop shall be placed in accordance
425 with the provisions of subdivision (22), subsection (b) of this
426 section; and (F) ensure stability of the spoil retained on the
427 mountaintop and meet the other requirements of this article.

428 (5) All permits granted under the provisions of this subsec-
429 tion shall be reviewed not more than three years from the date
430 of issuance of the permit; unless the applicant affirmatively
431 demonstrates that the proposed development is proceeding in
432 accordance with the terms of the approved schedule and
433 reclamation plan.

434 (d) In addition to those general performance standards
435 required by this section, when surface mining occurs on slopes
436 of twenty degrees or greater, or on lesser slopes as may be
437 defined by rule after consideration of soil and climate, no
438 debris, abandoned or disabled equipment, spoil material or
439 waste mineral matter will be placed on the natural downslope
440 below the initial bench or mining cut: *Provided*, That soil or
441 spoil material from the initial cut of earth in a new surface-
442 mining operation may be placed on a limited specified area of
443 the downslope below the initial cut if the permittee can estab-
444 lish to the satisfaction of the director that the soil or spoil will
445 not slide and that the other requirements of this section can still
446 be met.

447 (e) The director may propose rules for legislative approval
448 in accordance with article three, chapter twenty-nine-a of this
449 code, that permit variances from the approximate original
450 contour requirements of this section: *Provided*, That the
451 watershed control of the area is improved: *Provided, however*,
452 That complete backfilling with spoil material is required to

453 completely cover the highwall, which material will maintain
454 stability following mining and reclamation.

455 (f) The director shall propose rules for legislative approval
456 in accordance with article three, chapter twenty-nine-a of this
457 code, for the design, location, construction, maintenance,
458 operation, enlargement, modification, removal and abandon-
459 ment of new and existing coal mine waste piles. In addition to
460 engineering and other technical specifications, the standards
461 and criteria developed pursuant to this subsection shall include
462 provisions for review and approval of plans and specifications
463 prior to construction, enlargement, modification, removal or
464 abandonment; performance of periodic inspections during
465 construction; issuance of certificates of approval upon comple-
466 tion of construction; performance of periodic safety inspections;
467 and issuance of notices and orders for required remedial or
468 maintenance work or affirmative action: *Provided*, That
469 whenever the director finds that any coal processing waste pile
470 constitutes an imminent danger to human life, he or she may, in
471 addition to all other remedies and without the necessity of
472 obtaining the permission of any person prior or present who
473 operated or operates a pile or the landowners involved, enter
474 upon the premises where any coal processing waste pile exists
475 and may take or order to be taken any remedial action that may
476 be necessary or expedient to secure the coal processing waste
477 pile and to abate the conditions which cause the danger to
478 human life: *Provided, however*, That the cost reasonably
479 incurred in any remedial action taken by the director under this
480 subsection may be paid for initially by funds appropriated to the
481 division for these purposes, and the sums expended shall be
482 recovered from any responsible operator or landowner, individ-
483 ually or jointly, by suit initiated by the attorney general at the
484 request of the director. For purposes of this subsection "oper-
485 ates" or "operated" means to enter upon a coal processing waste
486 pile, or part of a coal processing waste pile, for the purpose of
487 disposing, depositing, dumping coal processing wastes on the
488 pile or removing coal processing waste from the pile, or to
489 employ a coal processing waste pile for retarding the flow of or
490 for the impoundment of water.

§22-3-13a. Pre-blast survey requirements.

1 (a) At least thirty days prior to commencing blasting, as
2 defined in section twenty-two-a of this article, an operator or an
3 operator's designee shall make the following notifications in
4 writing to all owners and occupants of man-made dwellings or
5 structures that the operator or operator's designee will perform
6 pre-blast surveys in accordance with subsection (f) of this
7 section:

8 (1) For surface-mining operations that are less than two
9 hundred acres in a single permitted area or less than three
10 hundred acres of contiguous or nearly contiguous area of two or
11 more permitted areas, the required notifications shall be to all
12 owners and occupants of man-made dwellings or structures
13 within five tenths of a mile of the permitted area or areas;

14 (2) For all other surface-mining operations, the required
15 notifications shall be to all owners and occupants of man-made
16 dwellings or structures within five tenths of a mile of the
17 permitted area or areas or seven tenths of a mile of the proposed
18 blasting site, whichever is greater.

19 (b) Within thirty days of the effective date of this section,
20 any operator identified in subdivision (2), subsection (a) of this
21 section, that has already completed pre-blast surveys for man-
22 made dwellings or structures within five tenths of a mile of the
23 permit area and has commenced operations by the effective date
24 of this section, shall be required to notify in writing all addi-
25 tional owners and occupants of man-made dwellings or
26 structures within seven tenths of a mile of the proposed blasting
27 site. Except for those dwellings or structures for which the
28 operator secures a written waiver or executes an affidavit in
29 accordance with the requirements of subsection (c) of this
30 section, the operator or the operator's designee must perform
31 the additional pre-blast surveys in accordance with subsection
32 (f) of this section within ninety days of the effective date of this
33 section.

34 (c) An occupant or owner of a man-made dwelling or
35 structure within the areas described in subdivisions (1) or (2) of

36 subsection (a) of this section, may waive the right to a pre-blast
37 survey in writing. If a dwelling is occupied by a person other
38 than the owner, both the owner and the occupant must waive
39 the right to a pre-blast survey in writing. If an occupant or
40 owner of a man-made dwelling or structure refuses to allow the
41 operator or the operator's designee access to the dwelling or
42 structure and refuses to waive in writing the right to a pre-blast
43 survey or to the extent that access to any portion of the struc-
44 ture, underground water supply or well is impossible or
45 impractical under the circumstances, the pre-blast survey shall
46 indicate that access was refused, impossible or impractical. The
47 operator or the operator's designee shall execute a sworn
48 affidavit explaining the reasons and circumstances surrounding
49 the refusals. The office of explosives and blasting shall not
50 determine the pre-blast survey to be incomplete because it
51 indicates that access to a particular structure, underground
52 water supply or well was refused, impossible or impractical.
53 The operator shall send copies of all written waivers and
54 affidavits executed pursuant to this subsection to the office of
55 explosives and blasting.

56 (d) If a pre-blast survey was waived by the owner and was
57 within the requisite area and the property was sold, the new
58 owner may request a pre-blast survey from the operator.

59 (e) An owner within the requisite area may request, from
60 the operator, a pre-blast survey on structures constructed after
61 the original pre-blast survey.

62 (f) The pre-blast survey shall include:

63 (1) The names, addresses or description of structure
64 location and telephone numbers of the owner and the residents
65 of the structure being surveyed and the structure number from
66 the permit blasting map;

67 (2) The current home insurer of the owner and the residents
68 of the structure;

69 (3) The names, addresses and telephone numbers of the
70 surface-mining operator and the permit number;

- 71 (4) The current general liability insurer of the surface-
72 mining operator;
- 73 (5) The name, address and telephone number of the person
74 or firm performing the pre-blast survey;
- 75 (6) The current general liability insurer of the person or
76 firm performing the pre-blast survey;
- 77 (7) The date of the pre-blast survey and the date it was
78 mailed or delivered to the office of explosives and blasting;
- 79 (8) A general description of the structure and its appurte-
80 nances including, but not limited to: (A) The number of stories;
81 (B) the construction materials for the frame and the exterior and
82 interior finish; (C) the type of construction including any
83 unusual or substandard construction; and (D) the approximate
84 age of the structure;
- 85 (9) A general description of the survey methods and the
86 direction of progression of the survey, including a key to
87 abbreviations used;
- 88 (10) Written documentation and drawings, videos or
89 photographs of the pre-blast defects and other physical condi-
90 tions of all structures, appurtenances and water sources which
91 could be affected by blasting;
- 92 (11) Written documentation and drawings, videos or
93 photographs of the exterior and interior of the structure to
94 indicate pre-blast defects and condition;
- 95 (12) Written documentation and drawings, videos or
96 photographs of the exterior and interior of any appurtenance of
97 the structure to indicate pre-blast defects and condition;
- 98 (13) Sufficient exterior and interior photographs or videos,
99 using a variety of angles, of the structure and its appurtenances
100 to indicate pre-blast defects and the condition of the structure
101 and appurtenances;
- 102 (14) Written documentation and drawings, videos or
103 photographs of any unusual or substandard construction
104 technique and materials used on the structure and/or its appurte-
105 nances;

106 (15) Written documentation relating to the type of water
107 supply, including a description of the type of system and
108 treatment being used, an analysis of untreated water supplies,
109 a water analysis of water supplies other than public utilities, and
110 information relating to the quantity and quality of water;

111 (16) When the water supply is a well, written documenta-
112 tion, where available, relating to the type of well; the well log;
113 the depth, age and type of casing or lining; the static water
114 level; flow data; the pump capacity; the drilling contractor; and
115 the source or sources of the documentation;

116 (17) A description of any portion of the structure and
117 appurtenances not documented or photographed and the
118 reasons;

119 (18) The signature of the person performing the survey; and

120 (19) Any other information required by the chief which
121 additional information shall be established by rule in accor-
122 dance with article three, chapter twenty-nine-a of this code.

123 (g) Except for additional pre-blast surveys prepared within
124 one hundred twenty days of the effective date of this section,
125 pursuant to subsection (b) of this section, the pre-blast survey
126 shall be submitted to the office of explosives and blasting at
127 least fifteen days prior to the commencement of any production
128 blasting. The office of explosives and blasting shall review each
129 pre-blast survey as to form and completeness only and notify
130 the operator of any deficiencies. The office of explosives and
131 blasting shall notify the owner and occupant of the location and
132 availability of the pre-blast survey and a copy of the pre-blast
133 survey shall be provided to the owner and/or occupant upon
134 request.

135 (h) The surface-mining operator shall file notice of the pre-
136 blast survey or the waiver in the office of the county clerk of
137 the county commission of the county where the man-made
138 dwelling or structure is located to notify the public that a pre-
139 blast survey has been conducted or waived. The notice shall be
140 on a form prescribed by the office of explosives and blasting.

141 (i) The chief of the office of explosives and blasting shall
142 propose rules for legislative approval in accordance with article
143 three, chapter twenty-nine-a of this code, dealing with pre-blast
144 survey requirements and setting the qualifications for individu-
145 als and firms performing pre-blast surveys.

146 (j) The provisions of this section shall not apply to the
147 following: (1) Underground coal mining operations; and (2) the
148 extraction of minerals by underground mining methods or the
149 surface impacts of the underground mining methods.

**§22-3-22a. Blasting restrictions; site specific blasting design
requirement.**

1 (a) For purposes of this section, the term “production
2 blasting” means blasting that removes the overburden to expose
3 underlying coal seams and shall not include construction
4 blasting.

5 (b) For purposes of this section, the term “construction
6 blasting” means blasting to develop haul roads, mine access
7 roads, coal preparation plants, drainage structures, or under-
8 ground coal mine sites and shall not include production
9 blasting.

10 (c) For purposes of this section, the term “protected
11 structure” means any of the following structures that are
12 situated outside the permit area: an occupied dwelling, a
13 temporarily unoccupied dwelling which has been occupied
14 within the past ninety days, a public building, a structure for
15 commercial purposes, a school, a church, a community or
16 institutional building, a public park or a water well.

17 (d) Production blasting is prohibited within three hundred
18 feet of a protected structure or within one hundred feet of a
19 cemetery.

20 (e) Blasting within one thousand feet of a protected
21 structure shall have a site specific blast design approved by the
22 office of explosives and blasting. The site specific blast design
23 shall limit the type of explosives and detonating equipment, the
24 size, the timing and frequency of blasts to do the following:

25 (1) Prevent injury to persons; (2) prevent damage to public
26 and private property outside the permit area; (3) prevent
27 adverse impacts on any underground mine; (4) prevent change
28 in the course, channel or availability of ground or surface water
29 outside the permit area; and (5) reduce dust outside the permit
30 area.

31 In the development of a site specific blasting plan consider-
32 ation shall be given, but is not limited to, the physical condi-
33 tion, type and quality of construction of the protected structure,
34 the current use of the protected structure and the concerns of the
35 owner or occupant living in the protected structure in the
36 blasting schedule.

37 (f) An owner or occupant of a protected structure may
38 waive the blasting prohibition within three hundred feet or the
39 site specific restriction within one thousand feet in writing. If
40 a protected structure is occupied by a person other than the
41 owner, both the owner and the occupant of the protected
42 structure shall waive the blasting prohibition within three
43 hundred feet or the site specific restriction within one thousand
44 feet in writing. The operator shall send copies of all written
45 waivers executed pursuant to this subsection to the office of
46 explosives and blasting. Written waivers executed and filed
47 with the office of explosives and blasting shall be valid during
48 the life of the permit or any renewals of the permit and shall be
49 enforceable against any subsequent owners or occupants of the
50 protected structure.

51 (g) The provisions of this section shall not apply to the
52 following: (1) Underground coal mining operations; (2) the
53 surface operations and surface impacts incident to an under-
54 ground coal mine; and (3) the extraction of minerals by
55 underground mining methods or the surface impacts of the
56 underground mining methods: *Provided*, That nothing con-
57 tained in this section shall be construed to exempt any coal
58 mining operation from the general performance standards as
59 contained in section thirteen of this article and any rules
60 promulgated pursuant thereto.

§22-3-23. Release of bond or deposits; application; notice; duties of director; public hearings; final maps on grade release.

1 (a) The permittee may file a request with the director for the
2 release of a bond or deposit. The permittee shall publish an
3 advertisement regarding such request for release in the same
4 manner as is required of advertisements for permit applications.
5 A copy of such advertisement shall be submitted to the director
6 as part of any bond release application and shall contain a
7 notification of the precise location of the land affected, the
8 number of acres, the permit and the date approved, the amount
9 of the bond filed and the portion sought to be released, the type
10 and appropriate dates of reclamation work performed and a
11 description of the results achieved as they relate to the
12 permittee's approved reclamation plan. In addition, as part of
13 any bond release application, the permittee shall submit copies
14 of letters which the permittee has sent to adjoining property
15 owners, local government bodies, planning agencies, sewage
16 and water treatment authorities or water companies in the
17 locality in which the surface-mining operation is located,
18 notifying them of the permittee's intention to seek release from
19 the bond. Any request for grade release shall also be accompa-
20 nied by final maps.

21 (b) Upon receipt of the application for bond release, the
22 director, within thirty days, taking into consideration existing
23 weather conditions, shall conduct an inspection and evaluation
24 of the reclamation work involved. Such evaluation shall
25 consider, among other things, the degree of difficulty to
26 complete any remaining reclamation, whether pollution of
27 surface and subsurface water is occurring, the probability of
28 continuance or future occurrence of such pollution and the
29 estimated cost of abating such pollution. The director shall
30 notify the permittee in writing of his or her decision to release
31 or not to release all or part of the bond or deposit within sixty
32 days from the date of the initial publication of the advertise-
33 ment if no public hearing is requested. If a public hearing is
34 held, the director's decision shall be issued within thirty days
35 thereafter.

36 (c) If the director is satisfied that reclamation covered by
37 the bond or deposit or portion thereof has been accomplished as
38 required by this article, he or she may release said bond or
39 deposit, in whole or in part, according to the following sched-
40 ule:

41 (1) When the operator completes the backfilling, regrading
42 and drainage control of a bonded area in accordance with the
43 operator's approved reclamation plan, the release of sixty
44 percent of the bond or collateral for the applicable bonded area:
45 *Provided*, That a minimum bond of ten thousand dollars shall
46 be retained after grade release;

47 (2) Two years after the last augmented seeding, fertilizing,
48 irrigation or other work to ensure compliance with subdivision
49 (19), subsection (b), section thirteen of this article, the release
50 of an additional twenty-five percent of the bond or collateral for
51 the applicable bonded area: *Provided*, That a minimum bond of
52 ten thousand dollars shall be retained after the release provided
53 for in this subdivision; and

54 (3) When the operator has completed successfully all
55 surface-mining and reclamation activities, the release of the
56 remaining portion of the bond, but not before the expiration of
57 the period specified in subdivision (20), subsection (b), section
58 thirteen of this article: *Provided*, That the revegetation has been
59 established on the regraded mined lands in accordance with the
60 approved reclamation plan: *Provided, however*, That such a
61 release may be made where the quality of the untreated
62 post-mining water discharged is better than or equal to the
63 premining water quality discharged from the mining site.

64 No part of the bond or deposit may be released under this
65 subsection so long as the lands to which the release would be
66 applicable are contributing additional suspended solids to
67 streamflow or runoff outside the permit area in excess of the
68 requirements set by section thirteen of this article, or until soil
69 productivity for prime farmlands has returned to equivalent
70 levels of yield as nonmined land of the same soil type in the
71 surrounding area under equivalent management practices as
72 determined from the soil survey performed pursuant to section

73 nine of this article. Where a sediment dam is to be retained as
74 a permanent impoundment pursuant to section thirteen of this
75 article, or where a road or minor deviation is to be retained for
76 sound future maintenance of the operation, the portion of the
77 bond may be released under this subsection so long as provi-
78 sions for sound future maintenance by the operator or the
79 landowner have been made with the director.

80 Notwithstanding the bond release scheduling provisions of
81 subdivisions (1), (2) and (3) of this subsection, if the operator
82 completes the backfilling and reclamation in accordance with
83 an approved post-mining land use plan that has been approved
84 by the division of environmental protection and accepted by a
85 local or regional economic development or planning agency for
86 the county or region in which the operation is located, provi-
87 sions for sound future maintenance are assured by the local or
88 regional economic development or planning agency, and the
89 quality of any untreated postmining water discharge complies
90 with applicable water quality criteria for bond release, the
91 director may release the entire amount of said bond or deposit.
92 The director shall propose rules for legislative approval in
93 accordance with the provisions of article three, chapter twenty-
94 nine-a of this code, to govern a bond release pursuant to the
95 terms of this paragraph.

96 (d) If the director disapproves the application for release of
97 the bond or portion thereof, the director shall notify the
98 permittee, in writing, stating the reasons for disapproval and
99 recommending corrective actions necessary to secure said
100 release and notifying the operator of the right to a hearing.

101 (e) When any application for total or partial bond release is
102 filed with the director, he or she shall notify the municipality in
103 which a surface-mining operation is located by registered or
104 certified mail at least thirty days prior to the release of all or a
105 portion of the bond.

106 (f) Any person with a valid legal interest which is or may
107 be adversely affected by release of the bond or the responsible
108 officer or head of any federal, state or local governmental
109 agency which has jurisdiction by law or special expertise with

110 respect to any environmental, social or economic impact
111 involved in the operation, or is authorized to develop and
112 enforce environmental standards with respect to such opera-
113 tions, has the right to file written objections to the proposed
114 bond release and request a hearing with the director within
115 thirty days after the last publication of the permittee's adver-
116 tisement. If written objections are filed and a hearing requested,
117 the director shall inform all of the interested parties of the time
118 and place of the hearing and shall hold a public hearing in the
119 locality of the surface-mining operation proposed for bond
120 release within three weeks after the close of the public comment
121 period. The date, time and location of such public hearing shall
122 also be advertised by the director in a newspaper of general
123 circulation in the same locality.

124 (g) Without prejudice to the rights of the objectors, the
125 applicant, or the responsibilities of the director pursuant to this
126 section, the director may hold an informal conference to resolve
127 any written objections and satisfy the hearing requirements of
128 this section thereby.

129 (h) For the purpose of such hearing, the director has the
130 authority and is hereby empowered to administer oaths,
131 subpoena witnesses and written or printed materials, compel the
132 attendance of witnesses, or production of materials, and take
133 evidence including, but not limited to, inspections of the land
134 affected and other surface-mining operations carried on by the
135 applicant in the general vicinity. A verbatim record of each
136 public hearing required by this section shall be made and a
137 transcript made available on the motion of any party or by order
138 of the director at the cost of the person requesting the transcript.

§22-3-24. Water rights and replacement; waiver of replacement.

1 (a) Nothing in this article affects in any way the rights of
2 any person to enforce or protect, under applicable law, the
3 person's interest in water resources affected by a surface-
4 mining operation.

5 (b) Any operator shall replace the water supply of an owner
6 of interest in real property who obtains all or part of the owner's

7 supply of water for domestic, agricultural, industrial or other
8 legitimate use from an underground or surface source where the
9 supply has been affected by contamination, diminution or
10 interruption proximately caused by the surface-mining opera-
11 tion, unless waived by the owner.

12 (c) There is a rebuttable presumption that a mining opera-
13 tion caused damage to an owner's underground water supply if
14 the inspector determines the following: (1) Contamination,
15 diminution or damage to an owner's underground water supply
16 exists; and (2) a pre-blast survey was performed, consistent
17 with the provisions of section thirteen-a of this article, on the
18 owner's property including the underground water supply that
19 indicated that contamination, diminution or damage to the
20 underground water supply did not exist prior to the mining
21 conducted at the mining operation. The operator conducting the
22 mining operation shall: (1) Provide an emergency drinking
23 water supply within twenty-four hours; (2) provide a temporary
24 water supply within seventy-two hours; (3) provide a permanent
25 water supply within thirty days; and (4) pay all reasonable costs
26 incurred by the owner in securing a water supply.

27 (d) An owner aggrieved under the provisions of subsections
28 (b) or (c) of this section, may seek relief in court or pursuant to
29 the provisions of section five, article three-a of this chapter.

30 (e) The director shall propose rules for legislative approval
31 in accordance with the provisions of article three, chapter
32 twenty-nine-a of this code, to implement the requirements of
33 this section.

34 (f) The provisions of subsection (c) of this section shall not
35 apply to the following: (1) Underground coal mining opera-
36 tions; (2) the surface operations and surface impacts incident to
37 an underground coal mine; and (3) the extraction of minerals by
38 underground mining methods or the surface impacts of the
39 underground mining methods.

**§22-3-30a. Blasting requirements; liability and civil penalties in
the event of property damage.**

1 (a) Blasting of overburden and coal shall be conducted in
2 accordance with the rules and laws established to regulate
3 blasting.

4 (b) If the division of environmental protection establishes
5 after an inspection that a blast was not in compliance with the
6 regulations governing blasting parameters and resulted in
7 property damage to a protected structure, as defined in section
8 twenty-two-a of this article, other than water wells, the follow-
9 ing penalties shall be imposed for each permit area or contigu-
10 ous permit areas where the blasting was out of compliance:

11 (1) For the first offense, the operator shall be assessed a
12 penalty of not less than one thousand dollars nor more than five
13 thousand dollars.

14 (2) For the second offense and each subsequent offense
15 within one year of the first offense, the surface-mining operator
16 shall be assessed a penalty of not less than five thousand dollars
17 nor more than ten thousand dollars.

18 (3) For the third offense and any subsequent offense within
19 one year of the first offense, or for the failure to pay any
20 assessment set forth within a reasonable time established by the
21 director, the surface-mining operator's permit shall be subject
22 to an immediate issuance of a cessation order, as set out in
23 section sixteen of this article. The cessation order shall only be
24 released upon written order of the director of the division of
25 environmental protection when the following conditions have
26 been met:

27 (A) A written plan has been established and filed with the
28 director assuring that additional violations will not occur;

29 (B) The permittee has provided compensation for the
30 property damages or the assurance of adequate compensation
31 for the property damages that have occurred; and

32 (C) A permittee shall provide such monetary and other
33 assurances as the director shall determine appropriate to
34 compensate for future property damages. The monetary
35 assurances required shall be in an amount at least equal to the

36 amount of compensation required in paragraph (B), subdivision
37 (3) of this subsection.

38 (4) In addition to the penalties described in subdivisions
39 (1), (2) and (3) of this subsection, for the second and subse-
40 quent offenses on any one permitted area regardless of the time
41 period, the owner of the protected structure is entitled to a
42 rebuttable presumption that the property damage is a result of
43 the blast if: (A) A pre-blast survey was performed; and (B) the
44 blasting site to which the second or subsequent offense relates
45 is within seven tenths of a mile of the protected structure.

46 (5) No more than one offense shall arise out of any one
47 shot. For purposes of this section, "shot" means a single
48 blasting event composed of one or multiple detonations of
49 explosive material, or the assembly of explosive materials for
50 this purpose. One "shot" may be composed of numerous
51 explosive charges detonated at intervals measured in millisec-
52 onds.

53 (c) Notwithstanding the provisions of subsections (a) and
54 (b) of this section, the division of environmental protection may
55 not impose penalties on an operator for the violation of any rule
56 identified in subsection (a) of this section that is merely
57 administrative in nature.

58 (d) The remedies provided in this section are not exclusive
59 and shall not bar an owner or occupant from any other remedy
60 accorded by law.

61 (e) Where inspection by the division of environmental
62 protection establishes that production blasting, in violation of
63 section twenty-two-a of this article, was done within three
64 hundred feet or was not site specific production blasting within
65 one thousand feet of any protected structure as defined in
66 section twenty-two-a of this article, or within one hundred feet
67 of a cemetery, the monetary penalties and revocation, as set out
68 in subsection (b) of this section, apply.

69 (f) All penalties and liabilities as set forth in this section
70 shall be assessed by the director, collected by the director and

71 deposited with the treasurer of the state of West Virginia, in the
72 "general school fund".

73 (g) The director shall propose rules for legislative approval
74 pursuant to article three, chapter twenty-nine-a of this code for
75 the implementation of this section.

76 (h) The provisions of this section shall not apply to the
77 following: (1) Underground coal mining operations; (2) the
78 surface operations and surface impacts incident to an under-
79 ground coal mine; and (3) the extraction of minerals by
80 underground mining methods or the surface impacts of the
81 underground mining methods: *Provided*, That nothing con-
82 tained in this section shall be construed to exempt any coal
83 mining operation from the general performance standards as
84 contained in section thirteen of this article and any rules
85 promulgated pursuant thereto.

ARTICLE 3A. OFFICE OF EXPLOSIVES AND BLASTING.

§22-3A-1. Legislative findings; policy and purposes.

§22-3A-2. Office of explosives and blasting created; transfer of functions;
responsibilities.

§22-3A-3. Powers and duties.

§22-3A-4. Legislative rules on surface-mining blasting; disciplinary procedures for
certified blasters.

§22-3A-5. Claims process.

§22-3A-6. Rules, orders and permits to remain in effect; proceedings not affected.

§22-3A-7. Funding.

§22-3A-8. Transfer of personnel and assets.

§22-3A-9. Limitation of article.

§22-3A-10. Office to conduct study.

§22-3A-11. Termination of office.

§22-3A-1. Legislative findings; policy and purposes.

1 (a) The Legislature declares that the establishment of an
2 office within the division of environmental protection to
3 enforce blasting laws pursuant to surface-mining within the
4 state of West Virginia is in the public interest and will promote
5 the protection of the property and citizens of the state of West
6 Virginia without sacrificing economic development. It is the
7 policy of the state of West Virginia, in cooperation with other
8 governmental agencies, public and private organizations, and

9 the citizens of this state, to use reasonable means and measures
10 to prevent harm from the effects of blasting to its property and
11 citizens.

12 (b) It is the purpose of this article to create the office of
13 explosives and blasting within the division of environmental
14 protection, and to vest in the office the authority to enforce all
15 the rules and laws established to regulate blasting consistent
16 with the authority granted in this article.

**§22-3A-2. Office of explosives and blasting created; transfer of
functions; responsibilities.**

1 (a) There is hereby created the office of explosives and
2 blasting within the division of environmental protection. The
3 director shall appoint a chief to administer the office. The chief
4 shall serve at the will and pleasure of the director.

5 (b) As of the effective date of this article, the office of
6 explosives and blasting shall assume responsibility for the
7 enforcement of all the rules and laws established to regulate
8 blasting consistent with the authority granted in this article.

9 (c) Terms used in this article shall have the definitions set
10 forth in article three of this chapter, unless used in a context that
11 clearly requires a different meaning or as otherwise defined
12 herein.

§22-3A-3. Powers and duties.

1 The duties of the office shall include, but are not limited to:

2 (a) Regulating blasting on all surface-mining operations;

3 (b) Implementing and overseeing the pre-blast survey
4 process, as set forth in section thirteen-a, article three of this
5 chapter;

6 (c) Maintaining and operating a system to receive and
7 address questions, concerns and complaints relating to mining
8 operations;

9 (d) Setting the qualifications for individuals and firms
10 performing pre-blast surveys;

11 (e) The education, training, examination and certification
12 of blasters; and

13 (f) Proposing rules for legislative approval pursuant to
14 article three, chapter twenty-nine-a of this code for the imple-
15 mentation of this article.

**§22-3A-4. Legislative rules on surface-mining blasting; disciplin-
ary procedures for certified blasters.**

1 (a) The office of explosives and blasting shall propose rules
2 for legislative approval in accordance with the provisions of
3 article three, chapter twenty-nine-a of this code, for the pur-
4 poses of implementing this article. The rules shall include, but
5 not be limited to, the following:

6 (1) A procedure for the review, modification and approval,
7 prior to the issuance of any permit, of any blasting plan required
8 to be submitted with any application for a permit to be issued
9 by the director pursuant to article three of this chapter, which
10 sets forth procedures for the inspection and monitoring of
11 blasting operations for compliance with blasting laws and rules,
12 and for the review and modification of the blasting plan of any
13 operator against whom an enforcement action is taken by the
14 division of environmental protection;

15 (2) Specific minimum requirements for pre-blast surveys,
16 as set forth in section thirteen-a, article three of this chapter;

17 (3) A procedure for review of pre-blast surveys required to
18 be submitted under section thirteen-a, article three of this
19 chapter;

20 (4) A procedure for the use of seismographs for production
21 blasting which shall be made part of the blasting log;

22 (5) A procedure to warn of impending blasting to the
23 owners or occupants adjoining the blasting area;

24 (6) A procedure to limit the type of explosives and detonat-
25 ing equipment, the size, the timing and frequency of blasts
26 based upon the physical conditions of the site so as to: (A)
27 Prevent injury to persons; (B) prevent damage to public and

28 private property outside the permit area; (C) prevent adverse
29 impacts on any underground mine; (D) prevent change in the
30 course, channel or availability of ground or surface water
31 outside the permit area; and (E) reduce dust outside the permit
32 area;

33 (7) Provisions for requiring mining operators to publish the
34 planned blasting schedule in a newspaper of general circulation
35 in the locality of the mining operation; and

36 (8) Provisions for requiring mining operators to provide
37 adequate advance written notice of the proposed blasting
38 schedule to local governments, owners and occupants living
39 within the distances prescribed in subsection (a), section
40 thirteen-a, article three of this chapter.

41 (b) The office of explosives and blasting shall propose rules
42 for legislative approval in accordance with the provisions of
43 article three, chapter twenty-nine-a of this code. The rules shall
44 include, but not be limited to, the following:

45 (1) Provisions for establishing a process for the education,
46 training, examination and certification of blasters working on
47 surface-mining operations; and

48 (2) Provisions for establishing disciplinary procedures for
49 all certified blasters responsible for blasting on surface-mining
50 operations conducted within this state in violation of any law or
51 rule promulgated by the division of environmental protection to
52 regulate blasting.

§22-3A-5. Claims process.

1 (a) The office of explosives and blasting shall establish and
2 manage a process for the filing, administration and resolution
3 of claims related to blasting.

4 (b) Claims which may be filed and determined under the
5 provisions of this section shall be those arising from both of the
6 following: (1) Damage to property arising from blasting
7 activities conducted pursuant to a permit granted under article
8 three of this chapter; and

9 (2) The damage is incurred by a claimant who is the owner
10 or occupant of the property.

11 (c) The claims process established by the office of explo-
12 sives and blasting shall include the following:

13 (1) An initial determination by the office of the merit of the
14 claim; and

15 (2) An arbitration process whereby the claim can be
16 determined and resolved by an arbitrator in a manner which is
17 inexpensive, prompt and fair to all parties.

18 The office shall propose rules for legislative approval in
19 accordance with article three, chapter twenty-nine-a of this code
20 for the development of standards for establishing rules relating
21 to the initial claim determination and the arbitration process
22 provided in this subsection.

23 (d) If the operator disagrees with the initial determination
24 made by the office and requests arbitration, then the following
25 shall apply:

26 (1) Any party may be represented by a representative of
27 their choice;

28 (2) At the request of the claimant, the office shall provide
29 the claimant with representation in the arbitration process,
30 which representation shall not necessarily be an attorney-at-
31 law; and

32 (3) If the claim is upheld in whole or in part, then the
33 operator shall pay the costs of the proceeding, as well as
34 reasonable representation fees and costs of the claimant, in an
35 amount not to exceed one thousand dollars.

36 (e) Participation in the claims process created by this
37 section shall be voluntary for the claimant. However, once the
38 claimant has submitted a claim for determination under the
39 provisions of this section, it is intended that the finding of the
40 office, if not taken to arbitration, shall be final. If arbitration is
41 requested, it is intended that the results of such arbitration shall
42 be final. The office shall provide written notification to the
43 claimant of the provisions of this subsection and shall secure a

44 written acknowledgment from the claimant prior to processing
45 a claim pursuant to the provisions of this section.

46 (f) The operator shall pay any claim for which the operator
47 is adjudged liable within thirty days of a final determination. If
48 the claim is not paid within thirty days, the director shall issue
49 a cessation order pursuant to section sixteen, article three of this
50 chapter for all sites operated by the operator.

51 (g) No permit to mine coal shall be granted unless the
52 permit applicant agrees to be subject to the terms of this
53 section.

54 (h) To fulfill its responsibilities pursuant to this section, the
55 office may retain the services of inspectors, experts and other
56 persons or firms as may be necessary.

§22-3A-6. Rules, orders and permits to remain in effect; proceedings not affected.

1 (a) All orders, determinations, rules, permits, grants,
2 contracts, certificates, licenses, waivers, bonds, authorizations
3 and privileges which have been issued, made, granted or
4 allowed to become effective prior to the enactment of this
5 article shall remain in effect according to their terms until
6 modified, terminated, superseded, set aside or revoked pursuant
7 to this article, by a court of competent jurisdiction, or by
8 operation of law.

9 (b) Any proceedings, including notices of proposed rule-
10 making, or any application for any license, permit or certificate
11 pending before the division are not affected by this enactment.

§22-3A-7. Funding.

1 (a) The office shall assess each operator permitted under the
2 provisions of this chapter a fee on each quantity of explosive
3 material used for any purpose on the surface-mining operations.

4 (b) The office shall propose a legislative rule for promulga-
5 tion in accordance with article three, chapter twenty-nine-a of
6 this code, establishing the fees required by this section. The fees
7 shall be calculated to generate sufficient money to provide for
8 the operation of this office and the office of coalfield commu-

9 nity development as provided for in article two-a, chapter five-b
10 of this code.

11 (c) The office shall deposit all moneys received from these
12 fees into a special revenue fund to be known as the “mountain-
13 top removal fund” in the state treasury to be expended by the
14 offices in the performance of their duties. The expenditure of
15 moneys in the fund is not authorized from collections, but shall
16 be appropriated by the Legislature.

§22-3A-8. Transfer of personnel and assets.

1 The director shall transfer to the office any personnel and
2 assets presently used to perform or used in the performance of
3 the duties and functions required by this article.

§22-3A-9. Limitation of article.

1 Except for sections five and seven of this article, all
2 provisions of this article are also applicable to surface-blasting
3 activities related to underground mining operations.

§22-3A-10. Office to conduct study.

1 (a) The office shall conduct or participate in studies or
2 research to develop scientifically based data and recommenda-
3 tions of the following:

4 (1) Ground vibrations associated with blasting and how the
5 vibrations impact protected structures;

6 (2) The proper size and shot parameters to assure protection
7 of protected structures;

8 (3) The necessity of expanding the parameters where
9 blasting is prohibited in relation to protected structures to assure
10 that the shots do not cause damage to protected structures;

11 (4) The appropriateness of modifying pre-blast survey
12 requirements that reflect a pattern of excessive ground vibration
13 and air blast has occurred within a measured distance;

14 (5) Analysis of the appropriate air blast limitations to
15 determine damage criteria; and

16 (6) Any other data or recommendations the office deems
17 appropriate.

18 (b) The office shall report the data and recommendations to
19 the joint committee on government and finance on or before the
20 first day of January, two thousand one, and annually thereafter
21 or as otherwise required.

§22-3A-11. Termination of office.

1 The office of explosives and blasting is continued until the
2 first day of July, two thousand two, pursuant to the provisions
3 of article ten, chapter four of this code.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-7a. Certification agreements; required provisions; effective date.

1 (a) Any applicant for the water quality certification that
2 seeks certification of activities covered by the United States
3 army corps of engineers permits issued in accordance with 33
4 U.S.C. §1344 and 33 C.F.R. Parts 323 or 330 for use at or in
5 conjunction with a surface coal mining operation as defined in
6 section three, article three of this chapter, certification may be
7 issued subject to the following conditions:

8 (1) If the applicant's surface coal mining operation will not
9 impact waters of the state designated as national resource
10 waters and streams where trout naturally reproduce and will not
11 impact wetlands of the state in a manner inconsistent with all
12 applicable state or federal standards as the case may be, as
13 required by the federal Clean Water Act, and if the watershed
14 above the toe of the farthest downstream permanent structure
15 authorized pursuant to the United States army corps of engi-
16 neers permits issued in accordance with 33 U.S.C. §1344 and
17 33 C.F.R. Parts 323 or 330 is less than two hundred fifty acres,
18 then the director may issue a water quality certification pursu-
19 ant to the requirements of this section. If the watershed above
20 the toe of the farthest downstream permanent structure im-
21 pacted is equal to or greater than two hundred fifty acres, the
22 director shall require that mitigation be undertaken. Addition-
23 ally, the director may require mitigation for temporary impacts

24 to waters of the state as specified in subdivision (2) of this
25 subsection.

26 (2) If the watershed above the toe of the farthest down-
27 stream permanent structure authorized pursuant to the United
28 States army corps of engineers permits issued in accordance
29 with 33 U.S.C. § 1344 and 33 C.F.R. Parts 323 or 330 is greater
30 than or equal to two hundred fifty acres and all other necessary
31 requirements are met consistent with this section, the director
32 shall further condition a water quality certification on a
33 requirement that the applicant mitigate the expected water
34 quality impacts under the following conditions:

35 (A) The water quality certification may require mitigation
36 at a ratio appropriate to the type of waters impacted, consistent
37 with state or federal standards as required by the federal Clean
38 Water Act, for the types and locations of waters impacted;

39 (B) For waters of the state isolated as a result of a perma-
40 nent structure, the maximum mitigation ratio shall be five-
41 tenths acre of mitigation area for every one acre of those
42 isolated waters;

43 (C) The director may accept mitigation on the permitted
44 area, mitigation off the permitted area, mitigation banking of
45 waters of the state, or any combination thereof, or any other
46 mitigation measure acceptable to the director; and

47 (D) Upon completion of the work required by an agreement
48 to conduct operations authorized by this subsection the surface
49 coal mining operation shall obtain a certification from a
50 registered professional engineer that all mitigation work
51 specified in the agreement has been completed in accordance
52 with the conditions of the water quality certification. The
53 director shall promptly review the certification and provide to
54 the surface coal mining operation with notice that all mitigation
55 work has been successfully completed, or that further mitiga-
56 tion work is necessary to meet the conditions imposed by the
57 water quality certification. The mitigation amount may not
58 exceed two hundred thousand dollars per acre of stream
59 disturbed above the toe of the farthest downstream permanent
60 structure. Those moneys shall be deposited in the stream
61 restoration fund under the jurisdiction of the division of

62 environmental protection and any expenditures from this fund
63 after the thirtieth day of June, one thousand nine hundred
64 ninety-eight, shall not be authorized from collections but shall
65 only be authorized by appropriation by the Legislature. Addi-
66 tionally, the expenditures are only authorized in those counties
67 where the activity leading to the mitigation occurred or in those
68 counties adjacent to the counties where the activity leading to
69 the mitigation occurred. The director shall by the thirty-first day
70 of December of each year provide a report to the joint commit-
71 tee on government and finance on receipts and expenditures
72 from the stream restoration fund, the number of acreage
73 reclaimed by the division through the use of these funds and the
74 effectiveness of achieving stream restoration through the
75 payment of the mitigation amounts into the fund in lieu of
76 reclamation by the certificate holder.

77 (3) The director shall confer with representatives of the
78 surface coal mining industry and representatives of environ-
79 mental organizations with an interest in water quality in
80 developing a manual of approval options for mitigation on
81 permitted areas, mitigation off permitted areas and mitigation
82 involving banking of waters of the state.

83 (4) The proposed surface coal mining operation shall
84 comply with all applicable state and federal laws, rules and
85 regulations.

86 (5) The director shall propose rules for legislative approval
87 in accordance with article three, chapter twenty-nine-a of this
88 code, for the purpose of implementing the provisions of this
89 section which rules shall include, but not be limited to, the
90 following:

91 (A) Establishing all necessary operational and performance
92 requirements for an operator undertaking activities covered by
93 this section;

94 (B) Modifying the provisions of this section, when neces-
95 sary and appropriate to bring the provisions of this section into
96 compliance with state or federal law or regulation; and

97 (C) Establishing the specific operational requirements for
98 mining operations consistent with this section appropriate to
99 protect the waters of this state during and following mining
100 operations.

101 (b) The joint committee on government and finance may
102 undertake or facilitate a study of the impact of mountaintop
103 mining and valley fills upon the state of West Virginia.

104 (1) To facilitate the study, the joint committee on govern-
105 ment and finance is further authorized to coordinate with and
106 seek funding from appropriate federal agencies to facilitate the
107 study including, but not limited to: The environmental protec-
108 tion agency, army corps of engineers, office of surface-mining
109 and the fish and wildlife service.

110 (2) In order to facilitate the research, the joint committee on
111 government and finance shall appoint a council to coordinate
112 and direct the research. The composition of the council shall be
113 determined by the joint committee, but shall include representa-
114 tives from the various interested parties as determined solely by
115 the joint committee.

CHAPTER 121

(Com. Sub. for S. B. 440 — By Senator Ross)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five, six and fifteen, article five, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state air pollution control requirements; modifying requirements for the issuance of a cease and desist order; clarifying the criminal penalty for knowing misrepresentation of a material fact in a report or other document; and modifying requirements relating to rules for motor vehicle emissions.

Be it enacted by the Legislature of West Virginia:

That sections five, six and fifteen, article five, 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 5. AIR POLLUTION CONTROL.

§22-5-5. Issuance of cease and desist orders by director; service; permit suspension, modification and revocation; appeals to board.

§22-5-6. Penalties; recovery and disposition; duties of prosecuting attorneys.

§22-5-15. Motor vehicle pollution, inspection and maintenance.

§22-5-5. Issuance of cease and desist orders by director; service; permit suspension, modification and revocation; appeals to board.

1 If, from any investigation made by the director or from any
2 complaint filed with him or her, the director is of the opinion
3 that a person is violating the provisions of this article, or any
4 rules promulgated pursuant thereto, he or she shall make and
5 enter an order directing the person to cease and desist the
6 activity, unless the director determines the violation is of a
7 minor nature or the violation has been abated. The director shall
8 fix a reasonable time in such order by which the activity must
9 stop or be prevented. The order shall contain the findings of fact
10 upon which the director determined to make and enter the
11 order.

12 If, after any investigation made by the director, or from any
13 complaint filed with him or her, the director is of the opinion
14 that a permit holder is violating the provisions of this article, or
15 any rules promulgated pursuant thereto, or any order of the
16 director, or any provision of a permit, the director may issue
17 notice of intent to suspend, modify or revoke and reissue such
18 permit. Upon notice of the director's intent to suspend, modify
19 or revoke a permit, the permit holder may request a conference
20 with the director to show cause why the permit should not be
21 suspended, modified or revoked. The request for conference
22 must be received by the director within fifteen days following
23 receipt of notice. After conference or fifteen days after issuance
24 of notice of intent, if no conference is requested, the director
25 may enter an order suspending, modifying or revoking the
26 permit and send notice to the permit holder. Such order is a

27 cease and desist order for purposes of administrative and
28 judicial review and shall contain findings of fact upon which
29 the director determined to make and enter the order. If an
30 appeal of the director's order is filed, the order of the director
31 shall be stayed from the date of issuance pending a final
32 decision of the board.

33 The director shall cause a copy of any such order to be
34 served upon the person by registered or certified mail or by any
35 proper law-enforcement officer.

36 Any person upon whom a copy of the final order has been
37 served may appeal such order to the air quality board pursuant
38 to the provisions of article one, chapter twenty-two-b of this
39 code.

§22-5-6. Penalties; recovery and disposition; duties of prosecuting attorneys.

1 (a) Any person who violates any provision of this article,
2 any permit or any rule or order issued pursuant to this article or
3 article one, chapter twenty-two-b of this code is subject to a
4 civil penalty not to exceed ten thousand dollars for each day of
5 such violation, which penalty shall be recovered in a civil
6 action brought by the director in the name of the state of West
7 Virginia in the circuit court of any county wherein the person
8 resides or is engaged in the activity complained of or in the
9 circuit court of Kanawha County. The amount of the penalty
10 shall be fixed by the court without a jury: *Provided*, That any
11 person is not subject to civil penalties unless the person has
12 been given written notice thereof by the director: *Provided*,
13 *however*, That for the first such minor violation, if the person
14 corrects the violation within the time as was specified in the
15 notice of violation issued by the director, no civil penalty may
16 be recovered: *Provided further*, That if the person fails to
17 correct a minor violation or for any serious or subsequent
18 serious or minor violation, the person is subject to civil penal-
19 ties imposed pursuant to this section from the first day of the
20 violation notwithstanding the date of the issuance or receipt of
21 the notice of violation. The director shall, by rule subject to the
22 provisions of chapter twenty-nine-a of this code, determine the
23 definitions of serious and minor violations. The amount of any

24 penalty collected by the director shall be deposited in the
25 general revenue of the state treasury according to law.

26 (b) (1) Any person who knowingly misrepresents any
27 material fact in an application, record, report, plan or other
28 document filed or required to be maintained under the provi-
29 sions of this article or any rules promulgated under this article
30 is guilty of a misdemeanor and, upon conviction thereof, shall
31 be fined not more than twenty-five thousand dollars or impris-
32 oned in the county jail not more than six months or both fined
33 and imprisoned: *Provided*, That if the violation occurs on
34 separate days or is continuing in nature, the fine shall be no
35 more than twenty-five thousand dollars for each day of such
36 violation.

37 (2) Any person who knowingly violates any provision of
38 this article, any permit or any rule or order issued pursuant to
39 this article or article one, chapter twenty-two-b of this code is
40 guilty of a misdemeanor and, upon conviction thereof, shall be
41 fined not more than twenty-five thousand dollars for each day
42 of such violation or imprisoned in the county jail not more than
43 one year or both fined and imprisoned.

44 (c) Upon a request in writing from the director it is the duty
45 of the attorney general and the prosecuting attorney of the
46 county in which any such action for penalties accruing under
47 this section or section seven of this article may be brought to
48 institute and prosecute all such actions on behalf of the director.

49 (d) For the purpose of this section, violations on separate
50 days are separate offenses.

§22-5-15. Motor vehicle pollution, inspection and maintenance.

1 (a) As the state of knowledge and technology relating to the
2 control of emissions from motor vehicles may permit or make
3 appropriate and in furtherance of the purposes of this article, the
4 director may provide by legislative rule for the control of
5 emissions from motor vehicles. The legislative rule may
6 prescribe requirements for the installation and use of equipment
7 designed to reduce or eliminate emissions and for the proper
8 maintenance of such equipment and of vehicles. Any legislative
9 rule pursuant to this section shall be consistent with provisions

10 of federal law, if any, relating to control of emissions from the
11 vehicles concerned. The director shall not require, as a condi-
12 tion precedent to the initial sale of a vehicle or vehicular
13 equipment, the inspection, certification or other approval of any
14 feature or equipment designed for the control of emissions from
15 motor vehicles, if such feature or equipment has been certified,
16 approved or otherwise authorized pursuant to federal law.

17 (b) Except as permitted or authorized by law or legislative
18 rule, no person shall fail to maintain in good working order or
19 remove, dismantle or otherwise cause to be inoperative any
20 equipment or feature constituting an operational element of the
21 air pollution control system or mechanism of a motor vehicle
22 required by rules of the director to be maintained in or on the
23 vehicle. Any such failure to maintain in good working order or
24 removal, dismantling or causing of inoperability subjects the
25 owner or operator to suspension or cancellation of the registra-
26 tion for the vehicle by the department of transportation, division
27 of motor vehicles. The vehicle is not thereafter eligible for
28 registration until all parts and equipment constituting opera-
29 tional elements of the motor vehicle have been restored,
30 replaced or repaired and are in good working order.

31 (c) The department of transportation, division of motor
32 vehicles, department of administration, information and
33 communication services division and the state police shall make
34 available technical information and records to the director to
35 implement the legislative rule regarding motor vehicle pollu-
36 tion, inspection and maintenance. The director may promulgate
37 a legislative rule establishing motor vehicle pollution, inspec-
38 tion and maintenance standards and imposing an inspection fee
39 at a rate sufficient to implement the motor vehicle inspection
40 program and shall do so when required pursuant to federal law
41 regarding attainment of ambient air quality standards.

42 (d) The director may promulgate a legislative rule requiring
43 maintenance of features of equipment in or on motor vehicles
44 for the purpose of controlling emissions therefrom and shall do
45 so when required pursuant to federal law regarding attainment
46 of ambient air quality standards, and no motor vehicle may be
47 issued a division of motor vehicles registration certificate, or

48 the existing registration certificate shall be revoked, unless the
49 motor vehicle has been found to be in compliance with the
50 director's legislative rule.

51 (e) The remedies and penalties provided in this section and
52 section one, article three, chapter seventeen-a of this code,
53 apply to violations hereof and the provisions of sections six or
54 seven of this article do not apply thereto.

55 (f) As used in this section "motor vehicle" has the same
56 meaning as in chapter seventeen-c of this code.

CHAPTER 122

(Com. Sub. for H. B. 2684 —By Delegates Michael, Compton,
Trump, Jenkins, Capito, Johnson and Amores)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article eleven, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to application and permit fees paid to the division of environmental protection for certain permits; continuing the water quality management fund; permitting the director of the division of environmental protection to expend interest, assessments and other moneys deposited in the water quality management fund; increasing maximum fees for permit applications and permits issued under the water pollution control act; exempting home aerator units of six hundred gallons and under; changing the circumstances under which permits become void for failure to pay annual permit fees; requiring the director of the division of environmental protection to promulgate emergency and legislative rules to implement a revised schedule for application and permit fees; and reporting requirements.

Be it enacted by the Legislature of West Virginia:

That section ten, article eleven, 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 11. WATER POLLUTION CONTROL ACT.

§22-11-10. Water quality management fund established; permit application fees; annual permit fees; dedication of proceeds; rules.

1 (a) The special revenue fund designated the "Water Quality
2 Management Fund" established in the state treasury on the first
3 day of July, one thousand nine hundred eighty-nine is hereby
4 continued.

5 (b) The permit application fees and annual permit fees
6 established and collected pursuant to this section; any interest
7 or surcharge assessed and collected by the director; interest
8 accruing on investments and deposits of the fund; and any other
9 moneys designated by the director shall be deposited into the
10 water quality management fund. The director shall expend the
11 proceeds of the water quality management fund for the review
12 of initial permit applications, renewal permit applications and
13 permit issuance activities.

14 (c) The director shall propose for promulgation, legislative
15 rules in accordance with the provisions of chapter twenty-nine-a
16 of this code, to establish a schedule of application fees for
17 which the appropriate fee shall be submitted by the applicant to
18 the division with the application filed pursuant to this article for
19 any state water pollution control permit or national pollutant
20 discharge elimination system permit. The schedule of applica-
21 tion fees shall be designed to establish reasonable categories of
22 permit application fees based upon the complexity of the permit
23 application review process required by the division pursuant to
24 the provisions of this article and the rules promulgated thereun-
25 der: *Provided*, That no initial application fee may exceed fifteen
26 thousand dollars for any facility nor may any permit renewal
27 application fee exceed five thousand dollars. The division may
28 not process any permit application pursuant to this article until
29 the required permit application fee has been received.

30 (d) The director shall propose for promulgation legislative
31 rules in accordance with the provisions of chapter twenty-nine-a
32 of this code, to establish a schedule of permit fees to be
33 assessed annually upon each person holding a state water
34 pollution control permit or national pollutant discharge elimina-
35 tion system permit issued pursuant to this article. Each person
36 holding a permit shall pay the prescribed annual permit fee to
37 the division pursuant to the rules promulgated hereunder:
38 *Provided*, That no person holding a permit for a home aerator
39 of six hundred gallons and under shall be required to pay an
40 annual permit fee. The schedule of annual permit fees shall be
41 designed to establish reasonable categories of annual permit
42 fees based upon the relative potential of categories or permits
43 to degrade the waters of the state: *Provided, however*, That no
44 annual permit fee may exceed five thousand dollars. The
45 director may declare any permit issued pursuant to this article
46 void when the annual permit fee is more than ninety days past
47 due pursuant to the rules promulgated hereunder. Voiding of the
48 permit will only become effective upon the date the director
49 mails, by certified mail, written notice to the permittee's last
50 known address notifying the permittee that the permit has been
51 voided.

52 (e) The director shall promulgate an emergency rule and
53 propose a legislative rule for promulgation in accordance with
54 the provisions of article three, chapter twenty-nine-a of this
55 code by the first day of July, one thousand nine hundred ninety-
56 nine, to implement the fee schedule authorized by the amend-
57 ments to this section enacted in the year one thousand nine
58 hundred ninety-nine. Beginning the first day of September, one
59 thousand nine hundred ninety-nine, the director shall file a
60 quarterly report with the joint committee on government and
61 finance setting forth the fees established and collected pursuant
62 to this section.

63 (f) The provisions of this section are not applicable to fees
64 required for permits issued under article three of this chapter.

CHAPTER 123

(Com. Sub. for H. B. 2746 — By Delegates Beane,
Douglas, Staton and Johnson)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, five, six, twelve and sixteen, article seventeen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to incorporating federal updates to the underground storage tank act and providing subrogation authority to the director of the division of environmental protection; and proposal of rules.

Be it enacted by the Legislature of West Virginia:

That sections three, five, six, twelve and sixteen, article seventeen, 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 17. UNDERGROUND STORAGE TANK ACT.

§22-17-3. Definitions.

§22-17-5. Powers and duties of director; integration with other acts.

§22-17-6. Promulgation of rules and standards by director.

§22-17-12. Confidentiality.

§22-17-16. Civil penalties.

§22-17-3. Definitions.

1 (a) "Change in status" means causing an underground
2 storage tank to be no longer in use or a change in the reported
3 uses, contents or ownership of an underground storage tank.

4 (b) "Director" means the director of the West Virginia
5 division of environmental protection or such other person to
6 whom the director has delegated authority or duties pursuant to
7 sections six or eight, article one of this chapter.

8 (c) "Nonoperational storage tank" means an underground
9 storage tank in which regulated substances will not be deposited
10 or from which regulated substances will not be dispensed after
11 the eighth day of November, one thousand nine hundred eighty-
12 four.

13 (d) "Operator" means any person in control of, or having
14 responsibility for, the daily operation of an underground storage
15 tank.

16 (e) "Owner" means:

17 (1) In the case of an underground storage tank in use on the
18 eighth day of November, one thousand nine hundred
19 eighty-four, or brought into use after that date, a person who
20 owns an underground storage tank used for the storage, use or
21 dispensing of a regulated substance.

22 (2) In the case of an underground storage tank in use before
23 the eighth day of November, one thousand nine hundred eighty-
24 four, but no longer in use on that date, a person who owned
25 such a tank immediately before the discontinuation of its use.

26 (f) "Person" means any individual, trust, firm, joint stock
27 company, corporation (including government corporations),
28 partnership, association, state, municipality, commission,
29 political subdivision of a state, interstate body, consortium,
30 joint venture, commercial entity and the United States govern-
31 ment.

32 (g) "Petroleum" means petroleum, including crude oil or
33 any fraction thereof which is liquid at a temperature of sixty
34 degrees Fahrenheit and a pressure of fourteen and seven-tenths
35 pounds per square inch absolute.

36 (h) "Regulated substance" means:

37 (1) Any substance defined in section 101 (14) of the
38 Comprehensive Environmental Response, Compensation and
39 Liability Act of 1980, but not including any substance regulated
40 as a hazardous waste under Subtitle C of the federal Resource
41 Conservation and Recovery Act of 1976, as amended; or

42 (2) Petroleum.

43 (i) "Release" means any spilling, leaking, emitting,
44 discharging, escaping, leaching or disposing from an under-
45 ground storage tank into groundwater, surface water or
46 subsurface soils.

47 (j) "Subtitle I" means Subtitle I of the federal Resource
48 Conservation and Recovery Act of 1976, as amended.

49 (k) "Underground storage tank" means one tank or a
50 combination of tanks, and the underground pipes connected
51 thereto, which is used to contain an accumulation of regulated
52 substances and the volume of which, including the volume of
53 the underground pipes connected thereto, is ten percent or more
54 beneath the surface of the ground, but does not include:

55 (1) Farm or residential tanks with a capacity of eleven
56 hundred gallons or less and used for storing motor fuel for
57 noncommercial purposes;

58 (2) Tanks used for storing heating oil for consumptive use
59 on the premises where stored;

60 (3) Septic tanks;

61 (4) A pipeline facility, including gathering lines, regulated
62 under the Natural Gas Pipeline Safety Act of 1968, or the
63 Hazardous Liquid Pipeline Safety Act of 1979, or an intrastate
64 pipeline facility regulated under state laws comparable to the
65 provisions of either of those acts;

66 (5) Surface impoundments, pits, ponds or lagoons;

67 (6) Storm water or wastewater collection systems;

68 (7) Flow-through process tanks;

69 (8) Liquid traps or associated gathering lines directly
70 related to oil or gas production and gathering operations; or

71 (9) Storage tanks situated in an underground area such as a
72 basement, cellar, mineworking, drift, shaft or tunnel, if the
73 storage tank is situated upon or above the surface of the floor.

74 The term "underground storage tank" does not include any
75 pipes connected to any tank which is described in subpara-
76 graphs (1) through (9).

§22-17-5. Powers and duties of director; integration with other acts.

1 (a) In addition to all other powers and duties prescribed in
2 this article or otherwise by law, and unless otherwise specifi-
3 cally set forth in this article, the director shall perform any and
4 all acts necessary to carry out the purposes and requirements of
5 Subtitle I.

6 (b) The director shall cooperate with and may receive and
7 expend money from the federal government or other source.

8 (c) The director may accept applications for and issue
9 policies of insurance to owners or operators of petroleum
10 underground storage tanks that are subscribers to the under-
11 ground storage tank insurance fund and may accept, review, pay
12 and settle claims pursuant to those policies of insurance under
13 such terms as the director may establish by rules proposed for
14 legislative approval in accordance with the provisions of article
15 three, chapter twenty-nine-a of this code.

16 (d) The director may enter into any agreements, including
17 reimbursement or subrogation agreements, contracts and
18 cooperative arrangements under such terms and conditions as
19 he or she deems appropriate, with other state agencies, educa-
20 tional institutions or other organizations and individuals as
21 necessary to implement the provisions of this article.

22 (e) The director may take such actions as are necessary and
23 appropriate to carry out and enforce any agreements, contracts
24 or cooperative arrangements entered into as provided in
25 subsection (d) of this section, including the institution and
26 prosecution of suits in any state or federal court or administra-
27 tive tribunal, whether in the director's name or in the name of
28 an insured or a subrogor.

§22-17-6. Promulgation of rules and standards by director.

1 (a) The director has overall responsibility for the promulga-
2 tion of rules under this article. In promulgating and revising

3 such rules the director shall comply with the provisions of
4 chapter twenty-nine-a of this code. Such rules shall be no more
5 stringent than the rules and regulations promulgated by the
6 United States environmental protection agency pursuant to
7 Subtitle I.

8 (b) The director shall promulgate rules applicable to owners
9 or operators of underground storage tanks or other affected
10 persons, as appropriate, as follows:

11 (1) A requirement for a yearly registration fee for under-
12 ground storage tanks;

13 (2) A requirement that an owner or operator register with
14 the director each underground storage tank after the effective
15 date of the rules and that an owner or operator report annually
16 on changes in status of any underground storage tank;

17 (3) Such release detection, prevention and correction rules
18 applicable to underground storage tanks as may be necessary to
19 protect human health and the environment;

20 (4) Requirements for maintaining a leak detection system,
21 inventory control systems together with tank testing, or a
22 comparable system or method designed to identify releases
23 from underground storage tanks in a manner consistent with the
24 protection of human health and the environment;

25 (5) Requirements for maintaining records of any monitoring
26 or leak detection system or inventory control system or tank
27 testing system;

28 (6) Rules for procedures and amount of fees to be assessed
29 for the underground storage tank administrative fund, the
30 leaking underground storage tank response fund and the
31 underground storage tank insurance fund established pursuant
32 to this article, which shall include a capitalization fee to be
33 assessed against all owners or operators of underground tanks
34 to be used for initial establishment of the underground storage
35 tank insurance fund;

36 (7) Procedures for making expenditures from the under-
37 ground storage tank administrative fund, the leaking under-

38 ground storage tank response fund and the underground storage
39 tank insurance fund;

40 (8) Acceptable methods by which an owner or operator may
41 demonstrate financial responsibility;

42 (9) Requirements for reporting of releases and corrective
43 action taken in response to a release;

44 (10) Requirements for taking corrective action in response
45 to a release from an underground storage tank;

46 (11) Requirements for the closure of tanks to prevent future
47 releases of regulated substances to the environment;

48 (12) Requirements for certification of installation, removal,
49 retrofit, testing and inspection of underground storage tanks and
50 leak detection systems by a registered professional engineer or
51 other qualified person;

52 (13) Requirements for public participation in the enforce-
53 ment of the state underground storage tank program;

54 (14) Procedures establishing when and how the director
55 determines if information obtained by any agency under this
56 article is confidential;

57 (15) Standards of performance for new underground storage
58 tanks;

59 (16) Procedures for the review, acceptance, settlement and
60 payment of claims under policies issued by the director
61 pursuant to subsection (c) of section five of this article; or

62 (17) Any other rules or standards necessary and appropriate
63 for the effective implementation and administration of this
64 article.

§22-17-12. Confidentiality.

1 (a) Any records, reports or information obtained from any
2 persons under this article shall be available to the public, except
3 that upon a showing satisfactory to the director by any person
4 that records, reports or information, or a particular part thereof,
5 to which the director or any officer, employee, or representative
6 thereof has access under this section, if made public, would

7 divulge information entitled to protection under section 1905 of
8 title 18 of the United States Code, such information or particu-
9 lar portion thereof is confidential in accordance with the
10 purposes of this section, except that such record, report,
11 document or information may be disclosed to other officers,
12 employees, or authorized representatives of the United States
13 environmental protection agency or of this state if such officers,
14 employees or authorized representatives are implementing the
15 provisions of this article.

16 (b) Any person who knowingly and willfully divulges or
17 discloses any information entitled to protection under this
18 section is guilty of a misdemeanor and, upon conviction
19 thereof, shall be fined not more than five thousand dollars, or
20 imprisoned in the county jail for not more than one year, or
21 both fined and imprisoned.

22 (c) In submitting data under this article, a person required
23 to provide such data may designate the data which he or she
24 believes is entitled to protection under this section and submit
25 such designated data separately from other data submitted under
26 this article. A designation under this subsection shall be made
27 in writing and in such manner as the director may prescribe.

§22-17-16. Civil penalties.

1 (a) Any violator who fails to comply with an order of the
2 director issued under subsection (a), section fifteen of this
3 article within the time specified in the order is liable for a civil
4 penalty of not more than twenty-five thousand dollars for each
5 day of continued noncompliance.

6 (b) Any owner who knowingly: (1) Fails to register; or (2)
7 submits false information pursuant to this article is liable for a
8 civil penalty not to exceed ten thousand dollars for each tank
9 which is not registered or for which false information is
10 submitted.

11 (c) Any owner or operator of an underground storage tank
12 who fails to comply with any requirement or standard promul-
13 gated by the director under section six of this article is subject
14 to a civil penalty not to exceed ten thousand dollars for each
15 tank for each day of violation.

CHAPTER 124

(Com. Sub. for S. B. 549 — By Senators Oliverio,
McKenzie, Minear, Unger, Hunter and Sprouse)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four and five, article twenty-four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the small business environmental loan program; providing a definition of pollution prevention; providing loan conditions for projects that are at a minimum seventy-five percent pollution prevention; and authorizing the director to accept gifts, donations and contributions for the revolving loan account.

Be it enacted by the Legislature of West Virginia:

That sections two, four and five, article twenty-four, 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 24. SMALL BUSINESS ENVIRONMENTAL LOAN PROGRAM.

§22-24-2. Definitions.

§22-24-4. Loan conditions.

§22-24-5. Small business environmental revolving loan account.

§22-24-2. Definitions.

1 (a) "Authority" means the West Virginia economic devel-
2 opment authority established in article fifteen, chapter
3 thirty-one of this code.

4 (b) "Director" means the director of the West Virginia
5 division of environmental protection.

6 (c) "Division" means the West Virginia division of environ-
7 mental protection as established in article one of this chapter.

8 (d) "Eligible borrower" means a small business as defined
9 in subsection (h) of this section that is required or needs to

10 conduct a qualifying environmental project as defined in
11 subsection (g) of this section. An eligible borrower also means
12 a small business that desires to refinance the remaining balance
13 of a debt that was incurred between the first day of January, one
14 thousand nine hundred ninety-two, and until two years after the
15 effective date of this article, and that meets, or would have met,
16 at the time of the original loan application, the requirements of
17 this subsection. The refinancing option is not available for
18 applications received by the authority more than three years
19 after the effective date of this article. Funds available for
20 refinanced loans may not, at any time, exceed forty percent of
21 the total funds available plus the outstanding balance of funded
22 loans.

23 (e) "Environmental project" means:

24 (1) Any environmental equipment purchases and installa-
25 tions of the equipment;

26 (2) Any associated transportation, technical or consulting
27 services for installation or modification of environmental
28 equipment;

29 (3) Any equipment, purchase and installation necessary to
30 effect a process change that in the director's judgment yields
31 significant environmental benefits; or

32 (4) Any combination of subdivisions (1), (2) or (3) of this
33 subsection.

34 (f) "Pollution prevention" means the reduction or elimina-
35 tion of pollutants at the source through process modification,
36 material substitution, in-process recycling, reduction of raw
37 material use or other source reduction or elimination opportuni-
38 ties.

39 (g) "Qualifying environmental project" means an environ-
40 mental project as described in subsection (e) of this section that
41 is to be undertaken at a location in West Virginia and used for
42 the purpose of:

43 (1) Effecting pollution elimination, minimization, preven-
44 tion, recycling or abatement measures;

45 (2) Improving conditions or operations environmentally or
46 substantially improving compliance with local, city, state,
47 interstate or federal rules, regulations or laws pertaining to the
48 environment and human health; or

49 (3) Purchasing equipment to establish environmental
50 information, computing, consulting or laboratory services.

51 (h) "Small business" means a business that:

52 (1) Is properly registered with the appropriate agencies to
53 do business in this state;

54 (2) Is actively conducting business in this state;

55 (3) Is current with all workers' compensation and unem-
56 ployment premiums and state taxes; and

57 (4) Employs less than fifty full-time employees as defined
58 in subsection (i) of this section within the entire company,
59 business or corporation inside and outside this state.

60 (i) "Total number of full-time employees" means all full-
61 time employees, plus all part-time employees counted as full-
62 time employee equivalents, plus all full and part-time equiva-
63 lent employees providing any type of service by contract or by
64 any other arrangement.

§22-24-4. Loan conditions.

1 A loan made to an eligible borrower as provided by this
2 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 rate be
5 less than four percent: *Provided*, That environmental loan
6 projects that have been determined by the director to be at a
7 minimum, seventy-five percent "pollution prevention", shall be
8 authorized an additional one half of one percent annual interest
9 rate reduction and the annual interest for these special pollution
10 prevention qualifying environmental projects may be as low as
11 three and one-half percent;

12 (b) Have repayment terms not to exceed ten years;

- 13 (c) Have collateral terms acceptable to the authority; and
14 (d) Be in an amount of not less than five thousand dollars
15 nor more than one hundred fifty thousand dollars; but in no case
16 may the amount exceed ninety percent of the cost of the project.

§22-24-5. Small business environmental revolving loan account.

- 1 (a) The small business environmental revolving loan
2 account is hereby continued in the authority and shall be made
3 available for environmental loans defined by this article for any
4 type of qualifying environmental project. Loans may be issued
5 only during the five-year period commencing on the effective
6 date of this article unless the time period is otherwise extended
7 by the Legislature. The administration of this loan program is
8 authorized for one year beyond the last payment date for any
9 outstanding loan.
- 10 (b) The environmental revolving loan account shall be
11 funded by appropriations from the Legislature and, at the
12 director's discretion, by using portions of penalties and fines
13 that are collected from various sources, including violators that
14 economically benefited by noncompliance and the director is
15 also authorized to accept gifts, donations, contributions,
16 bequests or devises of money, security or property for deposit
17 in the account: *Provided*, That the maximum value of all active
18 outstanding loans, combined with funds in reserve at any time,
19 may not exceed five million dollars.
- 20 (c) Interest income from the small business environmental
21 loan program as well as appropriations from the Legislature
22 shall be used to defray the operating costs of the program,
23 including, but not limited to, administration, facilities, salaries
24 and travel. Any excess interest income shall be used to reestab-
25 lish the loan program to its maximum authorized limit of five
26 million dollars, with additional excesses returned to the state's
27 general revenue account. If interest income is not projected to
28 provide the necessary operating funds for all aspects of the
29 small business environmental loan program for any one year,
30 the authority shall request the necessary funding in the annual
31 budget request.

CHAPTER 125

(H. B. 2707 — By Delegate Michael)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article one, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibiting certain convicted felons from obtaining the victim's share in joint property through survivorship.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. CREATION OF ESTATES GENERALLY.

§36-1-20. When survivorship preserved.

1 (a) The preceding section shall not apply to any estate
2 which joint tenants have as executors or trustees, nor to an
3 estate conveyed or devised to persons in their own right, when
4 it manifestly appears from the tenor of the instrument that it
5 was intended that the part of the one dying should then belong
6 to the others. Neither shall it affect the mode of proceeding on
7 any joint judgment or decree in favor of, or on any contract
8 with, two or more, one of whom dies.

9 (b) When the instrument of conveyance or ownership in any
10 estate, whether real estate or tangible or intangible personal
11 property, links multiple owners together with the disjunctive
12 "or," such ownership shall be held as joint tenants with the right
13 of survivorship, unless expressly stated otherwise.

14 (c) No person convicted of violating the provisions of
15 section one or three, article two, chapter sixty-one of this code

16 as a principal, aider and abettor or accessory before the fact, or
17 convicted of a similar provision of law of another state or the
18 United States, may take or acquire any real or personal property
19 by survivorship pursuant to this section when the victim of the
20 criminal offense was a joint holder of title to the property. The
21 property to which the person so convicted would otherwise
22 have been entitled shall go to the person or persons who would
23 have taken the same if the person so convicted had predeceased
24 the victim.

CHAPTER 126

(S. B. 427 — By Senators Wooton, Mlinear, Sharpe, Ross and Kessler)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight, eleven and fourteen, article one, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article two of said chapter; and to amend article four of said chapter by adding thereto a new section, designated section fourteen-a, all relating to the administration of estates and trusts; providing that an executor may be relieved of posting bond where the will so directs; providing for a commission for sheriffs administering estates; providing for criminal penalties to be assessed where a personal administrator fails to appraise an estate; eliminating language that requires appraisements to be done in triplicate; reducing the time for creditors to file a proof of claim for estates that will not be referenced to a fiduciary commissioner; establishing a time period for a fiduciary to make a final settlement of a decedent's estate; providing that a fiduciary may obtain an extension of time under certain circumstances; requiring a fiduciary to report to the county commission when an estate is not settled within the prescribed time period; permitting the county commission to discharge a fiduciary of his or her duties under certain circumstances; and

establishing criminal penalties for a fiduciary's failure to appraise an estate and failure to report to the county commission.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **Personal Representatives.**
2. **Proof and Allowance of Claims Against Estates of Decedents.**
4. **Accounting by Fiduciaries.**

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-8. When executor not to give bond.

§44-1-11. When sheriff to administer estate.

§44-1-14. Appraisal of estates in triplicate; disposition; authority of appraisers to act throughout the state; hiring of experts.

§44-1-8. When executor not to give bond.

1 Subject to the provisions of section three, article five of this
2 chapter governing the appointment of a nonresident of this state
3 as an executor, where the will directs that an executor shall not
4 give bond, it shall not be required of him or her, unless at the
5 time the will is admitted to probate or at any time subsequently,
6 on the application of any person interested, or from the knowl-
7 edge of the court or clerk admitting the will to probate, it is
8 deemed proper that bond ought to be given.

§44-1-11. When sheriff to administer estate.

1 If at any time two months elapse without there being an
2 executor or administrator of the estate of a decedent (except
3 during a contest about the decedent's will, or during the infancy
4 or absence of the executor), the court or clerk before whom the
5 will was admitted to probate, or having jurisdiction to grant
6 administration, shall on motion of any person order the sheriff
7 of the county to take into his or her possession the estate of
8 such decedent and administer the same; whereupon such

9 sheriff, without taking any other oath of office, or giving any
10 other bond or security than he or she may have before taken or
11 given, shall be the administrator or administrator de bonis non
12 of the decedent, with his or her will annexed if there be a will,
13 and shall be entitled to all the rights and bound to perform all
14 the duties of the administrator. For his or her services as
15 administrator of an estate, the sheriff shall receive from the
16 estate a fee of five percent of the estate subject to administra-
17 tion, which fee shall be deposited to the treasury of the county.
18 Every sheriff shall, in the month of January in each year, make
19 a written report to the county commission of his or her county,
20 and if the court is not in session, then he or she shall file the
21 report with the clerk of the court, of the receipts and disburse-
22 ments of each estate so committed to him or her, and at the end
23 of his or her term of office make a complete report and settle-
24 ment of each estate so committed to him or her, and shall turn
25 over to his or her successor in office all moneys or property in
26 his or her hands remaining unadministered. The court or clerk
27 may, however, at any time afterward revoke such order and
28 allow any other person to qualify as the executor or administra-
29 tor; and the court, or the clerk thereof, shall, at the expiration of
30 the term of office of any sheriff, commit to his or her successor
31 in office any and all estates which may appear, by the final
32 report above required to be made by the sheriff at the end of his
33 or her term, not to have been fully administered. Every sheriff
34 to whom any estate shall have been committed, as aforesaid,
35 who shall fail to render any report as required herein, or who
36 shall fail to make such settlement within two months after the
37 end of his or her term of office shall be guilty of a misdemeanor
38 and, upon conviction thereof, shall be fined not less than fifty
39 nor more than five hundred dollars.

**§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, or in
2 which such deceased person had an interest at the time of his or
3 her death, shall be appraised by the personal representative of
4 such deceased person. Such personal representative, after first

5 taking an oath for the purpose, shall list and appraise at its real
6 and actual value all the real estate and all the tangible property
7 of every description owned by the deceased at the time of his or
8 her death, including, but not limited to, all real estate and
9 tangible property in which the decedent had an interest as joint
10 tenant or otherwise or in which any beneficial interest passes to
11 another person by reason of the death of such decedent whose
12 estate is being so appraised and irrespective of whether such
13 real estate or tangible property is subject to administration and
14 located in each county or the counties, as the case may be. The
15 personal representative shall also list and appraise at its real and
16 actual value all of the decedent's intangible property of every
17 description, including moneys, credits, investments, annuities,
18 life insurance policies, (irrespective of whether such policies
19 are payable to named beneficiaries or in trust or otherwise),
20 judgments and decrees for moneys, notes, bonds, accounts and
21 all other evidences of debt, whether owing to him or her by
22 persons or corporations in or out of the state, and the number
23 and value, including both the par value, if any, and the actual
24 value, of any shares of capital stock owned by the decedent in
25 any corporation, and every other item of intangible property of
26 whatsoever nature or kind, including all intangible property in
27 which the decedent had an interest as joint tenant or otherwise
28 or in which any beneficial interest passes to another by reason
29 of the death of such decedent, and irrespective of whether such
30 intangible property is subject to administration and whether
31 located in this state or elsewhere. Any real estate or interest
32 therein so appraised shall be identified with particularity and
33 description, shall identify the source of title in the decedent and
34 the location of such realty for purposes of real property ad
35 valorem taxation. In addition to all other information required
36 by law, the appraisal shall contain and include a question-
37 naire designed and formulated by the tax commissioner which
38 is designed for the purpose of examining the personal represen-
39 tative to determine that he or she has made a thorough and
40 proper search and investigation as to the existence and value of
41 each and every kind and species of property required to be
42 included within, and subject to appraisal by, the provisions
43 of this or any other section of this code, which said question-

44 naire shall be completed and answered upon the oath or
45 adjuration of the personal representative or fiduciary.

46 The appraisalment, list and questionnaire aforesaid shall be
47 executed and signed by the personal representative. The
48 original appraisalment, list and questionnaire and two copies
49 thereof must be returned to the clerk of the county commission
50 by whom such personal representative was appointed or to the
51 fiduciary supervisor within ninety days of the date of qualifica-
52 tion of the personal representative. Such clerk or supervisor
53 shall inspect such appraisalment, list and questionnaire, see that
54 the same are in proper form, and that all property, if any,
55 suggested by the questionnaire is included within the appraise-
56 ment. If such appraisalment, list and questionnaire are returned
57 to a fiduciary supervisor within ten days after they are received
58 and approved by him or her, such supervisor shall deliver the
59 same to the clerk of the county commission. Upon receipt of the
60 appraisalment, list and questionnaire, the clerk of the county
61 commission shall record the same, with the certificate of
62 approval of the supervisor, and mail a certified copy of the
63 same to the tax commissioner of West Virginia. The date of
64 return of an appraisalment shall be entered by the clerk of the
65 county commission in his or her record of fiduciaries. The
66 appraisalment and list shall be prima facie evidence of the value
67 of the property embraced therein, and that the personal estate
68 embraced therein which is subject to administration came to the
69 hands of the personal representative. No person shall be
70 permitted by any means whatsoever to avoid the appraisalment
71 and listing of his or her estate and of all property, real, tangible
72 and intangible, of whatsoever nature and kind, in which a
73 beneficial interest passes to another by reason of the death of
74 the decedent and irrespective of whether such property is
75 subject to administration as herein provided, nor shall his or her
76 personal representative be permitted to do so. Any personal
77 representative who refuses or declines, without reasonable
78 cause, to comply with the provisions of this section shall be
79 guilty of a misdemeanor and, upon conviction thereof, shall be
80 fined not less than twenty-five dollars nor more than five
81 hundred dollars.

82 Every personal representative shall have authority to retain
83 or hire the services of such expert or experts as may be deemed
84 appropriate to assist and advise him or her in and about his or
85 her duties in appropriately and accurately appraising all or any
86 part of the assets or property to be appraised according to the
87 provisions of this section. Such expert or experts so retained or
88 hired shall be compensated a reasonable sum by the personal
89 representative from the assets coming into his or her hands or
90 of which he or she is embraced, which compensation and the
91 reasonableness thereof shall be subject to review and approval
92 by the county commission, upon recommendation of the
93 fiduciary supervisor.

**ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES
OF DECEDENTS.**

§44-2-1. Reference of decedents' estates; proceedings thereon.

1 (a) Upon the return of the appraisement by the personal
2 representative to the county clerk, the estate of his or her
3 decedent shall, by order of the county commission to be then
4 made, be referred to a fiduciary commissioner for proof and
5 determination of debts and claims, establishment of their
6 priority, determination of the amount of the respective shares of
7 the legatees and distributees, and any other matter necessary
8 and proper for the settlement of the estate: *Provided*, That in
9 counties where there are two or more such commissioners, the
10 estates of decedents shall be referred to such commissioners in
11 rotation, in order that, so far as possible, there may be an equal
12 division of the work. Notwithstanding any other provision of
13 this code to the contrary, a fiduciary commissioner may not
14 charge to the estate a fee greater than three hundred dollars and
15 expenses for the settlement of an estate, except upon: (i)
16 Approval of the personal representative; or (ii) a determination
17 by the county commission after a hearing that complicating
18 issues or problems attendant to such settlement substantiate the
19 allowance of a greater fee.

20 (b) If the personal representative delivers to the clerk an
21 appraisement of the assets of the estate showing their value to
22 be fifty thousand dollars or less, exclusive of real estate
23 specifically devised and nonprobate assets, or, if it appears to

24 the clerk that there is only one beneficiary of the probate estate
 25 and that the beneficiary is competent at law, the clerk shall
 26 record the appraisal and publish a notice once a week for
 27 two successive weeks in a newspaper of general circulation
 28 within the county of administration of the estate, substantially
 29 as follows:

30 NOTICE OF PENDING OR
 31 UNADMINISTERED ESTATE

32 "Notice is hereby given that settlement of the estate of the
 33 following named decedents will proceed without reference to a
 34 fiduciary commissioner unless within forty-five days from the
 35 first publication of this notice such reference is requested by a
 36 party in interest or an unpaid creditor files a claim and good
 37 cause is shown to support reference to a fiduciary commis-
 38 sioner.

39 Dated this _____ day of _____, _____.

40 _____

41 Clerk of the County Commission of
 42 _____ County, West Virginia."

43 The clerk shall charge to the personal representative, and
 44 receive, the reasonable cost of publication of the notice. If an
 45 unpaid creditor files a claim against the estate, the personal
 46 representative has twenty days after the date of the filing of a
 47 claim against the estate of the decedent to approve or reject the
 48 claim before the estate is referred to a fiduciary commissioner.
 49 If the personal representative approves all claims as filed, then
 50 no reference may be made.

51 The personal representative shall, within a reasonable time
 52 after the date of recordation of the appraisal in such case:
 53 (i) File a waiver of final settlement in accordance with the
 54 provisions of section twenty-nine of this article; or (ii) make a
 55 report to the clerk of his or her receipts, disbursements and
 56 distribution and submit an affidavit stating that all claims
 57 against the estate for expenses of administration, taxes and
 58 debts of the decedent have been paid in full. The clerk shall
 59 collect a fee of ten dollars for recording such report and

60 affidavit and for publication of the notice hereafter provided,
 61 the fee to be in lieu of any other fee provided by law for
 62 recording a report of settlement of the accounts of a decedent's
 63 personal representative. At least once a month the clerk shall
 64 cause to be published once a week for two successive weeks in
 65 a newspaper of general circulation within the county of the
 66 administration of the estate, with regard to reports received in
 67 the prior month, a notice substantially as follows:

68 NOTICE OF FILING OF ESTATE ACCOUNTS
 69 OR WAIVERS OF FINAL SETTLEMENT

70 "I have before me the account or waiver of final settlement
 71 of the executor(s) or administrator(s) of the estates of the
 72 following deceased persons:

73 _____
 74 _____
 75 _____

76 Any person having a claim against the estate of any such
 77 deceased person, or who has any beneficial interest therein,
 78 may appear before me or the county commission at any time
 79 within thirty days after first publication of this notice, and
 80 request reference of said estate to a commissioner or object to
 81 confirmation of the accounting. In the absence of such request
 82 or objection, the accounting may be approved by the county
 83 commission.

84 _____
 85 Clerk of the County Commission of
 86 _____ County, West Virginia."

87 If no such request or objection is made to the clerk or to the
 88 county commission, the county commission may confirm the
 89 report of the personal representative and thereupon the personal
 90 representative and his or her surety shall be discharged; but if
 91 such objection or request is made, the county commission may
 92 confirm the accounting and record the same or may refer the
 93 estate to one of its fiduciary commissioners: *Provided*, That the
 94 personal representative has twenty days after the date of the

95 filing of a claim or claims against the estate of the decedent to
96 approve or reject the claim before the estate is referred to a
97 fiduciary commissioner and if all claims are approved as filed,
98 then no reference may be made.

ARTICLE 4. ACCOUNTING BY FIDUCIARIES.

§44-4-14a. Final settlement by fiduciaries for decedent's estates; penalty.

1 (a) The provisions of this chapter notwithstanding, every
2 fiduciary for the estate of a resident decedent shall, within five
3 years of appointment as fiduciary make a full and final settle-
4 ment, report and accounting for the decedent's estate in the
5 manner provided for in this code for accountings by fiduciaries,
6 and further shall, at the time of making the final settlement,
7 notify in writing the clerk of the county commission of the
8 county where the fiduciary was appointed that the final settle-
9 ment has been made.

10 (b) If the fiduciary is unable to make a full and final
11 settlement, report and accounting of the decedent's estate
12 within the above time period because there have been unusual
13 or extraordinary circumstances, demands or conditions imposed
14 upon the fiduciary which have caused a delay in the final
15 settlement, he or she may request an extension of time in which
16 to make the settlement. Such request must be in writing to the
17 county commission and include a date by which the fiduciary
18 reasonably expects to make the full and final settlement.

19 (c) Any fiduciary failing to comply with this section, in
20 whole or in part, is personally liable to the beneficiaries or
21 creditors of the decedent's estate for any loss or waste caused
22 by the failure to make the final settlement. The fiduciary shall
23 be guilty of a misdemeanor and, upon conviction thereof, shall
24 be fined not less than two hundred fifty dollars nor more than
25 one thousand dollars for failure to comply with this section,
26 except for good and sufficient cause shown.

27 (d) In the event the fiduciary has not made the final
28 settlement of the estate within five years of appointment, the
29 fiduciary shall notify the county commission that the final

30 settlement has not been made. If the fiduciary does not establish
31 good cause for not making the final settlement within the five-
32 year period, as determined by the county commission, the
33 fiduciary is discharged of his or her duties as fiduciary. The
34 sheriff of the county shall then take charge of the estate and
35 proceed to make a final settlement of the estate in an expedi-
36 tious manner.

37 (e) A fiduciary who fails to notify the county commission
38 in accordance with subsection (d) of this section shall be guilty
39 of a misdemeanor and, upon conviction thereof, shall be fined
40 not less than fifty dollars nor more than five hundred dollars.

CHAPTER 127

(Com. Sub. for S. B. 597 — By Senator Plymale)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and twenty-six, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections four, four-a and thirty-two, article three-a of said chapter, all relating to decedents' estates; revising the time in which creditors may file a claim against an estate; removing a reference to inheritance tax; and requiring that a release of an estate tax lien be recorded before an estate can be closed under a short-term settlement.

Be it enacted by the Legislature of West Virginia:

That sections two and twenty-six, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections four, four-a and thirty-two, article three-a of said chapter be amended and reenacted to read as follows:

Article

2. Proof and Allowance of Claims Against Estates of Decedents.

3A. Optional Procedure for Proof and Allowance of Claims Against Estates of Decedents; County Option.

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.

§44-2-2. Fiduciary commissioner to publish notice of time for receiving claims against decedents estates.

§44-2-26. When claims not presented and proved barred of recovery from personal representative.

§44-2-2. Fiduciary commissioner to publish notice of time for receiving claims against decedents estates.

1 (a) Each month the fiduciary commissioner shall publish a
2 notice designating the date by which claims against the estate
3 or estates referred to him during the previous calendar month
4 may be presented. No claims against the estate shall be ac-
5 cepted by the fiduciary commissioner after the date set forth
6 herein. The date so designated by the fiduciary commissioner
7 shall be ninety days from the date of the first publication of the
8 notice hereinafter set forth. The notice shall be to the following
9 effect:

10 To the Creditors and Beneficiaries of the Estate(s) of
11
12

13 (Naming the decedent or decedents, as the case may be)

14 All persons having claims against the estate(s) of the said
15,

16 (Naming the decedent or decedents, as the case may be)
17 deceased, whether due or not, are notified to exhibit their
18 claims, with the voucher thereof, legally verified, to the
19 undersigned, at (designating the place) on or before the
20 day of, otherwise they may by law be excluded from
21 all benefit of said estate(s). All beneficiaries of said estate(s)
22 may appear on or before said day to examine said claims and
23 otherwise protect their interests.

24 Given under my hand this day of

25
 26 Fiduciary Commissioner,
 27 County of
 28

29 (b) Such notice shall be published as a Class II legal
 30 advertisement in compliance with the provisions of article
 31 three, chapter fifty-nine of this code, and the publication area
 32 for such publication shall be the county. The publication of
 33 such notice shall be equivalent to personal service on the
 34 creditors, distributees and legatees, or any of them.

§44-2-26. When claims not presented and proved barred of recovery from personal representative.

1 Every person including the state tax commissioner, having
 2 a claim against a deceased person, whether due or not, who has
 3 not, after notice to creditors has been published as prescribed in
 4 this article, presented his claim on or before the time fixed in
 5 such notice, or before that time has not instituted a civil action
 6 or suit thereon, shall, notwithstanding the same be not barred by
 7 some other statute of limitations that is applicable thereto, be
 8 barred from recovering such claim of or from the personal
 9 representative, or from thereafter setting off the same against
 10 the personal representative in any action or suit whatever;
 11 except that if a surplus remain after providing for all claims
 12 presented in due time, or on which action or suit shall have
 13 been commenced in due time, and such surplus shall not have
 14 been distributed by the personal representative to the beneficia-
 15 ries of the estate, and the claimant prove that he had no actual
 16 notice of the publication to creditors nor knowledge of any
 17 proceedings before the fiduciary commissioner, such creditor
 18 may prove his claim by action or suit and have the same
 19 allowed out of such surplus; and, in order that such late claims
 20 if proved may be provided for, the fiduciary commissioner shall
 21 reopen his report if the same has not been returned to the county
 22 commission, or if returned, shall make and return a supplement-
 23 tal report: *Provided, That, as to real estate, the provisions of*
 24 *subsection (b), section one of this article shall apply.*

**ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLOWANCE
OF CLAIMS AGAINST ESTATES OF DECEDENTS;
COUNTY OPTION.**

§44-3A-4. Notice of claim; settlement in certain cases.

§44-3A-4a. Short form settlement.

§44-3A-32. When claims not presented and proved barred of recovery from personal representative.

§44-3A-4. Notice of claim; settlement in certain cases.

1 (a) The fiduciary supervisor shall at least once a month as
2 a Class II legal advertisement in compliance with the provisions
3 of article three, chapter fifty-nine of this code, cause to be
4 published in a newspaper of general circulation within the
5 county wherein letters of administration have been granted, a
6 notice substantially as follows:

7 NOTICE OF FILING OF ESTATE ACCOUNTS

8 To the Creditors and Beneficiaries of the within named
9 deceased persons:

10 I have before me the estates of the following deceased
11 persons and the accounts of the fiduciaries of their respective
12 estates:

13 Name of Decedent:.....

14 Name of Fiduciary:.....

15 Address:.....

16 Name of Decedent:.....

17 Name of Fiduciary:.....

18 Address:

19 Name of Decedent:.....

20 Name of Fiduciary:.....

21 Address:

22 All persons having claims against the estate(s) of any of the
23 above-named deceased persons whether due or not, are notified
24 to exhibit their claims with vouchers thereof, legally verified,

25 to the fiduciary of such deceased person as shown herein within
 26 seventy-five days of the first publication hereof; or, if not so
 27 exhibited to such fiduciary by that date, to exhibit the same at
 28 the office of the undersigned fiduciary supervisor at the address
 29 shown below within ninety days of the first publication of this
 30 notice; otherwise any or all such claims may by law be ex-
 31 cluded from all benefits of said estate(s). No claims against the
 32 estate shall be accepted by the fiduciary supervisor after the last
 33 date shown above. All beneficiaries of said estate(s) may appear
 34 either before the above-named fiduciary by the date first shown
 35 above, or thereafter before the undersigned fiduciary supervisor
 36 by the date last shown above to examine said claims and
 37 otherwise protect their respective interests.

38 Given under my hand this day of,
 39 19.....

40
 41 Fiduciary Supervisor
 42 County, W.Va.

43 (b) All such claims are to be filed with the appropriate
 44 fiduciary at the address shown in such notice within seventy-
 45 five days of the date of the first publication of such notice or
 46 with the fiduciary supervisor within ninety days of such date.
 47 No claims against the estate shall be accepted by the fiduciary
 48 supervisor after the last date shown above.

49 (c) Subject to the provisions of this section, at the end of the
 50 ninety-day period set forth in such notice, the fiduciary supervi-
 51 sor may proceed with supervision of all estates referred to him
 52 for proof and determination of debts and claims, establishment
 53 of their priority, determination of the amount of the respective
 54 shares of the legatees and distributees and any and all other
 55 matter or matters necessary and proper for the settlement of the
 56 estate, including, but not limited to, his recommendations
 57 concerning the approval of the fees of any fiduciary commis-
 58 sioner to whom the estate may have been referred, determina-
 59 tion that inheritance taxes, if any, occasioned by the death of
 60 the decedent or returnable by reason thereof have been returned
 61 upon such estate and such taxes have been paid or such pay-
 62 ment provided for and whether a release therefor has been

63 issued by the proper authority, all matters required by section
64 nineteen of this article and all other matters deemed proper by
65 him.

§44-3A-4a. Short form settlement.

1 (a) In all estates of decedents administered under the
2 provisions of this article where more than ninety days has
3 elapsed since the filing of any notice required by section four,
4 an estate may be closed by a short form settlement filed in
5 compliance with this section: *Provided*, That any lien for
6 payment of estate taxes under article eleven, chapter eleven of
7 this code is released and that the release is filed with the clerk.

8 (b) The fiduciary may file with the fiduciary supervisor a
9 proposed short form settlement which shall contain an affidavit
10 made by the fiduciary that the time for filing claims has
11 expired, that no known and unpaid claims exist against the
12 estate and showing the allocation to which each distributee and
13 beneficiary is entitled in the distribution of the estate and
14 contain a representation that the property to which each
15 distributee or beneficiary is entitled has been or upon approval
16 of the settlement will be delivered thereto, or that each
17 distributee and beneficiary has agreed to a different allocation.
18 The application shall contain a waiver signed by each
19 distributee and beneficiary.

20 (c) Such waiver may be signed in the case of a distributee
21 or beneficiary under a disability by the duly qualified personal
22 representative of such distributee or beneficiary. A personal
23 representative signing such waiver shall be responsible to his or
24 her cestui que trust for any loss resulting from such waiver.

25 (d) The fiduciary supervisor shall examine the affidavit and
26 waiver and determine that the allocation to the distributees and
27 beneficiaries set forth in the affidavit is correct and all proper
28 parties signed the waiver, both shall be recorded as in the case
29 of and in lieu of settlement. If the fiduciary supervisor identifies
30 any error the fiduciary supervisor shall within five days of the
31 filing of such settlement give the fiduciary notice as in the case
32 of any other incorrect settlement.

33 (e) If the short form settlement is proper the fiduciary
34 supervisor shall proceed as in the case of any other settlement.

**§44-3A-32. When claims not presented and proved barred of
recovery from personal representative.**

1 Every person having a claim against a deceased person,
2 whether due or not, who shall not, when notice to creditors has
3 been published as prescribed in this article, have presented his
4 claim on or before the ninety-day time period fixed in such
5 notice, or before that time have instituted an action thereon,
6 shall, notwithstanding the same be not barred by some other
7 statute of limitations that is applicable thereto, be barred from
8 recovering such claim of or from the personal representative, or
9 from thereafter setting off the same by way of counterclaim or
10 otherwise against the personal representative in any action
11 whatever; except that if a surplus remain after providing for all
12 claims presented in due time, or on which action shall have
13 been commenced in due time, and such surplus shall not have
14 been distributed by the personal representative to the beneficia-
15 ries of the estate, and the claimant prove that he had no actual
16 notice of the publication to creditors nor knowledge of the
17 proceedings before the fiduciary supervisor or fiduciary
18 commissioner, such creditor may prove his claim by action or
19 suit and have the same allowed out of such surplus; and, in
20 order that such late claims if proved may be provided for, the
21 fiduciary supervisor or fiduciary commissioner shall reopen his
22 report if the same has not been returned to the county commis-
23 sion, or if returned shall make and return a supplemental report.

CHAPTER 128

(Com. Sub. for S. B. 555 — By Senators Schoonover, Mitchell and Hunter)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fifteen, chapter 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 to imposing mandatory safety procedures for firefighters in situations deemed immediately dangerous to life or health.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS;
CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.**

§8-15-10b. Mandatory safety procedures for situations deemed immediately dangerous to life and health.

1 (a) For the purposes of this article:

2 (1) "Immediately dangerous to life or health" or "IDLH"
3 means an atmosphere that poses an immediate threat to life,
4 would cause irreversible adverse health effects, or would impair
5 an individual's ability to escape from a dangerous atmosphere.

6 (2) "Interior structural firefighting" means the physical
7 activity of fire suppression, rescue or both, inside of buildings
8 or enclosed structures which are involved in a fire situation
9 beyond the incipient stage.

10 (3) "Self-contained breathing apparatus" or "SCBA" means
11 an atmosphere-supplying respirator for which the breathing air
12 source is designed to be carried by the user.

13 (b) In all atmospheres that are immediately dangerous to
14 life or health, the fire department or company shall ensure that:

15 (1) One or, when needed, more than one firefighter, is
16 located outside the IDLH atmosphere;

17 (2) Visual, voice or signal line communication is main-
18 tained between all firefighters in the IDLH atmosphere and
19 those outside the IDLH atmosphere;

20 (3) All firefighters located outside the IDLH atmosphere
21 are trained and equipped to provide effective emergency rescue;

22 (4) The fire department or company, or designee authorized
23 by the fire department or company, is notified before any
24 firefighter located outside the IDLH atmosphere enters the
25 IDLH atmosphere to provide emergency rescue;

26 (5) Once notified, the fire department or company, or
27 designee authorized by the fire department or company,
28 provides necessary assistance appropriate to the situation;

29 (6) All firefighters located outside the IDLH atmospheres
30 are equipped with:

31 Pressure demand or other positive pressure self-contained
32 breathing apparatus or a pressure demand or other positive
33 pressure supplied-air respirator with an auxiliary SCBA, and
34 either:

35 (A) Appropriate retrieval equipment for removing all
36 firefighters who enter IDLH atmospheres where retrieval
37 equipment would contribute to the rescue of the firefighters and
38 would not increase the overall risk resulting from entry; or

39 (B) Equivalent means of rescue where retrieval equipment
40 is not required or not available.

41 (c) In addition to the requirements set forth under subsec-
42 tion (b) of this section, when firefighters are engaging in
43 interior structural firefighting, the fire department or company
44 shall ensure that:

45 (1) At least two firefighters enter the IDLH atmosphere and
46 remain in visual or voice contact with one another at all times;

47 (2) At least two firefighters are located outside the IDLH
48 atmosphere; and

49 (3) All firefighters engaged in interior structural firefighting
50 use an SCBA.

51 (d) Nothing in this section is meant to preclude:

52 (1) The assignment of one of the firefighters located outside
53 the IDLH atmosphere to an additional role, such as incident
54 commander in charge, emergency officer or safety officer, so

55 long as this firefighter is able to perform assistance or rescue
 56 activities without jeopardizing the safety or health of any
 57 firefighter working in the IDLH atmosphere; and

58 (2) The performance of emergency rescue activities by
 59 firefighters before an entire team has assembled.

CHAPTER 129

(S. B. 240 — By Senators Wooton, Ball, Dittmar, Fanning, Hunter,
 Kessler, McCabe, Minard, Mitchell, Oliverio, Redd, Ross,
 Schoonover, Snyder and Deem)

[Passed February 19, 1999; in effect from passage. 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 smoke detector requirements; carbon monoxide detector requirements; notice to occupants; offenses; and penalties.

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 nine
 2 hundred ninety-one, an operational smoke detector shall be
 3 installed in the immediate vicinity of each sleeping area within
 4 all one- and two-family dwellings, including any “manufactured
 5 home” as that term is defined in subsection (j), section two,
 6 article nine, chapter twenty-one of this code. Such smoke
 7 detector shall be capable of sensing visible or invisible particles

8 of combustion and shall meet the specifications and be installed
9 as provided for in the National Fire Protection Association
10 Standard 74, "Standard for the Installation, Maintenance and
11 Use of Household Fire Warning Equipment", 1989 edition, and
12 in the manufacturer's specifications. When activated, the smoke
13 detector shall provide an alarm suitable to warn the occupants
14 of the danger of fire.

15 (b) The owner of each dwelling described in subsection (a)
16 of this section shall provide, install and replace the operational
17 smoke detectors required by this section. So as to assure that the
18 smoke detector continues to be operational, in each dwelling
19 described in subsection (a) of this section which is not occupied
20 by the owner thereof, the tenant in any such dwelling shall
21 perform routine maintenance on the smoke detectors within
22 such dwelling.

23 (c) Where a dwelling is not occupied by the owner and is
24 occupied by an individual who is deaf or hearing impaired, the
25 owner shall, upon written request by or on behalf of such
26 individual, provide and install a smoke detector with a light
27 signal sufficient to warn the deaf or hearing-impaired individual
28 of the danger of fire.

29 (d) An automatic fire sprinkler system installed in accor-
30 dance with the National Fire Protection Association Standard
31 13D, "Standard for the Installation of Sprinkler Systems in
32 Residential Occupancies", 1989 edition, may be provided in
33 lieu of smoke detectors.

34 (e) After investigating a fire in any dwelling described in
35 subsection (a) of this section, the local investigating authority
36 shall issue to the owner a smoke detector installation order in
37 the absence of the required smoke detectors.

38 (f) After the first day of July, one thousand nine hundred
39 ninety-eight, an operational carbon monoxide detector with a
40 suitable alarm shall be installed in accordance with the manu-
41 facturer's direction:

42 (1) In any newly constructed residential unit which has a
43 fuel-burning heating or cooking source, including, but not
44 limited to, an oil or gas furnace or stove; and

45 (2) In any residential unit which is connected to a newly
46 constructed building, including, but not limited to, a garage,
47 storage shed or bar, which has a fuel-burning heating or
48 cooking source, including, but not limited to, an oil or gas
49 furnace or stove.

50 (g) Any person installing a carbon monoxide detector in a
51 residential unit shall inform the owner, lessor, occupant or
52 occupants of the residential unit of the dangers of carbon
53 monoxide poisoning and instructions on the operation of the
54 carbon monoxide detector installed.

55 (h) When repair or maintenance work is undertaken on a
56 fuel-burning heating or cooking source or a venting system in
57 an existing residential unit, the person making the repair or
58 performing the maintenance shall inform the owner, lessor,
59 occupant or occupants of the unit being served by the fuel-
60 burning heating or cooking source or venting system of the
61 dangers of carbon monoxide poisoning and recommend the
62 installation of a carbon monoxide detector.

63 (i) Any person who violates any provision of this section is
64 guilty of a misdemeanor and, upon conviction thereof, shall be
65 fined not less than fifty dollars nor more than one hundred
66 dollars.

67 (j) A violation of this section shall not be deemed by virtue
68 of such violation to constitute evidence of negligence or
69 contributory negligence or comparative negligence in any civil
70 action or proceeding for damages.

71 (k) A violation of this section shall not constitute a defense
72 in any civil action or proceeding involving any insurance
73 policy.

74 (l) Nothing in this section shall be construed to limit the
75 rights of any political subdivision in this state to enact laws
76 imposing upon owners of any dwelling or other building
77 described in subsection (a) or (f) of this section a greater duty
78 with regard to the installation, repair and replacement of the
79 smoke detectors or carbon monoxide detectors than is required
80 by this section.

CHAPTER 130

(H. B. 3029 — By Delegates Michael, Doyle, Leach,
Campbell, Kelley, Proudfoot and Miller)

[Passed March 13, 1999; in effect ninety days from passage.
Became law without the signature of the Governor.]

AN ACT to amend and reenact sections two and five, article four, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three, article one, chapter twenty-nine of said code; to amend and reenact sections three, six, ten and thirteen, article twenty-two-a of said chapter; and to further amend said article by adding thereto a new section, designated section nineteen, all relating to distribution of proceeds from net terminal income of racetrack video lottery proceeds; creating a capitol dome and capitol improvements fund; eliminating the Morris Square repair fund; creating the grants for competitive arts program fund; providing that a portion of the net terminal income from racetrack video lottery be deposited into the created funds; relating to the operation of video lottery games at licensed horse and dog racetracks; redefining certain terms; authorizing lottery commission to approve video lottery terminals and in doing so requiring that certain matters be taken into consideration; modifying requirement that printing mechanisms be contained in video lottery terminals in certain circumstances; approving changes in video lottery terminals; permitting winnings to be paid by noncash prizes, annuitized payments over time, coins, vouchers or tokens in connection with video lottery games; permitting the display of actual symbols on video lottery terminals; requiring electronic accounting meter in video lottery terminals that record use of coins and tokens; and dividing certain amounts of net terminal income between counties and certain municipalities; creation of compulsive gambling treatment fund; source of funding; criteria for distribution of funding; and reports to the Legislature.

Be it enacted by the Legislature of West Virginia:

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

Chapter

5A. Department of Administration.

29. Miscellaneous Boards and Officers.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 4. GENERAL SERVICES DIVISION.

§5A-4-2. Care, control and custody of capitol buildings and grounds.

§5A-4-5. Regulation of parking on state-owned property in Charleston; construction of parking garage for general public; penalties; jurisdiction; creation of funds.

§5A-4-2. Care, control and custody of capitol buildings and grounds.

1 (a) The director has the full responsibility for the care,
2 control and custody of the capitol buildings and in this connec-
3 tion he or she shall:

4 (1) Furnish janitorial services, which are to be provided by
5 employees of the department of administration for the main
6 capitol building, including east and west wings, together with
7 all the departments in the building, or connected with the
8 building, regardless of the budget or budgets, departmental or
9 otherwise, from which the janitorial services are paid, and shall
10 furnish janitorial supplies, light, heat and ventilation for all the
11 rooms and corridors of the buildings: *Provided*, That nothing in
12 this section shall be construed to prohibit contracts for janitorial
13 services with sheltered workshops. The president of the Senate
14 and speaker of the House of Delegates, or their respective
15 designees, have charge of the halls and committee rooms of

16 their respective houses and any other quarters at the state
17 capitol provided for the use of the Legislature or its staff, and
18 shall keep the areas properly cleaned, warmed and in good
19 order, and shall do and perform any other duties in relation to
20 the areas as either house may require;

21 (2) Landscape and take care of the lawns and gardens; and

22 (3) Direct the making of all minor repairs to and alterations
23 of the capitol buildings and governor's mansion and the
24 grounds of the buildings and mansion. Major repairs and
25 alterations shall be made under the supervision of the director,
26 subject to the direction of the secretary.

27 (b) The offices of the assistants and employees appointed
28 to perform these duties shall be located where designated by the
29 secretary, except that they shall not be located in any of the
30 legislative chambers, offices, rooms or halls. Office hours shall
31 be arranged so that emergency or telephone service is available
32 at all times. The hours shall be arranged so that janitorial
33 service shall not interfere with other employment during regular
34 office hours.

35 (c) There is created in the state treasury a special revenue
36 account to be named the "capitol dome and capitol improve-
37 ments fund." The fund shall consist of moneys received under
38 section ten, article twenty-two-a, chapter twenty-nine of this
39 code and funds from any other source. Moneys in the fund shall
40 be expended for maintenance and repairs of the capitol dome
41 and other capital improvements and repairs to state-owned
42 buildings.

**§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 parking
2 facility for the general public and to direct the secretary of the
3 department of administration to plan and construct a parking
4 garage at the state capitol complex that will provide sufficient
5 and additional parking for the general public.

6 (b) The secretary may regulate the parking of motor
7 vehicles in accordance with the provisions of this section with
8 regard to the following state-owned property in the city of
9 Charleston, Kanawha County:

10 (1) The east side of Greenbrier Street between Kanawha
11 Boulevard and Washington Street, East;

12 (2) The west side of California Avenue between Kanawha
13 Boulevard and Washington Street, East;

14 (3) Upon the state-owned grounds upon which state office
15 building no. 3 is located;

16 (4) Upon the state-owned grounds which state office
17 building no. 4, 112 California Avenue, is located;

18 (5) In the state-owned parking garage at 212 California
19 Avenue and upon the state-owned grounds upon which such
20 parking garage is located;

21 (6) Upon the state-owned property at Michigan Avenue and
22 Virginia Terrace; and

23 (7) Upon any other property now or hereafter owned by the
24 state and used for parking purposes in conjunction with the state
25 capitol or state office buildings numbers three and four,
26 including the Laidley field complex: *Provided*, That the
27 secretary shall present to the joint committee on government
28 and finance for its suggestions, on or before the first day of
29 July, one thousand nine hundred ninety-eight, plans for the
30 construction of a state capitol parking garage to be constructed,
31 on property owned by the state or to be purchased by the state,
32 no later than the thirtieth day of June, one thousand nine
33 hundred ninety-nine. The submitted plans shall include propos-
34 als for general public parking, including the estimated use and
35 cost; relocation of parking for official state vehicles; and state
36 employee parking, including the estimated use and cost.

37 (c) The secretary shall propose rules for promulgation
38 respecting parking and to allocate parking spaces to public
39 officers and employees of the state upon all of the property set

40 forth in subsection (a) of this section: *Provided*, That during
41 sessions of the Legislature, including regular, extended,
42 extraordinary and interim sessions, parking on the east side of
43 Greenbrier Street between Kanawha Boulevard and Washington
44 Street, East, in the science and culture center parking lot, on the
45 north side of Kanawha Boulevard between Greenbrier Street
46 and California Avenue, and on the west side of California
47 Avenue between Kanawha Boulevard and Washington Street,
48 East, is subject to rules promulgated jointly by the speaker of
49 the House of Delegates and the president of the Senate. Any
50 person parking any vehicle contrary to the rules promulgated
51 under authority of this subsection is subject to a fine of not less
52 than one dollar nor more than twenty-five dollars for each
53 offense. In addition, the secretary or the Legislature, as the case
54 may be, may cause the removal at owner expense of any vehicle
55 that is parked in violation of the rules. Magistrates in Kanawha
56 County have jurisdiction of all the offenses.

57 (d) The secretary may employ the persons as may be
58 necessary to enforce the parking rules promulgated under the
59 provisions of this section.

60 (e) There is created in the department of administration a
61 special fund to be named the "Parking Garage Fund" in which
62 shall be deposited funds that are appropriated and funds from
63 other sources to be used for the construction and maintenance
64 of a parking garage on the state capitol complex.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

Article

1. Division of Culture and History.

22A. Racetrack Video Lottery.

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-3. Commission on the arts.

1 (a) The commission on the arts is continued and shall be
2 composed of fifteen appointed members.

3 (b)(1) The governor shall appoint, by and with the advice
4 and consent of the Senate, the members of the commission for

5 staggered terms of three years. A person appointed to fill a
6 vacancy shall be appointed only for the remainder of that term.

7 (2) No more than eight members may be of the same
8 political party. Members of the commission shall be appointed
9 so as to fairly represent both sexes, the ethnic and cultural
10 diversity of the state and the geographic regions of the state.

11 (3) The commission shall elect one of its members as chair.
12 It shall meet at the times specified by the chair. Notice of each
13 meeting shall be given to each member by the chair in compli-
14 ance with the open meetings laws of the state. A majority of the
15 members constitute a quorum for the transaction of business.
16 The director of the arts section shall be an ex officio nonvoting
17 member of the commission and shall serve as secretary. The
18 director or a majority of the members may also call a meeting
19 upon notice as provided in this section.

20 (4) Each member or ex officio member of the commission
21 shall serve without compensation, but shall be reimbursed for
22 all reasonable and necessary expenses actually incurred in the
23 performance of the duties of the office; except that in the event
24 the expenses are paid, or are to be paid, by a third party, the
25 member or ex officio member, as the case may be, shall not be
26 reimbursed by the state.

27 (5) Upon recommendation of the commissioner, the
28 governor may also appoint those officers of the state that are
29 appropriate to serve on the commission as ex officio nonvoting
30 members.

31 (c) The commission has the following powers:

32 (1) To advise the commissioner and the director of the arts
33 section concerning the accomplishment of the purposes of that
34 section and to establish a state plan with respect to the arts
35 section;

36 (2) To approve and distribute grants-in-aid and awards from
37 federal and state funds relating to the purposes of the arts
38 section;

39 (3) To request, accept or expend federal funds to accom-
40 plish the purposes of the arts section when federal law or
41 regulations would prohibit the same by the commissioner or
42 section director, but would permit the same to be done by the
43 commission on the arts;

44 (4) To otherwise encourage and promote the purposes of
45 the arts section;

46 (5) To approve rules concerning the professional policies
47 and functions of the section as promulgated by the director of
48 the arts section; and

49 (6) To advise and consent to the appointment of the director
50 by the commissioner.

51 (d) There is created in the state treasury a special revenue
52 account to be named the "grants for competitive arts program
53 fund." The fund shall consist of moneys received under section
54 ten, article twenty-two-a, chapter twenty-nine of this code and
55 funds from any other source. Moneys in the fund shall be
56 expended for the grants for competitive arts program: *Provided,*
57 That the commission shall make a women's veterans memorial
58 statue a priority when expending the funds: *Provided, however,*
59 That the commission shall submit the plans for the statue to the
60 secretary of administration for his or her approval.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-3. Definitions.

§29-22A-6. Video lottery terminal hardware and software requirements; hardware specifications; software requirements for randomness testing; software requirements for percentage payout; software requirements for continuation of video lottery game after malfunction; software requirements for play transaction records.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

§29-22A-13. Payment of credits; no state liability; method of payment; restrictions on payment of credits; redeemed tickets required to be defaced; liability for video lottery terminal malfunction.

§29-22A-19. Compulsive gambling treatment fund.

§29-22A-3. Definitions.

1 As used in this article:

2 (a) "Applicant" means any person applying for any video
3 lottery license or permit.

4 (b) "Associated equipment" means any hardware located on
5 a licensed racetrack's premises which is connected to the video
6 lottery system for the purpose of performing communication,
7 validation or other functions, but not including the video lottery
8 terminals or the communication facilities of a regulated public
9 utility.

10 (c) "Background investigation" means a security, criminal
11 and credit investigation of a person, as defined in this section,
12 who has applied for a video lottery license or permit, or who
13 has been granted a video lottery license or permit.

14 (d) "Central computer," "central control computer" or
15 "central site system" means any central site computer provided
16 to and controlled by the commission to which video lottery
17 terminals communicate for purposes of information retrieval
18 and terminal activation and to disable programs.

19 (e) "Commission" or "state lottery commission" means the
20 West Virginia lottery commission created by article twenty-two
21 of this chapter.

22 (f) "Control" means the authority to direct the management
23 and policies of an applicant or a license or permit holder.

24 (g) "Costs" means the expenses incurred by the commission
25 in the testing and examination of video lottery terminals and the
26 performance of background investigations and other related
27 activities which are charged to and collected from applicants or
28 license or permit holders.

29 (h) "Director" means the individual appointed by the
30 governor to provide management and administration necessary
31 to direct the state lottery office.

32 (i) "Disable" or "terminal disable" means the process of
33 executing a shutdown command from the central control
34 computer which causes video lottery terminals to cease func-
35 tioning.

36 (j) "Display" means the visual presentation of video lottery
37 game features on a video lottery terminal in the form of video
38 images, actual symbols or both.

39 (k) "EPROM" and "erasable programmable read-only
40 memory chips" means the electronic storage medium on which
41 the operation software for all games playable on a video lottery
42 terminal resides and which can also be in the form of CD-ROM,
43 flash RAM or other new technology medium that the commis-
44 sion may from time to time approve for use in video lottery
45 terminals. All electronic storage media are considered to be the
46 property of the state of West Virginia.

47 (l) "Floor attendant" means a person, employed by a
48 licensed racetrack, who holds a permit issued by the commis-
49 sion and who corrects paper jams and bill jams in video lottery
50 terminals and also provides courtesy services for video lottery
51 players.

52 (m) "Gross terminal income" means the total amount of
53 cash, vouchers or tokens inserted into the video lottery termi-
54 nals operated by a licensee, minus the total value of coins and
55 tokens won by a player and game credits which are cleared
56 from the video lottery terminals in exchange for winning
57 redemption tickets.

58 (n) "License" or "video lottery license" means authorization
59 granted by the commission to a racetrack which is licensed by
60 the West Virginia racing commission to conduct thoroughbred
61 or greyhound racing meetings pursuant to article twenty-three,
62 chapter nineteen of this code permitting the racetrack to operate
63 video lottery terminals authorized by the commission.

64 (o) "Lottery" means the public gaming systems or games
65 established and operated by the state lottery commission.

66 (p) "Manufacturer" means any person holding a permit
67 granted by the commission to engage in the business of
68 designing, building, constructing, assembling or manufacturing
69 video lottery terminals, the electronic computer components of
70 the video lottery terminals, the random number generator of the
71 video lottery terminals, or the cabinet in which it is housed, and
72 whose product is intended for sale, lease or other assignment to
73 a licensed racetrack in West Virginia, and who contracts
74 directly with the licensee for the sale, lease or other assignment
75 to a licensed racetrack in West Virginia.

76 (q) "Net terminal income" means gross terminal income
77 minus an amount deducted by the commission to reimburse the
78 commission for its actual costs of administering racetrack video
79 lottery at the licensed racetrack. No deduction for any or all
80 costs and expenses of a licensee related to the operation of
81 video lottery games shall be deducted from gross terminal
82 income.

83 (r) "Noncash prize" means merchandise which a video
84 lottery player may be given the option to receive in lieu of cash
85 in exchange for a winning redemption ticket and which shall be
86 assigned a redemption value equal to the actual cost of the
87 merchandise to the licensed racetrack.

88 (s) "Own" means any beneficial or proprietary interest in
89 any property or business of an applicant or licensed racetrack.

90 (t) "Pari-mutuel racing facility", "licensed racetrack",
91 "racetrack" or "track" means a facility where horse or dog race
92 meetings are held and the pari-mutuel system of wagering is
93 authorized pursuant to the provisions of article twenty-three,
94 chapter nineteen of this code: *Provided, That*, for the purposes
95 of this article, "pari-mutuel racing facility", "licensed race-
96 track", "racetrack" or "track" includes only a facility which was
97 licensed prior to the first day of January, one thousand nine
98 hundred ninety-four, to hold horse or dog race meetings, and

99 which conducts not less than two hundred twenty live racing
100 dates for each horse or dog race meeting or such other number
101 of live racing dates as may be approved by the racing commis-
102 sion in accordance with the provisions of section twelve-b,
103 article twenty-three, chapter nineteen of this code.

104 (u) "Permit" means authorization granted by the commis-
105 sion to a person to function as either a video lottery manufac-
106 turer, service technician or validation manager.

107 (v) "Person" means any natural person, corporation,
108 association, partnership, limited partnership, or other entity,
109 regardless of its form, structure or nature.

110 (w) "Player" means a person who plays a video lottery
111 game on a video lottery terminal at a racetrack licensed by the
112 commission to conduct video lottery games.

113 (x) "Service technician" means a person, employed by a
114 licensed racetrack, who holds a permit issued by the commis-
115 sion and who performs service, maintenance and repair on
116 licensed video lottery terminals in this state.

117 (y) "Video lottery game" means a commission approved,
118 owned and controlled electronically simulated game of chance
119 which is displayed on a video lottery terminal and which:

120 (1) Is connected to the commission's central control
121 computer by an on-line or dial-up communication system;

122 (2) Is initiated by a player's insertion of coins, currency,
123 vouchers or tokens into a video lottery terminal, which causes
124 game play credits to be displayed on the video lottery terminal
125 and, with respect to which, each game play credit entitles a
126 player to choose one or more symbols or numbers or to cause
127 the video lottery terminal to randomly select symbols or
128 numbers;

129 (3) Allows the player to win additional game play credits,
130 coins or tokens based upon game rules which establish the
131 random selection of winning combinations of symbols or

132 numbers or both and the number of free play credits, coins or
133 tokens to be awarded for each winning combination of symbols
134 or numbers or both;

135 (4) Is based upon computer-generated random selection of
136 winning combinations based totally or predominantly on
137 chance;

138 (5) In the case of a video lottery game which allows the
139 player an option to select replacement symbols or numbers or
140 additional symbols or numbers after the game is initiated and in
141 the course of play, either: (A) Signals the player, prior to any
142 optional selection by the player of randomly generated replace-
143 ment symbols or numbers, as to which symbols or numbers
144 should be retained by the player to present the best chance,
145 based upon probabilities, that the player may select a winning
146 combination; (B) signals the player, prior to any optional
147 selection by the player of randomly generated additional
148 symbols or numbers, as to whether such additional selection
149 presents the best chance, based upon probabilities, that the
150 player may select a winning combination; or (C) randomly
151 generates additional or replacement symbols and numbers for
152 the player after automatically selecting the symbols and
153 numbers which should be retained to present the best chance,
154 based upon probabilities, for a winning combination, so that in
155 any event, the player is not permitted to benefit from any
156 personal skill, based upon a knowledge of probabilities, before
157 deciding which optional numbers or symbols to choose in the
158 course of video lottery game play;

159 (6) Allows a player at any time to simultaneously clear all
160 game play credits and print a redemption ticket entitling the
161 player to receive the cash value of the free plays cleared from
162 the video lottery terminal; and

163 (7) Does not use the following game themes commonly
164 associated with casino gambling: Roulette, dice, or baccarat
165 card games: *Provided*, That games having a display with
166 symbols which appear to roll on drums to simulate a classic
167 casino slot machine, game themes of other card games and keno
168 may be used.

169 (z) "Validation manager" means a person who holds a
170 permit issued by the commission and who performs video
171 lottery ticket redemption services.

172 (aa) "Video lottery" means a lottery which allows a game
173 to be played utilizing an electronic computer and an interactive
174 computer terminal device, equipped with a video screen and
175 keys, a keyboard or other equipment allowing input by an
176 individual player, into which the player inserts coins, currency,
177 vouchers or tokens as consideration in order for play to be
178 available, and through which terminal device the player may
179 receive free games, coins, tokens or credit that can be redeemed
180 for cash, annuitized payments over time, a noncash prize or
181 nothing, as may be determined wholly or predominantly by
182 chance. "Video lottery" does not include a lottery game which
183 merely utilizes an electronic computer and a video screen to
184 operate a lottery game and communicate the results of the
185 game, such as the game "Travel", and which does not utilize an
186 interactive electronic terminal device allowing input by an
187 individual player.

188 (bb) "Video lottery terminal" means a commission-ap-
189 proved interactive electronic terminal device which is con-
190 nected with the commission's central computer system, and
191 which is used for the purpose of playing video lottery games
192 authorized by the commission. A video lottery terminal may
193 simulate the play of one or more video lottery games.

194 (cc) "Wager" means a sum of money or thing of value
195 risked on an uncertain occurrence.

**§29-22A-6. Video lottery terminal hardware and software re-
quirements; hardware specifications; software
requirements for randomness testing; software
requirements for percentage payout; software
requirements for continuation of video lottery
game after malfunction; software requirements
for play transaction records.**

1 (a) The commission may approve video lottery terminals
2 and in doing so shall take into account advancements in
3 computer technology, competition from nearby states and the

4 preservation of jobs in the West Virginia pari-mutuel racing
5 industry. In approving video lottery terminals licensed for
6 placement in this state the commission shall ensure that the
7 terminals meet the following hardware specifications:

8 (1) Electrical and mechanical parts and design principles
9 may not subject a player to physical hazards or injury.

10 (2) A surge protector shall be installed on the electrical
11 power supply line to each video lottery terminal. A battery or
12 equivalent power back-up for the electronic meters shall be
13 capable of maintaining accuracy of all accounting records and
14 terminal status reports for a period of one hundred eighty days
15 after power is disconnected from the terminal. The power
16 back-up device shall be located within the locked logic board
17 compartment of the video lottery terminal.

18 (3) An on/off switch which controls the electrical current
19 used in the operation of the terminal shall be located in an
20 accessible place within the interior of the video lottery terminal.

21 (4) The operation of each video lottery terminal may not be
22 adversely affected by any static discharge or other electromag-
23 netic interference.

24 (5) A minimum of one electronic or mechanical coin
25 acceptor or other means accurately and efficiently to establish
26 credits shall be installed on each video lottery terminal. Each
27 video lottery terminal may also contain bill acceptors for one or
28 more of the following: One dollar bills, five dollar bills, ten
29 dollar bills and twenty dollar bills. All coin and bill acceptors
30 must be approved by the commission prior to use on any video
31 lottery terminal in this state.

32 (6) Access to the interior of video lottery terminal shall be
33 controlled through a series of locks and seals.

34 (7) The main logic boards and all erasable programmable
35 read-only memory chips (Eproms) are deemed to be owned by
36 the commission and shall be located in a separate locked and
37 sealed area within the video lottery terminal.

38 (8) The cash compartment shall be located in a separate
39 locked area within or attached to the video lottery terminal.

40 (9) No hardware switches, jumpers, wire posts or any other
41 means of manipulation may be installed which alter the pay
42 tables or payout percentages in the operation of a game.
43 Hardware switches on a video lottery terminal to control the
44 terminal's graphic routines, speed of play, sound and other
45 purely cosmetic features may be approved by the commission.

46 (10) Each video lottery terminal shall contain a single
47 printing mechanism capable of printing an original ticket and
48 retaining an exact legible copy within the video lottery terminal
49 or other means of capturing and retaining an electronic copy of
50 the ticket data as approved by the commission: *Provided*, That
51 such printing mechanism is optional on any video lottery
52 terminal which is designed and equipped exclusively for coin
53 or token payouts. The following information shall be recorded
54 on the ticket when credits accrued on a video lottery terminal
55 are redeemed for cash:

56 (i) The number of credits accrued;

57 (ii) Value of the credits in dollars and cents displayed in
58 both numeric and written form;

59 (iii) Time of day and date;

60 (iv) Validation number; and

61 (v) Any other information required by the commission.

62 (11) A permanently installed and affixed identification plate
63 shall appear on the exterior of each video lottery terminal and
64 the following information shall be on the plate:

65 (i) Manufacturer of the video lottery terminal;

66 (ii) Serial number of the terminal; and

67 (iii) Model number of the terminal.

68 (12) The rules of play for each game shall be displayed on
69 the video lottery terminal face or screen. The commission may
70 reject any rules of play which are incomplete, confusing,
71 misleading or inconsistent with game rules approved by the

72 commission. For each video lottery game, there shall be a
73 display detailing the credits awarded for the occurrence of each
74 possible winning combination of numbers or symbols. A video
75 lottery terminal may not allow more than two dollars to be
76 wagered on a single game. All information required by this
77 subdivision shall be displayed under glass or another transpar-
78 ent substance. No stickers or other removable devices may be
79 placed on the video lottery terminal screen or face without the
80 prior approval of the commission.

81 (13) Communication equipment and devices shall be
82 installed to enable each video lottery terminal to communicate
83 with the commission's central computer system by use of a
84 communications protocol provided by the commission to each
85 permitted manufacturer, which protocol shall include informa-
86 tion retrieval and terminal activation and disable programs, and
87 the commission may require each licensed racetrack to pay the
88 cost of a central site computer as a part of the licensing require-
89 ment.

90 (14) All video lottery terminals shall have a security system
91 which temporarily disables the gaming function of the terminal
92 while opened.

93 (b) Each video lottery terminal shall have a random number
94 generator to determine randomly the occurrence of each
95 specific symbol or number used in video lottery games. A
96 selection process is random if it meets the following statistical
97 criteria:

98 (1) Chi-square test. Each symbol or number shall satisfy the
99 ninety-nine percent confidence limit using the standard chi-
100 square statistical analysis of the difference between the ex-
101 pected result and the observed result.

102 (2) Runs test. Each symbol or number may not produce a
103 significant statistic with regard to producing patterns of
104 occurrences. Each symbol or number is random if it meets the
105 ninety-nine percent confidence level with regard to the "runs
106 test" for the existence of recurring patterns within a set of data.

107 (3) Correlation test. Each pair of symbols or numbers is
108 random if it meets the ninety-nine percent confidence level

109 using standard correlation analysis to determine whether each
110 symbol or number is independently chosen without regard to
111 another symbol or number within a single game play.

112 (4) Serial correlation test. Each symbol or number is
113 random if it meets the ninety-nine percent confidence level
114 using standard serial correlation analysis to determine whether
115 each symbol or number is independently chosen without
116 reference to the same symbol or number in a previous game.

117 (c) Each video lottery terminal shall meet the following
118 maximum and minimum theoretical percentage payout during
119 the expected lifetime of said terminal:

120 (1) Video lottery games shall pay out no less than eighty
121 percent and no more than ninety-five percent of the amount
122 wagered. The theoretical payout percentage will be determined
123 using standard methods of probability theory.

124 (2) Manufacturers must file a request and receive approval
125 from the commission prior to manufacturing for placement in
126 this state video lottery terminals programmed for a payout
127 greater than ninety-two percent of the amount wagered.
128 Commission approval must be obtained prior to applying for
129 testing of such high payout terminals.

130 (3) Each terminal shall have a probability greater than one
131 in seventeen million of obtaining the maximum payout for each
132 play.

133 (d) Each video lottery terminal shall be capable of continu-
134 ing the current game with all current game features after a video
135 lottery terminal malfunction is cleared. If a video lottery
136 terminal is rendered totally inoperable during game play, the
137 current wager and all credits appearing on the video lottery
138 terminal screen prior to the malfunction shall be returned to the
139 player.

140 (e) Each video lottery terminal shall at all times maintain
141 electronic accounting regardless of whether the terminal is
142 being supplied with electrical power. Each meter shall be
143 capable of maintaining a total of no less than eight digits in

144 length for each type of data required. The electronic meters
145 shall record the following information:

146 (1) Number of coins inserted by players or the coin equiva-
147 lent if a bill acceptor is being used or tokens or vouchers are
148 used;

149 (2) Number of credits wagered;

150 (3) Number of total credits, coins and tokens won;

151 (4) Number of credits paid out by a printed ticket;

152 (5) Number of coins or tokens won, if applicable;

153 (6) Number of times the logic area was accessed;

154 (7) Number of times the cash door was accessed;

155 (8) Number of credits wagered in the current game;

156 (9) Number of credits won in the last complete video lottery
157 game; and

158 (10) Number of cumulative credits representing money
159 inserted by a player and credits for video lottery games won but
160 not collected.

161 (f) No video lottery terminal may have any mechanism
162 which allows the electronic accounting meters to clear automat-
163 ically. Electronic accounting meters may not be cleared without
164 the prior approval of the commission. Both before and after any
165 electronic accounting meter is cleared, all meter readings shall
166 be recorded in the presence of a commission employee.

167 (g) The primary responsibility for the control and regulation
168 of any video lottery games and video lottery terminals operated
169 pursuant to this article rests with the commission.

170 (h) The commission shall directly or through a contract
171 with a third party vendor other than the video lottery licensee,
172 maintain a central site system of monitoring the lottery termi-
173 nals, utilizing an on-line or dial-up inquiry. The central site
174 system shall be capable of monitoring the operation of each
175 video lottery game or video lottery terminal operating pursuant
176 to this article and, at the direction of the director, immediately

177 disable and cause not to operate, any video lottery game and
178 video lottery terminal. As provided in this section, the commis-
179 sion may require the licensed racetrack to pay the cost of a
180 central site computer as part of the licensing requirement.

***§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 protocol
3 documentation data necessary to enable the respective manufac-
4 turer's video lottery terminals to communicate with the
5 commission's central computer for transmitting auditing
6 program information and for activation and disabling of video
7 lottery terminals.

8 (b) The gross terminal income of a licensed racetrack shall
9 be remitted to the commission through the electronic transfer of
10 funds. Licensed racetracks shall furnish to the commission all
11 information and bank authorizations required to facilitate the
12 timely transfer of moneys to the commission. Licensed race-
13 tracks must provide the commission thirty days' advance notice
14 of any proposed account changes in order to assure the uninter-
15 rupted electronic transfer of funds. From the gross terminal
16 income remitted by the licensee to the commission, the com-
17 mission shall deduct an amount sufficient to reimburse the
18 commission for its actual costs and expenses incurred in
19 administering racetrack video lottery at the licensed racetrack,
20 and the resulting amount after such deduction shall be the net
21 terminal income. The amount deducted for administrative costs
22 and expenses of the commission may not exceed four percent
23 of gross terminal income.

* Clerk's Note: This section was also amended by SB 380 (Chapter 131), which passed prior to this act.

24 (c) Net terminal income shall be divided as set out in this
25 subsection. The licensed racetrack's share shall be in lieu of all
26 lottery agent commissions and is considered to cover all costs
27 and expenses required to be expended by the licensed racetrack
28 in connection with video lottery operations. The division shall
29 be made as follows:

30 (1) The commission shall receive thirty percent of net
31 terminal income, which shall be paid into the general revenue
32 fund of the state to be appropriated by the Legislature;

33 (2) Fourteen percent of net terminal income at a licensed
34 racetrack shall be deposited in the special fund established by
35 the licensee, and used for payment of regular purses in addition
36 to other amounts provided for in article twenty-three, chapter
37 nineteen of this code;

38 (3) The county where the video lottery terminals are located
39 shall receive two percent of the net terminal income: *Provided,*
40 *That:*

41 (A) Beginning the first day of July, one thousand nine
42 hundred ninety-nine, and thereafter, any amount in excess of
43 the two percent received during fiscal year one thousand nine
44 hundred ninety-nine by a county in which a racetrack is located
45 that has participated in the West Virginia thoroughbred devel-
46 opment fund since on or before the first day of January, one
47 thousand nine hundred ninety-nine, shall be divided as follows:

48 (i) The county shall receive fifty percent of the excess
49 amount; and

50 (ii) The municipalities of the county shall receive fifty
51 percent of the excess amount, said fifty percent to be divided
52 among the municipalities on a per capita basis as determined by
53 the most recent decennial United States census of population; and

54 (B) Beginning the first day of July, one thousand nine
55 hundred ninety-nine, and thereafter, any amount in excess of
56 the two percent received during fiscal year one thousand nine
57 hundred ninety-nine by a county in which a racetrack other than
58 a racetrack described in paragraph (A) of this proviso is located
59 and where the racetrack has been located in a municipality

60 within the county since on or before the first day of January,
61 one thousand nine hundred ninety-nine, shall be divided, if
62 applicable, as follows:

63 (i) The county shall receive fifty percent of the excess
64 amount; and

65 (ii) The municipality shall receive fifty percent of the
66 excess amount; and

67 (C) This proviso shall not affect the amount to be received
68 under this subdivision by any county other than a county
69 described in paragraph (A) or (B) of this proviso;

70 (4) One half of one percent of net terminal income shall be
71 paid for and on behalf of all employees of the licensed racing
72 association by making a deposit into a special fund to be
73 established by the racing commission to be used for payment
74 into the pension plan for all employees of the licensed racing
75 association;

76 (5) The West Virginia thoroughbred development fund
77 created under section thirteen-b, article twenty-three, chapter
78 nineteen of this code and the West Virginia greyhound breeding
79 development fund created under section ten, article
80 twenty-three, chapter nineteen of this code shall receive an
81 equal share of a total of not less than one and one-half percent
82 of the net terminal income: *Provided*, That for any racetrack
83 which does not have a breeder's program supported by the
84 thoroughbred development fund or the greyhound breeding
85 development fund, the one and one-half percent provided for in
86 this subdivision shall be deposited in the special fund estab-
87 lished by the licensee and used for payment of regular purses,
88 in addition to other amounts provided for in subdivision (2) of
89 this subsection and article twenty-three, chapter nineteen of this
90 code;

91 (6) The West Virginia thoroughbred breeders classic shall
92 receive one percent of the net terminal income which shall be
93 used for purses. The moneys shall be deposited in the separate
94 account established for the classic under section thirteen, article
95 twenty-three, chapter nineteen of this code;

96 (7) A licensee shall receive forty-seven percent of net
97 terminal income;

98 (8) The tourism promotion fund established in section
99 twelve, article two, chapter five-b of this code shall receive
100 three percent of the net terminal income; and

101 (9) The veterans memorial program shall receive one
102 percent of the net terminal income until sufficient moneys have
103 been received to complete the veterans memorial on the
104 grounds of the state capitol complex in Charleston, West
105 Virginia. The moneys shall be deposited in the state treasury in
106 the division of culture and history special fund created under
107 section three, article one-i, chapter twenty-nine of this code:
108 *Provided*, That only after sufficient moneys have been depos-
109 ited in the fund to complete the veterans memorial and to pay
110 in full the annual bonded indebtedness on the veterans memo-
111 rial, not more than twenty thousand dollars of the one percent
112 of net terminal income provided for in this subdivision shall be
113 deposited into a special revenue fund in the state treasury, to be
114 known as the "John F. 'Jack' Bennett Fund". The moneys in
115 this fund shall be expended by the division of veterans affairs
116 to provide for the placement of markers for the graves of
117 veterans in perpetual cemeteries in this state. The division of
118 veterans affairs shall promulgate legislative rules pursuant to
119 the provisions of article three, chapter twenty-nine-a of this
120 code specifying the manner in which the funds are spent,
121 determine the ability of the surviving spouse to pay for the
122 placement of the marker, and setting forth the standards to be
123 used to determine the priority in which the veterans grave
124 markers will be placed in the event that there are not sufficient
125 funds to complete the placement of veterans grave markers in
126 any one year, or at all. Upon payment in full of the bonded
127 indebtedness on the veterans memorial, one hundred thousand
128 dollars of the one percent of net terminal income provided for
129 in this subdivision shall be deposited in the special fund in the
130 division of culture and history created under section three,
131 article one-i, chapter twenty-nine of this code and be expended
132 by the division of culture and history to establish a West
133 Virginia veterans memorial archives within the cultural center

134 to serve as a repository for the documents and records pertain-
135 ing to the veterans memorial, to restore and maintain the
136 monuments and memorial on the capitol grounds, and not more
137 than twenty thousand dollars be deposited in the "John F. 'Jack'
138 Bennett Fund": *Provided, however*, That five hundred thousand
139 dollars of the one percent of net terminal income shall be
140 deposited in the state treasury in a special fund of the depart-
141 ment of administration, created under section five, article four,
142 chapter five-a of this code to be used for construction and
143 maintenance of a parking garage on the state capitol complex:
144 *Provided further*, That the remainder of the one percent of net
145 terminal income shall be deposited in equal amounts in the
146 capitol dome and improvements fund created under section two,
147 article four, chapter five-a of this code and the grants for
148 competitive arts program fund created under section three,
149 article one, chapter twenty-nine of this code.

150 (d) Each licensed racetrack shall maintain in its account an
151 amount equal to or greater than the gross terminal income from
152 its operation of video lottery machines, to be electronically
153 transferred by the commission on dates established by the
154 commission. Upon a licensed racetrack's failure to maintain
155 this balance, the commission may disable all of a licensed
156 racetrack's video lottery terminals until full payment of all
157 amounts due is made. Interest shall accrue on any unpaid
158 balance at a rate consistent with the amount charged for state
159 income tax delinquency under chapter eleven of this code,
160 which interest shall begin to accrue on the date payment is due
161 to the commission.

162 (e) The commission's central control computer shall keep
163 accurate records of all income generated by each video lottery
164 terminal. The commission shall prepare and mail to the licensed
165 racetrack a statement reflecting the gross terminal income
166 generated by the licensee's video lottery terminals. Each
167 licensed racetrack must report to the commission any discrep-
168 ancies between the commission's statement and each terminal's
169 mechanical and electronic meter readings. The licensed
170 racetrack is solely responsible for resolving income discrepan-

171 cies between actual money collected and the amount shown on
172 the accounting meters or on the commission's billing statement.

173 (f) Until an accounting discrepancy is resolved in favor of
174 the licensed racetrack, the commission may make no credit
175 adjustments. For any video lottery terminal reflecting a discrep-
176 ancy, the licensed racetrack shall submit to the commission the
177 maintenance log which includes current mechanical meter
178 readings and the audit ticket which contains electronic meter
179 readings generated by the terminal's software. If the meter
180 readings and the commission's records cannot be reconciled,
181 final disposition of the matter shall be determined by the
182 commission. Any accounting discrepancies which cannot be
183 otherwise resolved shall be resolved in favor of the commis-
184 sion.

185 (g) Licensed racetracks shall remit payment by mail if the
186 electronic transfer of funds is not operational or the commission
187 notifies licensed racetracks that remittance by this method is
188 required. The licensed racetracks shall report an amount equal
189 to the total amount of cash inserted into each video lottery
190 terminal operated by a licensee, minus the total value of game
191 credits which are cleared from the video lottery terminal in
192 exchange for winning redemption tickets, and remit such
193 amount as generated from its terminals during the reporting
194 period. The remittance shall be sealed in a properly addressed
195 and stamped envelope and deposited in the United States mail
196 no later than noon on the day when the payment would other-
197 wise be completed through electronic funds transfer.

198 (h) Licensed racetracks may, upon request, receive addi-
199 tional reports of play transactions for their respective video
200 lottery terminals and other marketing information not consid-
201 ered confidential by the commission. The commission may
202 charge a reasonable fee for the cost of producing and mailing
203 any report other than the billing statements.

204 (i) The commission has the right to examine all accounts,
205 bank accounts, financial statements and records in a licensed
206 racetrack's possession, under its control or in which it has an
207 interest and the licensed racetrack must authorize all third

208 parties in possession or in control of the accounts or records to
209 allow examination of any of those accounts or records by the
210 commission.

**§29-22A-13. Payment of credits; no state liability; method of
payment; restrictions on payment of credits;
redeemed tickets required to be defaced; liability
for video lottery terminal malfunction.**

1 (a) No payment for credits awarded on a video lottery
2 terminal may be made unless the ticket meets the following
3 requirements:

4 (1) The ticket is fully legible and printed on paper approved
5 by the commission and the ticket contains all information
6 required by this article;

7 (2) The ticket is not mutilated, altered, unreadable or
8 tampered with in any manner;

9 (3) The ticket is not counterfeit, in whole or in part; and

10 (4) The ticket is presented by a person authorized to play
11 video lottery pursuant to this article.

12 (b) Each licensed racetrack shall designate validation
13 managers and employees authorized to redeem tickets and to
14 sell and redeem tokens during the business hours of operation.
15 Credits shall be immediately paid in cash, by check, by
16 annuitized payments over time or in the form of a noncash
17 prize, when a player presents a valid ticket for payment.

18 (c) Licensed racetracks shall not redeem tickets for credits
19 awarded on video lottery terminals which are not located on its
20 premises. A ticket must be presented for payment no later than
21 ten days after the date the ticket is printed. The commission is
22 not liable for the payment of any video lottery ticket credits.

23 (d) All tickets redeemed by a licensed racetrack shall be
24 defaced in a manner which prevents any subsequent present-
25 ment and payment.

26 (e) The commission is not responsible for any video lottery
27 terminal malfunction which causes a credit to be wrongfully

28 awarded or denied to players. The licensed racetrack is solely
29 responsible for any wrongful award or denial of credits.

§29-22A-19. Compulsive gambling treatment fund.

1 There is hereby created and established a separate special
2 account to be known as the “Compulsive Gambling Treatment
3 Fund”. Such fund shall be appropriated from the commission’s
4 administrative expense account and shall be not less than one
5 hundred fifty thousand dollars nor more than five hundred
6 thousand dollars per fiscal year, as determined by the commis-
7 sion, to provide funds for compulsive gambling treatment
8 programs in the state.

9 The department of health and human resources shall
10 develop criteria which a treatment program for compulsive
11 gamblers must meet in order to become eligible for a grant from
12 the funds made available for such treatment programs pursuant
13 to this provision. The department, in conjunction with the
14 commission, shall develop a formula for the distribution of
15 available funds which will result in an equitable distribution
16 among programs submitted which meet the eligibility criteria
17 for grants as developed by the department.

18 The Commission shall report annually to the Legislature the
19 number and amounts of grants distributed and the number of
20 people served by such programs.

CHAPTER 131

(Com. Sub. for S. B. 380 — By Senator Schoonover)

[Passed March 13, 1999; in effect ninety days 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; and to further amend said chapter by adding thereto a new article, designated article twenty-

five, all relating generally to authorized games of chance; redistributing moneys from racetrack video lottery; authorizing a gaming facility and providing generally therefor; legislative findings and intent; defining certain terms; duties and powers of the state lottery commission; authorizing operation of video lottery games at the gaming facility; appointment of lottery commission staff; adoption and proposal of rules; contract agreements and cost for law-enforcement services; local option elections to approve licensure of a gaming facility; providing generally for licenses to engage in activities related to operation of a gaming facility; authorization for no more than one license; severability of article; qualifications for applicant for license to operate a gaming facility; conditions of license; license application requirements; information required of certain corporations; gaming facility qualifications; application, license and investigative fees; requirement for surety bond; authorization of license and prohibiting transfer, assignment, sale or pledge as collateral; audits and reports of licensee; requirements for license for supplier of gaming facility; requirements for license for employee of operator of gaming facility; prohibition of false statements on application for license; grounds for denial, revocation or suspension of license; reprimand of licensee; information included on license; display and availability of license; notice of change of address; expiration and renewal of licenses; renewal fees; hearing procedures; licensee consent to warrantless searches of person and property; patron consent to presence of law-enforcement officers; permitting gaming operators to set wagers; transfers of gross terminal income to state gaming fund; imposing privilege tax on adjusted gross receipts of gaming facility; providing generally for filing and payment of taxes; creating state gaming fund; distribution of amounts in fund; prohibited wagers and other activities; prohibiting wagers by certain persons; establishing criminal offenses and penalties; forfeiture of certain property; and providing civil penalties.

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; and that said chapter be further

amended by adding thereto a new article, designated article twenty-five, all to read as follows:

Article

22A. Racetrack Video Lottery.

25. Authorized Gaming Facility.

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 protocol
3 documentation data necessary to enable the respective manufac-
4 turer's video lottery terminals to communicate with the com-
5 mission's central computer for transmitting auditing program
6 information and for activation and disabling of video lottery
7 terminals.

8 (b) The gross terminal income of a licensed racetrack shall
9 be remitted to the commission through the electronic transfer of
10 funds. Licensed racetracks shall furnish to the commission all
11 information and bank authorizations required to facilitate the
12 timely transfer of moneys to the commission. Licensed race-
13 tracks must provide the commission thirty days' advance notice
14 of any proposed account changes in order to assure the uninter-
15 rupted electronic transfer of funds. From the gross terminal
16 income remitted by the licensee to the commission, the com-
17 mission shall deduct an amount sufficient to reimburse the
18 commission for its actual costs and expenses incurred in
19 administering racetrack video lottery at the licensed racetrack,
20 and the resulting amount after that deduction is the net terminal
21 income. The amount deducted for administrative costs and

* **Clerk's Note:** This section was also amended by HB 3029 (Chapter 130), which passed subsequent to this act.

22 expenses of the commission may not exceed four percent of
23 gross terminal income.

24 (c) Net terminal income shall be divided as set out in this
25 subsection. The licensed racetrack's share shall be in lieu of all
26 lottery agent commissions and is considered to cover all costs
27 and expenses required to be expended by the licensed racetrack
28 in connection with video lottery operations. The division shall
29 be made as follows:

30 (1) The commission shall receive thirty percent of net
31 terminal income, which shall be paid into the general revenue
32 fund of the state to be appropriated by the Legislature;

33 (2) Fourteen percent of net terminal income at a licensed
34 racetrack shall be deposited in the special fund established by
35 the licensee and used for payment of regular purses in addition
36 to other amounts provided for in article twenty-three, chapter
37 nineteen of this code;

38 (3) The county where the video lottery terminals are located
39 shall receive two percent of the net terminal income;

40 (4) One half of one percent of net terminal income shall be
41 paid for and on behalf of all employees of the licensed racing
42 association by making a deposit into a special fund to be
43 established by the racing commission to be used for payment
44 into the pension plan for all employees of the licensed racing
45 association;

46 (5) The West Virginia thoroughbred development fund
47 created under section thirteen-b, article twenty-three, chapter
48 nineteen of this code and the West Virginia greyhound breeding
49 development fund created under section ten, article
50 twenty-three, chapter nineteen of this code shall receive an
51 equal share of a total of not less than one and one-half percent
52 of the net terminal income: *Provided*, That for any racetrack
53 which does not have a breeder's program supported by the
54 thoroughbred development fund or the greyhound breeding
55 development fund, the one and one-half percent provided for in
56 this subdivision shall be deposited in the special fund estab-
57 lished by the licensee and used for payment of regular purses,

58 in addition to other amounts provided for in subdivision (2) of
59 this subsection and article twenty-three, chapter nineteen of this
60 code;

61 (6) The West Virginia thoroughbred breeders classic shall
62 receive one percent of the net terminal income which shall be
63 used for purses. The moneys shall be deposited in the separate
64 account established for the classic under section thirteen, article
65 twenty-three, chapter nineteen of this code;

66 (7) A licensee shall receive forty-seven percent of net
67 terminal income;

68 (8) The tourism promotion fund established in section
69 twelve, article two, chapter five-b of this code shall receive
70 three percent of the net terminal income; and

71 (9) The remaining one percent of net terminal income shall
72 be distributed in the manner set forth in this subdivision. Not
73 more than twenty thousand dollars of the one percent of net
74 terminal income provided for in this subdivision shall be
75 deposited into a special revenue fund in the state treasury, to be
76 known as the "John F. 'Jack' Bennett Fund". The moneys in
77 this fund shall be expended by the division of veterans affairs
78 to provide for the placement of markers for the graves of
79 veterans in perpetual cemeteries in this state. The division of
80 veterans affairs shall propose legislative rules for promulgation
81 pursuant to the provisions of article three, chapter twenty-nine-a
82 of this code specifying the manner in which the funds are spent,
83 determining the ability of the surviving spouse to pay for the
84 placement of the marker, and setting forth the standards to be
85 used to determine the priority in which the veterans grave
86 markers will be placed in the event that there are not sufficient
87 funds to complete the placement of veterans grave markers in
88 any one year, or at all. One hundred thousand dollars of the one
89 percent of net terminal income provided for in this subdivision
90 shall be deposited in the special fund in the division of culture
91 and history created under section three, article one-i, chapter
92 twenty-nine of this code and be expended by the division of
93 culture and history to establish a West Virginia veterans
94 memorial archives within the cultural center to serve as a

95 repository for the documents and records pertaining to the
96 veterans memorial and to restore and maintain the monuments
97 and memorial on the capitol grounds. Five hundred thousand
98 dollars of the one percent of net terminal income shall be
99 deposited in the state treasury in a special fund of the depart-
100 ment of administration, created under section five, article four,
101 chapter five-a of this code to be used for construction and
102 maintenance of a parking garage on the state capitol complex.
103 The remainder of the one percent of net terminal income shall
104 be deposited in equal amounts into the grants for competitive
105 arts program and the capitol dome and capitol improvements
106 fund.

107 (d) Each licensed racetrack shall maintain in its account an
108 amount equal to or greater than the gross terminal income from
109 its operation of video lottery machines, to be electronically
110 transferred by the commission on dates established by the
111 commission. Upon a licensed racetrack's failure to maintain
112 this balance, the commission may disable all of a licensed
113 racetrack's video lottery terminals until full payment of all
114 amounts due is made. Interest shall accrue on any unpaid
115 balance at a rate consistent with the amount charged for state
116 income tax delinquency under chapter eleven of this code,
117 which interest shall begin to accrue on the date payment is due
118 to the commission.

119 (e) The commission's central control computer shall keep
120 accurate records of all income generated by each video lottery
121 terminal. The commission shall prepare and mail to the licensed
122 racetrack a statement reflecting the gross terminal income
123 generated by the licensee's video lottery terminals. Each
124 licensed racetrack shall report to the commission any discrepan-
125 cies between the commission's statement and each terminal's
126 mechanical and electronic meter readings. The licensed
127 racetrack is solely responsible for resolving income discrepan-
128 cies between actual money collected and the amount shown on
129 the accounting meters or on the commission's billing statement.

130 (f) Until an accounting discrepancy is resolved in favor of
131 the licensed racetrack, the commission may make no credit

132 adjustments. For any video lottery terminal reflecting a discrep-
133 ancy, the licensed racetrack shall submit to the commission the
134 maintenance log which includes current mechanical meter
135 readings and the audit ticket which contains electronic meter
136 readings generated by the terminal's software. If the meter
137 readings and the commission's records cannot be reconciled,
138 final disposition of the matter shall be determined by the
139 commission. Any accounting discrepancies which cannot be
140 otherwise resolved shall be resolved in favor of the commis-
141 sion.

142 (g) Licensed racetracks shall remit payment by mail if the
143 electronic transfer of funds is not operational or the commission
144 notifies licensed racetracks that remittance by this method is
145 required. The licensed racetracks shall report an amount equal
146 to the total amount of cash inserted into each video lottery
147 terminal operated by a licensee, minus the total value of game
148 credits which are cleared from the video lottery terminal in
149 exchange for winning redemption tickets, and remit the amount
150 as generated from its terminals during the reporting period. The
151 remittance shall be sealed in a properly addressed and stamped
152 envelope and deposited in the United States mail no later than
153 noon on the day when the payment would otherwise be com-
154 pleted through electronic funds transfer.

155 (h) Licensed racetracks may, upon request, receive addi-
156 tional reports of play transactions for their respective video
157 lottery terminals and other marketing information not consid-
158 ered confidential by the commission. The commission may
159 charge a reasonable fee for the cost of producing and mailing
160 any report other than the billing statements.

161 (i) The commission has the right to examine all accounts,
162 bank accounts, financial statements and records in a licensed
163 racetrack's possession, under its control or in which it has an
164 interest and the licensed racetrack shall authorize all third
165 parties in possession or in control of the accounts or records to
166 allow examination of any of those accounts or records by the
167 commission.

ARTICLE 25. AUTHORIZED GAMING FACILITY.

- §29-25-1. Authorization of limited gaming facility; findings; intent.
- §29-25-2. Definitions.
- §29-25-3. Commission duties and powers.
- §29-25-4. Appointment of commission staff; conditions of employment.
- §29-25-5. Rules.
- §29-25-6. Law enforcement.
- §29-25-7. Local option.
- §29-25-8. Licenses required.
- §29-25-9. License to operate a gaming facility.
- §29-25-10. Reports by licensee.
- §29-25-11. License to supply gaming facility.
- §29-25-12. License to be employed by operator of gaming facility.
- §29-25-13. False statements on applications; other license requirements and prohibitions.
- §29-25-14. Licenses; availability for inspection; change of address.
- §29-25-15. Expiration date and renewal of gaming license.
- §29-25-16. License denial, revocation and reprimand.
- §29-25-17. Hearing procedures.
- §29-25-18. Consent to warrantless search.
- §29-25-19. Consent to presence of law-enforcement officers; wagering limits.
- §29-25-20. Accounting and reporting of gross terminal income.
- §29-25-21. Taxes on games other than video lottery games.
- §29-25-22. State gaming fund created; allocation of net income.
- §29-25-23. Prohibition on unauthorized wagering.
- §29-25-24. Individual gaming restrictions.
- §29-25-25. Offenses and penalties.
- §29-25-26. Forfeiture of property.
- §29-25-27. Civil penalties.

§29-25-1. Authorization of limited gaming facility; findings; intent.

1 (a) *Operation of authorized games of chance.* — Notwith-
2 standing any provision of law to the contrary, the operation of
3 those authorized games of chance permitted by this article and
4 the related operation of a gaming facility and ancillary activities
5 is not unlawful when conducted under the terms specified in
6 this article.

7 (b) *Legislative findings.* — The Legislature finds and
8 declares that the tourism industry plays a critical role in the
9 economy of this state and that a substantial state interest exists
10 in protecting that industry. It further finds and declares that the
11 authorization of the operation of a gaming facility at no more
12 than one well-established historic resort hotel in this state as

13 provided in this article will serve to protect and enhance the
14 tourism industry, and indirectly other segments of the economy
15 of this state, by providing a resort hotel amenity which is
16 becoming increasingly important to many actual and potential
17 resort hotel patrons.

18 The Legislature finds and declares that, except for video
19 lottery operation pursuant to subsection (c), section three of this
20 article, the operation of the authorized games of chance
21 permitted by this article does not constitute the operation of
22 lotteries or gift enterprises within the purview of section thirty-
23 six, article VI of the constitution of this state.

24 With respect to video lottery games contemplated hereun-
25 der, the Legislature restates and reaffirms the findings and
26 declarations set forth in section two, article twenty-two-a of this
27 chapter.

28 (c) *Legislative intent.* — It is the intent of the Legislature in
29 the enactment of this article to promote tourism and year-round
30 employment in this state. It is expressly not the intent of the
31 Legislature to promote gaming. As a consequence, it is the
32 intent of the Legislature to allow limited gaming as authorized
33 by this article with all moneys gained from the operation of the
34 gaming facility, other than those necessary to reimburse
35 reasonable costs of operation, to enure to the benefit of the
36 state.

§29-25-2. Definitions.

1 (a) “Applicant” means any person or entity applying for a
2 license.

3 (b) “Adjusted gross receipts” means the gross receipts of a
4 gaming facility from authorized games of chance less winnings
5 paid to wagerers in the games.

6 (c) “Authorized game of chance” includes baccarat, twenty-
7 one or blackjack, poker, craps, roulette, wheel of fortune, video
8 lottery games and any other Monte Carlo style table game
9 expressly authorized by rule of the commission, but expressly
10 excludes punchboards, faro, keno, numbers tickets, push cards,
11 jar tickets, pull tabs or similar games.

12 (d) "Controlling interest" means:

13 (1) For a partnership, an interest as a general or limited
14 partner holding more than fifty percent interest in the entity;

15 (2) For a corporation, an interest of more than fifty percent
16 of the stock in the corporation; and

17 (3) For any other entity, an ownership interest of more than
18 fifty percent in the entity.

19 (e) "Controlling person" means, with respect to another
20 person, any person directly or indirectly owning or holding a
21 controlling interest in that other person.

22 (f) "Commission" means the state lottery commission
23 created in section four, article twenty-two of this chapter.

24 (g) "Director" means the director of the state lottery
25 commission.

26 (h) "Gaming devices and supplies" means gaming tables for
27 all authorized games of chance, roulette wheels, wheels of
28 fortune, video lottery terminals, cards, dice, chips, tokens,
29 markers or any other mechanical, electronic or other device,
30 mechanism or equipment or related supplies utilized in the
31 operation of an authorized game of chance.

32 (i) "Gaming facility" means a designated area on the
33 premises of an historic resort hotel in which authorized games
34 of chance are conducted by a gaming licensee.

35 (j) "Gaming licensee" means the licensed operator of a
36 gaming facility.

37 (k) "Gross receipts" means the total amount of money
38 exchanged for the purchase of chips, tokens or electronic cards
39 by patrons of a gaming facility reduced by gross terminal
40 income to the extent gross terminal income is included in the
41 amount of money exchanged.

42 (l) "Gross terminal income" has the same meaning ascribed
43 to the term as set forth in article twenty-two-a of this chapter.

44 (m) "Historic resort hotel" means a resort hotel registered
45 with the United States department of the interior as a national
46 historic landmark in its national registry of historic places
47 having not fewer than five hundred guest rooms under common
48 ownership and having substantial recreational guest amenities
49 in addition to the gaming facility.

50 (n) "License" means a license issued by the commission,
51 including:

52 (1) A license to operate a gaming facility;

53 (2) A license to supply gaming devices and supplies to a
54 gaming facility; or

55 (3) A license to be employed in connection with the
56 operation of a gaming facility.

57 (o) "Licensed gaming facility employee" means any
58 individual licensed to be employed by a gaming licensee in
59 connection with the operation of a gaming facility.

60 (p) "Licensed gaming facility supplier" means a person who
61 is licensed by the commission to engage in the business of
62 supplying gaming devices and gaming supplies to a gaming
63 facility.

64 (q) "Licensee" means a gaming licensee, a licensed gaming
65 facility supplier or a licensed gaming facility employee.

66 (r) "Person" means any natural person, corporation,
67 association, partnership, limited partnership, limited liability
68 company or other entity, regardless of its form, structure or
69 nature.

70 (s) "State gaming fund" means the special fund in the state
71 treasury created in section twenty-two of this article.

72 (t) "Video lottery games" and "video lottery terminals"
73 have the same meaning ascribed the terms in article twenty-
74 two-a of this chapter.

§29-25-3. Commission duties and powers.

1 (a) Duties. — In addition to the duties set forth elsewhere
2 in this article, the commission shall:

3 (1) Establish standards for gaming devices and supplies,
4 including electronic or mechanical gaming devices;

5 (2) Approve rules for all authorized games of chance
6 proposed to be operated by a gaming licensee;

7 (3) Establish standards governing gaming facilities gener-
8 ally, including the maintenance of financial books and records;

9 (4) Provide staff to supervise, inspect and monitor the
10 operation of any gaming facility, including inspection of
11 gaming devices and supplies used in the operation to assure
12 continuous compliance with all rules of the commission and
13 provisions of this article;

14 (5) Establish minimum levels of insurance to be maintained
15 with respect to a gaming facility;

16 (6) Investigate applicants to determine eligibility for any
17 license and, where appropriate, select among competing
18 applicants;

19 (7) Designate appropriate classifications of personnel to be
20 employed in the operation of a gaming facility and establish
21 appropriate licensing standards within the classifications;

22 (8) Issue all licenses;

23 (9) Charge and collect the taxes and fees authorized,
24 required or specified in this article and receive, accept and pay
25 all taxes and fees collected under this article into the state
26 gaming fund;

27 (10) Maintain a record of all licenses issued;

28 (11) Keep a public record of all commission actions and
29 proceedings; and

30 (12) File a written report to the governor, the president of
31 the Senate and the speaker of the House of Delegates on or
32 before the thirtieth day of January of each year and any addi-
33 tional reports as the governor or Legislature may request.

34 (b) Powers. — In addition to the powers set forth elsewhere
35 in this article, the commission has the following powers:

36 (1) To sue to enforce any provision of this article by
37 injunction;

38 (2) To hold hearings, administer oaths and issue subpoenas
39 for the attendance of a witness to testify and to produce
40 evidence;

41 (3) To enter a gaming facility at any time and without
42 notice to ensure strict compliance with the rules of the commis-
43 sion;

44 (4) To bar, for cause, any person from entering or partici-
45 pating in any capacity in the operation of a gaming facility; and

46 (5) To exercise any other powers that may be necessary to
47 effectuate the provisions of this article.

48 (c) Video lottery games. — The commission is authorized
49 to implement and operate video lottery games at the gaming
50 facility licensed pursuant to this article consistent with the
51 gaming licensee's operation of the gaming facility. With respect
52 to video lottery games, the provisions of article twenty-two-a of
53 this chapter apply to this article, except in the event of a conflict
54 or inconsistency between any of the provisions of this article
55 and the provisions of article twenty-two-a of this chapter. In
56 that event, the provisions of this article supersede any conflict-
57 ing or inconsistent provisions contained in article twenty-two-a
58 of this chapter. In carrying out its authority under this article,
59 the commission may: (1) Specify by rule additional licensure
60 and fee requirements consistent with the provisions of article
61 twenty-two-a of this chapter respecting video lottery manufact-
62 urers, service technicians and validation managers; and (2)
63 adopt and specify any reasonable procedure, protocol or
64 requirement to enable video lottery terminals to effectively and
65 efficiently communicate with the commission's central com-
66 puter system used in administering article twenty-two-a of this
67 chapter.

**§29-25-4. Appointment of commission staff; conditions of em-
ployment.**

1 The director, pursuant to the provisions of section six,
2 article twenty-two of this chapter, with the approval of the

3 commission, may appoint any professional, clerical, technical
4 and administrative personnel, who shall be state employees
5 hired in accordance with article six of this chapter, that may be
6 necessary to carry out the provisions of this article. Prior to his
7 or her appointment, each staff person shall undergo a thorough
8 background investigation, including fingerprinting and a check
9 of criminal records. No employee may directly or indirectly
10 hold any financial interest in any entity licensed under this
11 article.

§29-25-5. Rules.

1 The commission shall propose for promulgation legislative
2 rules in accordance with the provisions of article three, chapter
3 twenty-nine-a of this code as are necessary to provide for
4 implementation and enforcement of the provisions of this
5 article. Any rules proposed by the commission before the first
6 day of September, one thousand nine hundred ninety-nine, may
7 be by emergency rule.

§29-25-6. Law enforcement.

1 (a) *Generally.* — Notwithstanding any provision of this
2 code to the contrary, the director may by contract or coopera-
3 tive agreements with state, county or municipal law-enforce-
4 ment agencies operating in the county in which the gaming
5 facility is located arrange for those law-enforcement services
6 that are necessary to enforce the provisions of this article.

7 (b) *Costs.* — The actual cost of services provided by the
8 state police or municipal law-enforcement agencies in connec-
9 tion with enforcement of the provisions of this article shall be
10 paid from the state gaming fund, and shall include all costs of
11 required training and equipment as well as salary, benefits and
12 other direct costs of additional required personnel.

13 The costs of services related to a gaming facility provided
14 by law-enforcement officers of the county in which the gaming
15 facility is located shall be paid from that portion of the state
16 gaming fund allocated to that county. The costs shall include all
17 costs of required training and equipment as well as salary,
18 benefits and other direct costs of additional required personnel.

§29-25-7. Local option.

1 (a) No gaming facility may be licensed to operate in a
2 county until the county commission of the county holds an
3 election on the question of whether a gaming facility may be
4 operated within the county and the voters approve the operation
5 of a gaming facility in the county. The election shall be
6 determined by a vote of the resident voters of the county in
7 which the facility is proposed to be located.

8 The county commission of the county in which the pro-
9 posed facility is located shall give notice to the public of the
10 election by publication of the notice as a Class II-0 legal
11 advertisement in compliance with the provisions of article
12 three, chapter fifty-nine of this code, and the publication area
13 for the publication shall be the county in which the election is
14 to be held. The date of the last publication of the notice shall
15 fall on a date within the period of the fourteen consecutive days
16 next preceding the election.

17 On the local option election ballot shall be printed the
18 following:

19 Shall West Virginia lottery commission video lottery games
20 and authorized games of chance be permitted within an area at
21 the [name of qualified historic resort hotel]?

22 Yes No

23 (Place a cross mark in the square opposite your choice.)

24 Any local option election to approve or disapprove of the
25 proposed authorization of a gaming facility within a county
26 shall be in accordance with procedures adopted by the commis-
27 sion. The local option election may be held in conjunction with
28 a primary or general election, or at a special election. Approval
29 shall be by a majority of the voters casting votes on the question
30 of approval or disapproval of gaming facility operations at the
31 election.

32 If a majority votes against allowing a gaming facility, no
33 election on the issue shall be held for a period of one hundred
34 four weeks. If a majority votes "yes" no election reconsidering

35 the action may be held for a period of five years. A local option
36 election may thereafter be held if a written petition of qualified
37 voters residing within the county equal to at least five percent
38 of the number of persons who were registered to vote in the
39 next preceding general election is received by the county
40 commission of the county in which the gaming facility is to be
41 located. The petition may be in any number of counterparts.
42 The election shall take place at the next primary or general
43 election scheduled more than ninety days following receipt by
44 the county commission of the petition required by this subsection:
45 *Provided*, That the issue may not be placed on the ballot
46 until all statutory notice requirements have been met: *Provided*,
47 *however*, That no subsequent disapproval may take effect until
48 after the expiration of the five year licensing period in effect at
49 the time of the referendum.

50 (b) No local law or regulation providing any penalty,
51 disability, restriction, regulation or prohibition for operating a
52 gaming facility or supplying a gaming facility may be enacted,
53 and the provisions of this article preempt all regulations, rules,
54 ordinances and laws of any county or municipality in conflict
55 with this article.

56 (c) Except as specifically provided in this article, no other
57 fees or taxes may be imposed by a local governing body.

§29-25-8. Licenses required.

1 (a) No person may engage in any activity in connection
2 with a gaming facility in this state for which a license is
3 required by subsection (b) of this section unless that person has
4 been licensed by the commission in accordance with this article.

5 (b) Licenses are required for the following purposes:

6 (1) For any person engaging in the business of operating a
7 gaming facility in the state;

8 (2) For any person engaging in the business of supplying a
9 gaming facility with gaming devices, supplies or services if the
10 gaming facility expends more than fifty thousand dollars
11 annually with that person; and

12 (3) For any individual employed by a gaming licensee in
13 connection with the operation of a gaming facility in the state.

14 (c) Any license required under this article is in addition to
15 all other licenses or permits otherwise required by law.

§29-25-9. License to operate a gaming facility.

1 (a) *Single license.* — The commission may issue only one
2 license to operate a gaming facility. If the one license limitation
3 in the preceding sentence is found to be unconstitutional in a
4 final, nonappealable order by a court of competent jurisdiction,
5 the commission shall have no authority to issue any license
6 under this article and, in such event, the provisions of this
7 article shall not be severable, and any license issued under the
8 provisions of this article prior thereto shall be void. The
9 Legislature intends that no more than one license to operate one
10 gaming facility in this state shall be authorized in any event.

11 (b) *Applicant qualifications.* — An applicant for a license
12 to operate a gaming facility shall be the owner or be wholly
13 owned by the owner of an existing historic resort hotel in which
14 the gaming facility is to be located, and the resort hotel shall be
15 located within the jurisdiction of a county approving the
16 operation of a gaming facility in accordance with section seven
17 of this article. An applicant shall meet the qualifications and
18 requirements set forth in this article and rules adopted by the
19 commission. In determining whether to grant a license to
20 operate a gaming facility to an applicant, the commission shall
21 consider:

22 (1) The character, reputation, experience and financial
23 integrity of the applicant and any controlling person of the
24 applicant;

25 (2) Whether the applicant has adequate capital to construct
26 and maintain the proposed gaming facility for the duration of a
27 license;

28 (3) The extent to which the applicant meets standards
29 contained in rules adopted by the commission relating to public
30 safety or other standards; and

31 (4) The plan submitted by the applicant regarding employ-
32 ment levels and the extent to which the submitted plan demon-
33 strates an ability on the part of the applicant to create at least
34 one hundred full-time equivalent jobs with a salary and benefit
35 package commensurate with existing employees at the historic
36 resort hotel.

37 (c) *Conditions attached to license.* — A license to operate
38 a gaming facility may only be granted to an applicant upon the
39 express condition that:

40 (1) The licensee may not enter into any management
41 service contract, understanding or arrangement of any kind
42 which would act to permit any person other than the licensee to
43 operate a licensed gaming facility unless the management
44 service contract, understanding or arrangement is in writing and
45 has been approved by the commission. The commission shall
46 condition its approval upon the successful completion of a
47 thorough background investigation at the expense of the
48 licensee;

49 (2) The licensee may not in any manner permit a person
50 other than the licensee to have a share, percentage or proportion
51 of any profits generated from the operation of a gaming facility;

52 (3) The licensee shall not conduct any advertising and
53 promotional activities related to the gaming facility without the
54 prior written approval of the director of the lottery commission;
55 and

56 (4) The licensee shall permit authorized games of chance to
57 be played only during those hours established and approved by
58 the commission.

59 (d) *License application requirements.* — An applicant for
60 a license to operate a gaming facility shall:

61 (1) Submit an application to the commission on a form
62 prescribed by the commission, which shall include:

63 (A) Information concerning the applicant and of any
64 controlling person of the applicant sufficient to serve as a basis
65 for a thorough background check;

66 (B) Subject to the provisions of subsection (e) of this
67 section with respect to publicly-traded corporations, the identity
68 of all stockholders or other persons having a financial interest
69 in either the applicant or any controlling person of the applicant
70 and the identity of each director or executive officer of the
71 applicant and of any controlling person of the applicant;

72 (C) The identity of the historic resort hotel at which the
73 gaming facility is to be located, including identification of the
74 county in which the historic resort hotel is located; and

75 (D) Any other information designated by the commission
76 as appropriate to assist it in determining whether a license
77 should be issued;

78 (2) Pay to the commission a nonrefundable application fee
79 for deposit into the state gaming fund in the amount of twenty-
80 five thousand dollars; and

81 (3) Pay to the commission an investigative fee for deposit
82 in the state gaming fund in the amount of twenty thousand
83 dollars.

84 (e) *Publicly-traded corporations.* — In the event that an
85 applicant or any controlling person of an applicant is a publicly-
86 traded corporation, then information otherwise required to be
87 furnished by an applicant with respect to stockholders, directors
88 and executive officers of the publicly-traded corporation shall
89 be limited to information concerning only those executive
90 officers of the publicly-traded corporation whose ongoing and
91 regular responsibilities relate or are expected to relate directly
92 to the operation or oversight of the gaming facility. “Publicly-
93 traded corporation” as used in this subsection means any
94 corporation or other legal entity except a natural person which
95 has one or more classes of securities registered pursuant to
96 section twelve of the Securities Exchange Act of 1934, as
97 amended (15 U.S.C. §78), or is an issuer subject to section
98 fifteen-d of that act.

99 (f) *Gaming facility qualifications.* — An applicant for a
100 license to operate a gaming facility shall demonstrate that the
101 gaming facility will: (1) Be accessible to disabled individuals;

102 (2) not be located at the main entrance to the historic resort
103 hotel; (3) be licensed in accordance with all other applicable
104 federal, state and local laws; and (4) meet any other qualifica-
105 tions specified by rules adopted by the commission.

106 (g) *Investigative fee.* — The investigative fee paid by an
107 applicant at the time of submitting an application shall be
108 applied to the cost of any investigation relating to the applicant
109 required under this article.

110 (1) If the cost of the investigation is greater than twenty
111 thousand dollars, the investigative agency shall show cause for
112 the additional cost. The applicant shall pay the additional costs
113 to the extent approved by the commission, but not to exceed a
114 total investigative fee of forty thousand dollars.

115 (2) If the cost of the investigation is less than the aggregate
116 investigative fee paid by an applicant, the commission shall
117 refund the difference.

118 (h) *Surety bond requirement.* — The licensed operator of a
119 gaming facility shall execute a surety bond to be given to the
120 state to guarantee the licensee faithfully makes the payments,
121 keeps books and records, makes reports and conducts gaming
122 in the licensee's gaming facility in accordance with the provi-
123 sions of this article and rules promulgated by the commission.
124 The surety bond shall be:

125 (1) In the amount of five million dollars;

126 (2) In a form approved by the commission; and

127 (3) With a surety approved by the commission.

128 The bond shall remain in effect during the term of the
129 license and may not be canceled by a surety on less than thirty
130 days notice in writing to the commission. The total and aggre-
131 gate liability of the surety on the bond is limited to the amount
132 specified in the bond.

133 (i) *Authorization of license.* — A license to operate a
134 gaming facility authorizes the licensee to engage in the business

135 of operating a gaming facility while the license is effective. A
136 license to operate a gaming facility is not transferable or
137 assignable and cannot be sold or pledged as collateral.

138 (j) *Audits.* — A licensed gaming facility operator shall
139 submit to the commission an annual audit, by a certified public
140 accountant licensed in the state of West Virginia, of the
141 financial transactions and condition of the licensee's total
142 operations. The audit shall be in accordance with generally
143 accepted auditing principles.

144 (k) *Annual license maintenance fee.* — The licensed
145 gaming facility operator shall pay to the commission an annual
146 license maintenance fee of five thousand dollars.

147 (l) The licensed gaming facility operator shall provide to
148 the commission, at no cost to the commission, suitable office
149 space at the gaming facility to perform the duties required of it
150 by the provisions of this article.

§29-25-10. Reports by licensee.

1 (a) A gaming licensee shall file with the commission an
2 annual balance sheet and profit and loss statement pertaining to
3 the licensee's operation of a gaming facility in this state. A
4 gaming licensee also shall file with the commission an annual
5 statement identifying each controlling person of the licensee
6 and all stockholders, partners, officers or directors for the
7 licensee and any controlling person: *Provided*, That if a gaming
8 licensee or controlling person is a publicly-traded corporation,
9 then as to the publicly-traded corporation the annual report is
10 required to identify only executive officers whose ongoing
11 regular duties relate directly to the operation of the gaming
12 facility. A gaming licensee shall file further reports with the
13 commission as the commission may require by rule.

14 (b) A gaming licensee shall maintain daily records showing
15 the following:

- 16 (1) The total number of patrons of the gaming facility; and
- 17 (2) The gross receipts and the adjusted gross receipts.

18 (c) From information provided under this subsection, from
19 the audit described in subsection (j), section nine of this article,
20 and from any other source available to the commission, the
21 commission shall identify the profits made from the operation
22 of the gaming facility and compare the profits to profits made
23 from the operation of facilities of a similar nature in other
24 states. Annually, the commission shall submit a report to the
25 joint committee on government and finance setting forth the
26 profits made in the operation of the gaming facility in this state
27 and the results of the comparison to profits made in other states.
28 The commission shall include in the report its recommendations
29 for any adjustments in the taxes imposed upon the operation of
30 a gaming facility under the provisions of this article that would
31 be commensurate with the legislative intent to maximize taxes
32 received from the operation of a gaming facility and minimize
33 profits derived by a licensee from the operation of a gaming
34 facility.

§29-25-11. License to supply gaming facility.

1 (a) *Licenses.* — The commission may issue a license to
2 each applicant for a license to supply a gaming facility with
3 gaming devices, gaming supplies or services who meets the
4 requirements of this section.

5 (b) *License qualifications.* — To qualify for a license, an
6 applicant shall meet the requirements of this section. Each
7 applicant who is an individual and each individual who is a
8 controlling person of an applicant that is not an individual shall
9 be of good moral character and reputation, and shall have the
10 necessary experience and financial ability to successfully carry
11 out the functions of a gaming facility supplier. The commission
12 may adopt rules establishing additional requirements for a
13 gaming facility supplier.

14 (c) *Supplier specifications.* — An applicant for a license to
15 supply gaming devices, equipment and supplies to a gaming
16 facility shall demonstrate that the gaming devices, equipment
17 and supplies that the applicant plans to sell or lease to the
18 licensed operator of the gaming facility, conform or will
19 conform to standards established by rules of the commission
20 and applicable state law.

21 (d) *License application requirements.* — An applicant for
22 a license shall:

23 (1) Submit an application to the commission on the form
24 that the commission requires;

25 (2) Pay to the commission a nonrefundable application fee
26 for deposit into the state gaming fund in the amount of five
27 thousand dollars; and

28 (3) Pay to the commission an investigative fee for deposit
29 into the state gaming fund in the amount of ten thousand
30 dollars, or a lesser amount as the commission upon application
31 may conditionally approve in a particular case.

32 (e) *Investigative fee.* — The investigative fee paid by an
33 applicant for a license to supply a gaming facility shall be
34 applied to the cost of any investigation of the applicant required
35 under this article:

36 (1) If the costs of the investigation of an applicant are
37 greater than ten thousand dollars, or the lesser investigative fee
38 as may have been conditionally approved by the commission,
39 the investigative agency must show cause for the additional
40 cost. If the commission approves, the applicant shall pay the
41 additional costs as required by the commission, but not to
42 exceed a total investigative fee of fifty thousand dollars.

43 (2) If the costs of the investigation of an applicant are less
44 than the aggregate investigative fee paid to the commission, the
45 commission shall refund the difference.

46 (f) *Authorization of licensee.* — A license to supply a
47 gaming facility authorizes the licensee to engage in the business
48 of selling gaming devices and supplies to a gaming facility
49 while the license is effective.

50 (g) *Inventory.* — A licensed gaming facility supplier shall
51 submit to the commission a list of all equipment, gaming
52 devices and supplies sold or delivered to a gaming facility in
53 this state when required by the commission.

54 (h) *Annual license maintenance fee.* — A licensed gaming
55 facility supplier shall pay to the commission an annual license
56 maintenance fee of five thousand dollars.

§29-25-12. License to be employed by operator of gaming facility.

1 (a) *Licenses.* — The commission shall issue a license to
2 each applicant for a license to be employed in the operation of
3 a gaming facility who meets the requirements of this section.

4 (b) *License qualifications.* — To qualify for a license to be
5 employed in a gaming facility, the applicant shall be an
6 individual of good moral character and reputation and have
7 been offered employment by the gaming facility contingent
8 upon licensure pursuant to the provisions of this section. The
9 commission by rule may specify additional requirements to be
10 met by applicants based on the specific job classifications in
11 which the applicant is to be employed.

12 (c) *License application requirements.* — An applicant for
13 a license to be employed in the operation of a gaming facility
14 shall:

15 (1) Submit an application to the commission on the form
16 that the commission requires, including adequate information
17 to serve as a basis for a thorough background check;

18 (2) Pay to the commission a nonrefundable application fee
19 for deposit into the state gaming fund in the amount of three
20 hundred dollars, which fee may be paid on behalf of the
21 applicant by the employer; and

22 (3) Pay to the commission a nonrefundable investigative fee
23 for deposit into the state gaming fund in an amount to be fixed
24 by the commission by rule, which fee may be paid on behalf of
25 the applicant by the employer.

26 (d) *Authorization of licensee.* — A license to be employed
27 by a gaming facility authorizes the licensee to be employed in
28 the capacity designated by the commission with respect to the
29 license while the license is effective.

30 (e) *Annual license maintenance fee.* — Each licensed
31 employee shall pay to the commission an annual license
32 maintenance fee set by the commission. The maintenance fee
33 may vary based on the capacity designated with respect to the
34 licensee but in no event to exceed three hundred dollars. The

35 fee may be paid on behalf of the licensed employee by the
36 employer.

§29-25-13. False statements on applications; other license requirements and prohibitions.

1 (a) Any person who knowingly makes a false statement on
2 an application is guilty of a misdemeanor and, upon conviction
3 thereof, shall be fined not less than one hundred nor more than
4 five hundred dollars, or confined in the county or regional jail
5 not less than six months, or both fined and confined.

6 (b) The commission may not grant a license pursuant to the
7 provisions of this article if there is substantial evidence that the
8 applicant:

9 (1) Has knowingly made a false statement of a material fact
10 to the commission;

11 (2) Has been suspended from operating a gambling game,
12 gaming device or gambling operation in another jurisdiction by
13 a board or other governmental authority of that jurisdiction
14 having responsibility for the regulation of gambling or gaming
15 activities;

16 (3) Has been convicted of a felony, an offense of moral
17 turpitude, a gambling offense, a theft or fraud offense, or has
18 otherwise demonstrated, either by a police record or other
19 satisfactory evidence, a lack of respect for law and order;

20 (4) Has failed to meet any monetary obligation in connec-
21 tion with a gaming facility or any other form of gaming; or

22 (5) In the case of an applicant for a license to operate a
23 gaming facility or to supply a gaming facility:

24 (A) Has not demonstrated financial responsibility sufficient
25 to meet adequately the requirements of the enterprise proposed;

26 (B) Is not the true owner of the enterprise or is not the sole
27 owner and has not disclosed the existence or identity of other
28 persons who have an ownership interest in such enterprise; or

29 (C) Is a corporation and five percent or more of the stock of
30 the corporation is subject to a contract or option to purchase at

31 any time during the period for which the license is issued unless
32 the contract or option was disclosed to and approved by the
33 commission.

34 (c) In addition to any other grounds specified in this article,
35 and subject to the hearing provisions of section seventeen of
36 this article, in the case of a license to operate a gaming facility
37 the commission may deny a license to any applicant, reprimand
38 any licensee, or suspend or revoke a license if the applicant or
39 licensee or any controlling person of the applicant or licensee
40 knowingly employs an individual in a senior management
41 position who has been convicted of a felony under the laws of
42 this state, another state, a territory of the United States or the
43 United States or employs any individual in a senior manage-
44 ment position who has had a license relating to the operation of
45 a gaming facility revoked by this state or any other state.

46 (d) Character references may be required of persons
47 licensed, but the character references may not be obtained from
48 persons in the same or similar occupations or professions in
49 other states.

§29-25-14. Licenses; availability for inspection; change of address.

1 (a) The commission shall include on each license that the
2 commission issues:

3 (1) The type of license;

4 (2) The identity and address of the licensee;

5 (3) The effective date of the license; and

6 (4) Any other information the commission considers
7 appropriate.

8 (b) Each gaming licensee or licensed supplier of a gaming
9 facility shall display the license conspicuously in its place of
10 business or have the license readily available for inspection at
11 the request of any agent of the commission or of the state
12 police. Each holder of a license to be employed by a gaming
13 facility shall carry the license on his or her person at all times
14 when present in a gaming facility and, if required by rules

15 adopted by the commission with respect to the particular
16 capacity in which the licensee is employed, have some indicia
17 of licensure prominently displayed on his or her person.

18 (c) Each licensee shall give the commission written notice
19 of any change of address and any other relevant information
20 necessary for the maintenance of accurate records by the
21 commission.

§29-25-15. Expiration date and renewal of gaming license.

1 (a) A license expires on the fifth anniversary of its effective
2 date, unless the license is renewed for additional five-year
3 terms as provided in this section.

4 (b) At least two months before a license expires, the
5 commission shall send to the licensee, by mail to the last known
6 address, a renewal application form and notice that states:

7 (1) The date on which the current license expires;

8 (2) The date by which the commission must receive the
9 renewal application for the renewal to be issued and mailed
10 before the existing license expires; and

11 (3) The amount of the renewal fee.

12 (c) Before the license expires the licensee may renew it for
13 successive additional five-year terms if the licensee:

14 (1) Otherwise is entitled to be licensed;

15 (2) Pays to the commission the following renewal fee:

16 (A) The sum of twenty-five thousand dollars for a license
17 to operate a gaming facility;

18 (B) The sum of five thousand dollars for a license to supply
19 a gaming facility; and

20 (C) As set by the commission by rule in the case of a
21 license to be employed by an operator of a gaming facility, not
22 to exceed three hundred dollars, which renewal fee may be paid
23 on behalf of the licensee by the employer; and

24 (3) Submits to the commission a renewal application in the
25 form that the commission requires accompanied by satisfactory
26 evidence of compliance with any additional requirements set by
27 rules of the commission for license renewal; and

28 (4) Submits to the commission evidence satisfactory to the
29 commission of the gaming facility operator's compliance with
30 the plan described in subdivision (4), subsection (b), section
31 nine of this article to create at least one hundred full-time
32 equivalent positions with a salary and benefit package commen-
33 surate with existing employees at the historic resort hotel.
34 Notwithstanding any provision of subsection (d) of this section,
35 the failure to substantially comply with the plan, as determined
36 by the commission, may constitute grounds for the denial of the
37 renewal of the license.

38 (d) The commission shall renew the license of each licensee
39 who meets the requirements of this section.

§29-25-16. License denial, revocation and reprimand.

1 (a) The commission may deny a license to any applicant,
2 reprimand any licensee, or suspend or revoke a license if the
3 applicant or licensee, or any controlling person of the applicant
4 or licensee:

5 (1) Fraudulently or deceptively obtains or attempts to
6 obtain a license for the applicant or licensee or for another;

7 (2) Fraudulently or deceptively uses a license; or

8 (3) Is convicted of a felony under the laws of this state,
9 another state, a territory of the United States or the United
10 States.

11 (b) Instead of or in addition to reprimanding a licensee or
12 suspending or revoking a license, the commission may impose
13 a civil penalty under section twenty-seven of this article.

§29-25-17. Hearing procedures.

1 Except as otherwise provided by law, before the commis-
2 sion takes any action involving a licensee under the provisions
3 of this article, it shall give the persons against whom the action

4 is contemplated an opportunity for a hearing before the com-
5 mission.

6 The commission shall give notice and hold the hearing in
7 accordance with state law. The notice shall be given to the
8 person by certified mail to the last known address of the person
9 at least thirty days before the hearing. The person may be
10 represented at the hearing by counsel.

11 If a person fails to comply with a subpoena issued under
12 this section, on petition of the commission, the circuit court
13 may compel obedience to the subpoena. If after due notice the
14 person against whom the action is contemplated fails or refuses
15 to appear, the commission may hear and determine the matter.

16 Any person aggrieved by a final decision of the commission
17 in a contested case, as defined in chapter twenty-nine-a of this
18 code, may appeal as provided for in that chapter.

§29-25-18. Consent to warrantless search.

1 As a condition of licensure and notwithstanding the
2 separate licensure of the facility as a private club pursuant to
3 article seven, chapter sixty of this code, any licensee shall
4 consent to any search without a warrant by agents of the
5 commission or of the state police designated by the commission
6 of the licensee's person, personal property and effects, and
7 premises which are located in the gaming facility or adjacent
8 facilities under the control of the licensee, to inspect or investi-
9 gate for criminal violations of this article or violations of rules
10 adopted by the commission.

**§29-25-19. Consent to presence of law-enforcement officers;
wagering limits.**

1 (a) *Consent to presence of law-enforcement officers.* —
2 Any individual entering a gaming facility shall be advised by
3 the posting of a notice or other suitable means of the possible
4 presence of state, county or municipal law-enforcement
5 officers, and by entering the gaming facility impliedly consents
6 to the presence of the law-enforcement officers.

7 (b) *Setting of wagering limits.* — The operator of a gaming
8 facility may set minimum and maximum wagers for any
9 authorized game of chance, except for video lottery. Video
10 lottery terminals operated at the gaming facility may not allow
11 more than two dollars to be wagered on a single game.

§29-25-20. Accounting and reporting of gross terminal income.

1 The licensed gaming facility shall remit fifty-three percent
2 of the gross terminal income from video lottery games at the
3 licensed gaming facility to the commission through electronic
4 funds transfer. The gaming licensee shall furnish to the com-
5 mission all information and bank authorizations required to
6 facilitate the timely transfer of moneys to the commission. The
7 gaming licensee shall provide the commission thirty days'
8 advance notice of any proposed account changes in order to
9 assure the uninterrupted electronic transfer of funds.

§29-25-21. Taxes on games other than video lottery games.

1 (a) *Imposition and rate of limited gaming profits tax.* —
2 There is hereby levied and shall be collected a privilege tax
3 against a gaming licensee in an amount to be determined by
4 application of the rate against adjusted gross receipts of the
5 licensed gaming facility. The rate of tax is thirty-seven percent.
6 This tax is in addition to all other taxes and fees imposed:
7 *Provided,* That the consumers sales and services tax imposed
8 pursuant to article fifteen, chapter eleven of this code may not
9 apply to the proceeds from any wagering with respect to an
10 authorized game of chance pursuant to this article.

11 (b) *Computation and payment of tax.* — The taxes levied
12 under the provisions of this section are due and payable in
13 monthly installments on or before the twenty-first day of the
14 month following the month in which the tax is accrued. The
15 taxpayer shall, on or before the twenty-first day of each month
16 make out and mail to the commission a return for the preceding
17 month, in the form prescribed by the commission, showing: (1)
18 The total gross receipts from the gaming facility for that month
19 and the adjusted gross receipts; (2) the amount of tax for which
20 the taxpayer is liable; and (3) any further information necessary
21 in the computation and collection of the tax which the tax

22 commissioner or the commission may require. Payment of the
23 amount of tax due shall accompany the return. All payments
24 made pursuant to this section shall be deposited in the state
25 gaming fund.

26 (c) *Prohibition on credits.* — Notwithstanding any other
27 provision of this code to the contrary, no credits may be
28 allowed against any tax imposed on any taxpayer by this code
29 for an investment in gaming devices and supplies, for an
30 investment in real property which would be directly utilized for
31 the operation of a gaming facility or for any jobs created at a
32 gaming facility. Notwithstanding any other provision of this
33 code to the contrary, the tax imposed by this section may not be
34 added to federal taxable income in determining West Virginia
35 taxable income of a taxpayer for purposes of article twenty-
36 four, chapter eleven of this code.

§29-25-22. State gaming fund created; allocation of net income.

1 (a) There is hereby created a special fund in the state
2 treasury which shall be designated and known as the “state
3 gaming fund”. All revenues received from licenses and appli-
4 cants under this article, all gross terminal income received by
5 the commission under section twenty of this article and all tax
6 revenues from the tax imposed under section twenty-one of this
7 article shall be deposited with the state treasurer and placed in
8 the state gaming fund. The fund shall be an interest bearing
9 account with interest to be credited to and deposited in the state
10 gaming fund.

11 (b) All expenses of the commission shall be paid from the
12 state gaming fund, including reimbursement of the state police
13 for activities performed at the request of the commission in
14 connection with background investigations or enforcement
15 activities pursuant to this article. At no time may the commis-
16 sion’s expenses under this article exceed fifteen percent of the
17 total of the annual revenue received from the licensee under this
18 article, including all license fees, taxes or other amounts
19 required to be deposited in the state gaming fund.

20 (c) The balance of the state gaming fund shall be divided as
21 follows:

22 (1) Eighty-nine percent of the state gaming fund net income
23 shall be paid into the general revenue fund to be appropriated
24 by the Legislature;

25 (2) The tourism promotion fund established in section nine,
26 article one, chapter five-b of this code shall receive three
27 percent of the state gaming fund net income;

28 (3) The county where the gaming facility is located shall
29 receive four percent of the state gaming fund net income;

30 (4) The municipality where the gaming facility is located or
31 the municipality closest to the gaming facility by paved road
32 access shall receive two percent of the state gaming fund net
33 income; and

34 (5) The municipalities within the county where the gaming
35 facility is located, except for the municipality receiving funds
36 under subdivision (4) of this subsection, shall receive equal
37 shares of two percent of the state gaming fund net income.

§29-25-23. Prohibition on unauthorized wagering.

1 (a) A gaming licensee may not permit any form of wagering
2 except as authorized under this article.

3 (b) A gaming licensee may receive wagers only from an
4 individual present in a licensed gaming facility.

5 (c) All gaming facility operations shall use a cashless
6 wagering system whereby all players' money is converted to
7 tokens, electronic cards or chips at the request of the wagerer
8 which can only be used for wagering in a licensed gaming
9 facility, and wagering may not be conducted with money or
10 other negotiable currency.

11 (d) The gaming licensee is prohibited from offering any
12 property or service, other than incidental food and beverages,
13 to any person as an inducement to participate in a game of
14 chance. This prohibition includes the offering of complimentary
15 or discounted rooms in exchange for a guest participating in any
16 game of chance at the gaming facility.

§29-25-24. Individual gaming restrictions.

1 (a) An individual may not enter a gaming facility or remain
2 in a gaming facility to participate in authorized games of
3 chance if the individual:

4 (1) Is not a registered overnight guest in the historic resort
5 hotel on whose premises the gaming facility is located;

6 (2) Is under the age of twenty-one years;

7 (3) Is intoxicated;

8 (4) Is determined by the gaming facility operator or the
9 commission to be unruly, disruptive or otherwise interfering
10 with operation of the gaming facility; or to be likely to commit,
11 or to attempt to commit, a violation of this article; or

12 (5) Has been barred by the commission from entering a
13 gaming facility.

14 (b) Notwithstanding any provisions of this code to the
15 contrary, no employee of the commission or employee of the
16 historic resort hotel or any member of his or her immediate
17 household may wager at the gaming facility.

§29-25-25. Offenses and penalties.

1 (a) A gaming licensee is guilty of unlawful operation of a
2 game of chance when:

3 (1) The licensee operates a game of chance in any location
4 other than a gaming facility;

5 (2) The licensee acts, or employs another person to act, as
6 a shill or decoy to encourage participation in a game of chance
7 in a gaming facility;

8 (3) The licensee knowingly permits an individual under the
9 age of twenty-one years of age to enter or remain in a gaming
10 facility for the purpose of making a wager; or

11 (4) The licensee exchanges tokens, chips or other forms of
12 credit to be used for wagering in a gaming facility for anything
13 of value except in exchange for money.

14 (b) A person is guilty of felonious wager when:

15 (1) The person offers, promises or gives anything of value
16 or benefit to a person who is connected with a gaming facility
17 pursuant to an agreement or arrangement or with intent that the
18 promise or thing of value or benefit will influence the actions
19 of the person to whom the offer, promise, or gift was made in
20 order to affect or attempt to affect the outcome of an authorized
21 game of chance, or to influence official action of the commis-
22 sion. For the purposes of this subdivision and subdivision (2) of
23 this subsection, the term "person who is connected with a
24 gaming facility" includes, but is not limited to, an officer or
25 employee of a licensee;

26 (2) The person solicits or knowingly accepts or receives a
27 promise of anything of value or benefit while the person is
28 connected with a gaming facility, pursuant to an understanding
29 or arrangement or with the intent that the promise or thing of
30 value or benefit will influence the actions of the person to affect
31 or attempt to affect the outcome of an authorized game of
32 chance, or to influence official action of the commission;

33 (3) The person uses or possesses with the intent to use a
34 device to assist:

35 (A) In projecting the outcome of an authorized game of
36 chance;

37 (B) In keeping track of cards played or in play;

38 (C) In analyzing the probability of the occurrence of an
39 event relating to an authorized game of chance; or

40 (D) In analyzing the strategy for playing or betting to be
41 used in an authorized game of chance, except as permitted by
42 the commission;

43 (4) The person cheats at an authorized game of chance in a
44 gaming facility;

45 (5) The person manufactures, sells, or distributes any cards,
46 chips, dice, game or device which is intended to be used to
47 violate any provision of this article;

48 (6) The person instructs a person in cheating or in the use
49 of a device for that purpose with the knowledge or intent that
50 the information or use conveyed may be employed to violate
51 any provision of the article;

52 (7) The person places a bet after acquiring knowledge, not
53 available to all players, of the outcome of the game of chance
54 which is the subject of the bet, or aids a person in acquiring the
55 knowledge for the purpose of placing a bet contingent on that
56 outcome;

57 (8) The person claims, collects, takes, or attempts to claim,
58 collect or take, money or anything of value into or from a
59 gaming facility, with intent to defraud, without having made a
60 wager contingent on winning a game of chance, or claims,
61 collects or takes an amount of money or thing of value of
62 greater value than the amount won;

63 (9) The person uses counterfeit chips or tokens to place a
64 wager in a gaming facility;

65 (10) The person knowingly uses any medium other than
66 chips, tokens or other methods of credit approved by the
67 commission to place a wager in a gaming facility;

68 (11) The person, not a gaming licensee or employee or
69 agent of a gaming licensee acting in furtherance of the gaming
70 licensee's interests, has in his or her possession any device
71 intended to be used to violate a provision of this article; or

72 (12) The person, not a gaming licensee or agent of a gaming
73 licensee acting in furtherance of the gaming licensee's interests,
74 has in his or her possession any key or device designed for the
75 purpose of opening, entering or affecting the operation of an
76 authorized game of chance, drop box or an electronic or
77 mechanical device connected with or used in connection with
78 an authorized game of chance in a gaming facility or for
79 removing coins, tokens, chips or other contents therefrom.

80 (c) Any person who violates the provisions of subsection
81 (a) of this section is guilty of a misdemeanor and, upon convic-
82 tion thereof, shall be fined not more than one thousand dollars

83 or confined in a county or regional jail for not more than six
84 months.

85 (d) Any person who violates the provisions of subsection
86 (b) of this section is guilty of a felony and, upon conviction
87 thereof, shall be fined not less than five thousand dollars nor
88 more than ten thousand dollars and committed to the division
89 of corrections of a definite term of imprisonment of not less
90 than one year nor more than five years.

§29-25-26. Forfeiture of property.

1 (a) Anything of value, including all traceable proceeds
2 including, but not limited to, real and personal property,
3 moneys, negotiable instruments, securities and conveyances, is
4 subject to forfeiture to the state of West Virginia if the item was
5 used for any of the following:

6 (1) As a bribe intended to affect the outcome of an autho-
7 rized game of chance in a gaming facility; or

8 (2) In exchange for or to facilitate a violation of this article.

9 (b) Subsection (a) of this section does not apply if the act or
10 omission which would give rise to the forfeiture was committed
11 or omitted without knowledge or consent of the owner of the
12 property to be forfeited.

§29-25-27. Civil penalties.

1 The commission may impose on a person who violates the
2 provisions of this article a civil penalty not to exceed ten
3 thousand dollars for each violation, whether or not the person
4 is licensed under this article.

5 The provisions of article five, chapter twenty-nine-a of this
6 code shall apply to any civil penalty imposed pursuant to the
7 provisions of this section.

CHAPTER 132

(Com. Sub. for S. B. 664 — By Senator Wooton)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article ten, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the appointment and termination of guardians by county commissions.

Be it enacted by the Legislature of West Virginia:

That section three, article ten, 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 10. GUARDIANS AND WARDS GENERALLY.

§44-10-3. Appointment and revocation of guardian by county commission.

- 1 (a) The county commission of the county in which the
2 minor resides, or if the minor is a nonresident of the state, the
3 county in which the minor has an estate, may appoint as the
4 minor's guardian a suitable person. The father or mother shall
5 receive priority. However, in every case, the competency and
6 fitness of the proposed guardian and the welfare and best
7 interests of the minor shall be given precedence by the court
8 when appointing the guardian.
- 9 (b) The county commission, the guardian, or the minor may
10 revoke or terminate the guardianship appointment when:
- 11 (1) The minor reaches the age of eighteen and executes a
12 release stating that the guardian estate was properly adminis-
13 tered and that the minor has received the assets of the estate
14 from the guardian;
- 15 (2) The guardian or the minor dies;

16 (3) The guardian petitions the county commission to resign
17 and the county commission enters an order approving the
18 resignation; or

19 (4) A petition is filed by the guardian, the minor, an
20 interested person or upon the motion of the county commission
21 stating that the minor is no longer in need of the assistance or
22 protection of a guardian.

23 (c) A guardianship shall not be terminated by the county
24 commission if there are any assets in the estate due and payable
25 to the minor: *Provided*, That another guardian may be ap-
26 pointed upon the resignation of a guardian whenever there are
27 assets in the estate due and payable to the minor.

CHAPTER 133

(Com. Sub. for H. B. 2472 — By Delegates Staton,
Coleman, Faircloth, Givens, Mahan, Pino and Smirl)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five, relating to the creation of standby guardianship; defining terms; setting forth the procedures and requirements for petitions with the circuit court for standby guardianship; requiring that notice be given of any petition filed; providing that an evidentiary hearing be held prior to approval of a standby guardian under certain circumstances; requiring the circuit court to appoint a guardian ad litem prior to any hearing held where the petition is filed by anyone other than the child's parent; setting forth the factors necessary prior to approving a standby guardianship and the form of any order of approval; requiring service of the order; requiring the standby guardian to file a copy of the qualified parent's death certificate, determination of incompetence or consent when his or her

authority commences; providing for the written designation of a standby guardianship by a parent; requiring a standby guardian authorized by a written designation to file a petition for approval after the commencement of his authority; providing for institution of proceedings to determine permanent guardianship; establishing procedures for revocation and refusal; and providing that the standby guardian's authority continues until it is revoked by the qualified parent or rescinded by the circuit court.

Be it enacted by the Legislature of West Virginia:

That chapter forty-four-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 five, to read as follows:

ARTICLE 5. STANDBY GUARDIANSHIP.

§44A-5-1. Title.

§44A-5-2. Definitions.

§44A-5-3. Petition for approval of standby guardian; fees.

§44A-5-4. Circuit court's order approving standby guardianship; authority; when effective.

§44A-5-5. Written designation of a standby guardian by a parent; commencement of authority; approval required.

§44A-5-6. Further proceedings to determine permanent guardianship.

§44A-5-7. Revocation, refusal and termination of standby guardianship.

§44A-5-8. Review of standby guardianship.

§44A-5-1. Title.

1 This article may be cited as the "Standby Guardianship
2 Act."

§44A-5-2. Definitions.

1 (a) "Attending physician" means the physician who has
2 primary responsibility for the treatment and care of a qualified
3 parent.

4 (b) "Designation" means a writing that is: (i) Voluntarily
5 executed in conformance with the requirements of section five
6 of this article, signed by a parent; and (ii) names a person to act
7 as standby guardian.

8 (c) "Determination of debilitation" means a written
9 determination made by an attending physician that a qualified

10 parent is chronically and substantially unable to care for a
11 minor child as a result of a debilitating illness, disease or injury.
12 Such a determination shall include the physician's medical
13 opinion to a reasonable degree of medical certainty regarding
14 the nature, cause, extent and probable duration of the parent's
15 debilitating condition.

16 (d) "Determination of incompetence" means a written
17 determination made by the attending physician that to a
18 reasonable degree of medical certainty a qualified parent is
19 chronically and substantially unable to understand the nature
20 and consequences of decisions concerning the care of a minor
21 child as a result of a mental or organic impairment and conse-
22 quently is unable to care for the child. Such a determination
23 shall include the physician's medical opinion, to a reasonable
24 degree of medical certainty, regarding the nature, cause, extent
25 and probable duration of the parent's incompetence.

26 (e) "Functional parent" means a person other than a
27 biological or adoptive parent, who is performing daily
28 caretaking functions for the child.

29 (f) "Parent" means a biological or adoptive parent and
30 includes a person, other than a parent, who has physical custody
31 of a child and who has either been awarded custody by a court
32 or claims a right to custody.

33 (g) "Petition" means a writing that is voluntarily executed
34 and filed in the circuit court of the county in which the child
35 resides in conformance with the requirements of section three
36 of this article.

37 (h) "Qualified parent" means a parent who has been
38 diagnosed, as evidenced in writing, by a licensed physician to
39 be afflicted with a progressive or chronic condition caused by
40 injury, disease or illness from which, to a reasonable degree of
41 medical probability, the patient cannot recover and that is likely
42 to lead to debilitation or incompetence.

43 (i) "Standby guardian" means a person who, in accordance
44 with this article, is designated in writing or approved by the
45 circuit court to temporarily assume the duties of guardian of the

46 person or property, or both, of a minor child, on behalf of or in
47 conjunction with a qualified parent, upon the occurrence of a
48 triggering event. A standby guardianship shall be so construed
49 as to enable the parent to plan for the future of a child, without
50 terminating parental or legal rights by creating coguardianship
51 rights between a parent and a standby guardian who has the
52 authority to act in a manner consistent with the known wishes
53 of a qualified parent regarding the care, custody and support of
54 the minor child.

55 (j) "Triggering event" means the event upon the occurrence
56 of which the standby guardian may be authorized to act. The
57 triggering event shall be specified in a court order or written
58 designation and shall be the earlier of a determination of
59 incompetence or the death of a qualified parent. In the case of
60 a standby guardian judicially approved pursuant to section three
61 of this article, the triggering event may also be specified as the
62 qualified parent's written consent to the commencement of the
63 standby guardian's authority. In the case of a standby guardian
64 designated pursuant to section five of this article, the triggering
65 event may also be specified as: (i) A determination of debilita-
66 tion of the qualified parent; and (ii) that parent's written
67 consent to the commencement of the designated standby
68 guardian's authority.

§44A-5-3. Petition for approval of standby guardian; fees.

1 (a) Upon petition of a parent, functional parent or any
2 person acting on parent's behalf, the circuit court of the county
3 in which a child resides may approve a person as standby
4 guardian for a child of a qualified parent upon the occurrence
5 of a specific triggering event. If requested in the petition, the
6 court may also approve an alternate standby guardian identified
7 by the petitioner, to act in the event the standby guardian is
8 unable or unwilling to assume the responsibilities of the
9 standby guardianship.

10 (b) The petition shall include:

11 (1) The name and address of the petitioner and his or her
12 relationship to the child, the name and address of the child's
13 qualified parent, and the name and address of any other parent

14 of the child whose identity and whereabouts are known to the
15 petitioner or can reasonably be ascertained;

16 (2) The name, address and birth date of the child;

17 (3) The nature of the proposed triggering event and, if
18 written consent is chosen as the proposed triggering event, any
19 factors or circumstances that must be present before the
20 qualified parent's written consent is effective;

21 (4) Whether a determination of incompetence or debilita-
22 tion has been made and, if so, when and by whom;

23 (5) Whether there is a significant risk that the qualified
24 parent will die imminently or become physically or mentally
25 incapable of caring for the child or die as a result of a progres-
26 sive chronic condition or illness; however, a petitioner shall not
27 be required to submit medical documentation of a parent's
28 medical status with the petition;

29 (6) The name and address of the person proposed as
30 standby guardian and any alternate standby guardian, and if the
31 parent is competent, that the qualified parent approves of the
32 persons proposed;

33 (7) Whether the petitioner requests that the person proposed
34 as standby guardian be given authority as a guardian of the
35 person or guardian of the property of the minor, or both;

36 (8) A statement of any known reasons why the child's other
37 parent is not assuming or should not assume the responsibilities
38 of a standby guardian;

39 (9) Whether there is any prior judicial history or pending
40 litigation regarding custody of the child; and

41 (10) The name and address of the attending physician.

42 (c) Upon filing of a petition, notice of the filing must be
43 promptly given to each parent of the child whose identity and
44 whereabouts are known to the petitioner, the child, if he or she
45 is fourteen or more years of age, the proposed standby guardian
46 and alternate, if any.

47 (1) The notice must be accompanied by a copy of the
48 petition and shall be mailed by certified mail return receipt
49 requested, by the petitioner.

50 (2) The notice should include a statement that no change in
51 custody or other legal rights is effected by the appointment of
52 a standby guardian and that it is not necessary for the recipient
53 of the notice to appear. The notice should also state that any
54 parent may request a hearing on the petition provided that such
55 request is made within ten days from the date the notice was
56 sent.

57 (d) A hearing must be held prior to any order approving the
58 standby guardianship if there is another known parent who
59 requests a hearing within ten days of the date that notice of
60 filing was sent or if there is other litigation pending regarding
61 the custody of the child.

62 (e) Prior to any hearing on the petition, the circuit court
63 may appoint a discreet and competent attorney at law as
64 guardian ad litem to represent the child pursuant to section ten,
65 article four, chapter fifty-six of this code. If the petition for
66 standby guardianship is filed by anyone other than a parent of
67 the child, the circuit court shall appoint a guardian ad litem. The
68 qualified parent shall not be required to appear at the hearing if
69 he or she is medically unable to appear, except upon motion for
70 good cause shown.

**§44A-5-4. Circuit court's order approving standby guardianship;
authority; when effective.**

1 (a) When a petition is filed by a person other than a parent
2 having custody of the child, the standby guardian may be
3 appointed only with the consent of the qualified parent unless
4 the circuit court finds that such consent cannot be given for
5 medical reasons.

6 (b) Upon consideration of the factors set out in subsection
7 (b), section three of this article and finding that: (i) The child's
8 parent is a qualified parent; and (ii) appointment of a standby
9 guardian is in the best interest of the child, the circuit court
10 shall appoint the person requested in the petition as standby

11 guardian, and, if requested, the requested alternate standby
12 guardian. However, when a petition is filed by a person other
13 than a parent having custody of the child, the standby guardian
14 shall be appointed only with the consent of the qualified parent
15 unless the court finds that such consent cannot be given for
16 medical reasons.

17 (c) The order shall specify the triggering event and shall
18 provide that the authority of the standby guardian is effective:
19 (i) Upon receipt of either a determination of incompetence or a
20 certificate of death; or (ii) if so requested in the petition, upon
21 receipt by the standby guardian of the qualified parent's written
22 consent and filing of this consent with the circuit court. The
23 written consent shall be executed after the entry of the court
24 order and signed by the qualified parent, or by another in his or
25 her presence and on his or her behalf.

26 (d) As soon as practicable after entry of the order, a copy
27 shall be served on the standby guardian.

28 (e) A standby guardian shall have the powers and duties of
29 a guardian of the person and guardian of the property of a
30 minor, unless otherwise specified in the order.

31 (f) The standby guardian shall file with the circuit court as
32 soon as practicable but in no event later than thirty days
33 following a parent's death, determination of incompetence or
34 consent, a copy of the certificate of death, determination of
35 incompetence or consent of the qualified parent upon which the
36 standby authority is based and a determination of debilitation.
37 Failure to file within the time specified shall be grounds for the
38 circuit court to rescind the authority of the standby guardian
39 upon petition of any person, but all acts undertaken by the
40 standby guardian on behalf of and in the interests of the child
41 be valid and enforceable until authority is rescinded.

**§44A-5-5. Written designation of a standby guardian by a parent;
commencement of authority; approval required.**

1 (a) A parent may execute a written designation of a standby
2 guardian at anytime. The written designation shall be signed by
3 the parent, witnessed by two adults. Another adult may sign the

4 written designation on behalf of the parent if the parent is
5 physically unable to do so, provided the designation is signed
6 at the express request of the parent and in the presence of the
7 parent. The designated standby guardian or alternate may not
8 sign on behalf of the parent. The signed designation shall be
9 delivered to the standby guardian and any alternate named as
10 soon as practicable. The written designation shall state:

11 (1) The name, address and birth date of the child affected;

12 (2) The triggering event; and

13 (3) The name and address of the person designated as
14 standby guardian or alternate.

15 (b) Following such delivery of the designation, the author-
16 ity of a standby guardian to act for a qualified parent shall
17 commence upon the occurrence of the specified triggering event
18 and receipt by him or her of: (i) A determination of incompe-
19 tence; (ii) a certificate of death of the parent; or (iii) a determi-
20 nation of debilitation and the qualified parent's written consent
21 to such commencement signed by the parent or another on his
22 behalf and at his direction as provided in subsection (a) of this
23 section for the designation.

24 (c) A standby guardian under a designation shall have the
25 authority of a guardian of the person and a guardian of the
26 property of the child, unless otherwise specified in the designa-
27 tion.

28 (d) A designated standby guardian or alternate shall file a
29 petition for approval with the circuit court as soon as practica-
30 ble after the occurrence of the triggering event but in no event
31 later than thirty days after the date of the commencement of his
32 or her authority. The authority of the standby guardian shall
33 cease upon his or her failure to so file, but shall recommence
34 upon such filing. The petition shall be accompanied by a copy
35 of the designation and a: (i) Determination of incompetence; (ii)
36 determination of debilitation and consent; or (iii) a certificate
37 of death.

38 (e) The notice provisions of subsection (c), section three of
39 this article shall apply to a petition filed pursuant to this section.

40 The circuit court shall enter in an order approving the desig-
41 nated guardian upon finding that:

42 (1) The person was duly designated as standby guardian
43 pursuant to the section and the designation has not been
44 revoked;

45 (2) A determination of incompetence was made; a determi-
46 nation of debilitation was made and the parent consented to
47 commencement of the standby guardian's authority; or the
48 parent has died;

49 (3) The best interests of the child will be served by approval
50 of the standby guardian; and

51 (4) If the petition is by an alternate, that the designated
52 standby guardian is unwilling or unable to serve.

**§44A-5-6. Further proceedings to determine permanent guard-
ianship.**

1 (a) If the triggering event was death of the qualified parent,
2 the standby guardian shall within ninety days of such death,
3 petition for appointment of a guardian for the child as otherwise
4 provided by law or may initiate proceedings to determine legal
5 and physical custody of the child pursuant to article four,
6 chapter forty-eight, or both.

7 (b) In all other cases a standby guardian shall promptly
8 after occurrence of the triggering event initiate such proceed-
9 ings to determine guardianship and custody, absent objection by
10 the qualified parent.

11 (c) The petition shall be accompanied by:

12 (1) The circuit court's order approving the standby guardian
13 or the qualified parent's written designation of the standby
14 guardian; and

15 (2) (i) The attending physician's written determination of
16 incompetence or debilitation; or (ii) certificate of death.

**§44A-5-7. Revocation, refusal and termination of standby guard-
ianship.**

1 (a) The authority of a standby guardian approved by the
2 circuit court may be revoked by the qualified parent by his or

3 her filing a notice of revocation with the circuit court. The
4 notice of revocation shall identify the standby guardian or
5 alternate standby guardian to which the revocation will apply.
6 A copy of the revocation shall also be delivered to the standby
7 guardian whose authority is revoked and any alternate standby
8 guardian who may then be authorized to act. At any time
9 following his or her approval by the circuit court, a standby
10 guardian may decline to serve by filing a written statement of
11 refusal with the court and having the statement personally
12 served on the qualified parent and any alternate standby
13 guardian who may then be authorized to act.

14 (b) When a written designation has been executed, but is
15 not yet effective because the triggering event has not yet
16 occurred, the parent may revoke or the prospective standby
17 guardian may refuse the designation by notifying the other
18 party in writing. A written designation may also be revoked by
19 the subsequent execution of an inconsistent designation.

20 (c) When a standby guardian's authority is effective upon
21 debilitation or incompetence of the qualified parent, the standby
22 guardian's authority to act on behalf of the parent continues
23 after the parent is restored to health unless the qualified parent
24 notifies the guardian and, if appropriate, the county commis-
25 sion, in writing, that the standby guardian's authority is
26 revoked. If at any time the circuit court finds that the parent no
27 longer meets the definition of "qualified parent," it shall rescind
28 its approval of the standby guardian.

§44A-5-8. Review of standby guardianship.

1 A child's parent, stepparent, functional parent, adult sibling
2 or any adult related to the child by blood or marriage may
3 petition the circuit court that approved the standby guardian at
4 any time following such approval for review of whether
5 continuation of the standby guardianship is in the best interest
6 of the child. Notice of the filing of a petition for review shall
7 promptly be given to the standby guardian, the child if the child
8 is fourteen or more years of age, and each parent of the child
9 whose identity and whereabouts are known or could reasonably
10 be ascertained.

CHAPTER 134

(Com. Sub. for H. B. 2826 — By Delegates Faircloth,
Hall, Staton, Damron and Facemyer)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-b, relating to permit approval by the commissioner of the bureau of public health for individual sewage systems with surface water discharge; consideration for approval under certain conditions; reserve area requirements.

Be it enacted by the Legislature of West Virginia:

That article one, 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 nine-b, to read as follows:

ARTICLE 1. DIVISION OF HEALTH.

§16-1-9b. Permit approval for individual systems with surface water discharge; reserve areas.

1 Individual systems with surface water discharge may be
2 considered for approval for a permit pursuant to section nine of
3 this article under the following conditions: (1) To correct
4 existing failures when other means of treatment and disposal
5 have proven ineffective; or (2) on a tract, lot or parcel of land
6 that equals or exceeds two acres which cannot qualify for
7 standard or alternative soil absorption systems; or (3) on
8 existing lots which received approval under a prior permit
9 where it has been determined that applicable standards cannot
10 be met to qualify for a standard or alternate soil absorption
11 system. Approval under these conditions is applicable only to
12 single family residential units.

13 When installing a standard sewage disposal system,
14 modified system, experimental system or other approved
15 system, the reserve area shall consist of an area for the place-
16 ment of the original system together with an area for replace-
17 ment and upgrade of absorption field lines within the reserve
18 area. Testing of the site for approval shall consist of a six foot
19 hole and a percolation test of the soils.

CHAPTER 135

(S. B. 492 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, four-a, five, six, seven, seven-a, eight, nine, ten, eleven, thirteen and fifteen, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to definitions; certificate of need; new institutional health services definition; exemptions from certificate of need; conversion of acute beds to skilled nursing beds in rural areas; powers and duties of health care authority relating to certificate of need program, health planning, state health plan, application fees, long term care beds, ICF/MR beds, life care retirement centers, moratoriums for certain health services, certificate of need standards and rural health facilities; providing for the conversion of acute care beds to skilled nursing beds at certain hospitals under specified conditions; minimum criteria for certificate of need reviews, long-range plans; procedures for certificate of need reviews; notification to the public; public hearings; file closing; annual report; access for the public; reconsideration; expedited review; review for nonhealth-related projects; filing with consumer advocate; rule-making powers; final decision; required findings; emergency certificate of need; appeal of final decision; certificate of need is nontransferable; extensions and withdrawals

of certificates of need; injunctive relief; civil penalties; and previously approved rules and regulations.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, four-a, five, six, seven, seven-a, eight, nine, ten, eleven, thirteen and fifteen, article two-d, 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 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.

§16-2D-3. Certificate of need; new institutional health services defined.

§16-2D-4. Exemptions from certificate of need program.

§16-2D-4a. Conversion of hospital acute beds to skilled nursing beds.

§16-2D-5. Powers and duties of state agency.

§16-2D-6. Minimum criteria for certificate of need reviews.

§16-2D-7. Procedures for certificate of need reviews.

§16-2D-7a. Coordination and filing with consumer advocate.

§16-2D-8. Agency to promulgate additional rules.

§16-2D-9. Agency to render final decision; issue certificate of need; write findings; specify capital expenditure maximum.

§16-2D-10. Appeal of certificate of need decisions.

§16-2D-11. Nontransference, time period compliance and withdrawal of certificate of need.

§16-2D-13. Injunctive relief; civil penalty.

§16-2D-15. Previously approved rules.

§16-2D-2. Definitions.

1 Definitions of words and terms defined in articles five-f and
2 twenty-nine-b of this chapter are incorporated in this section
3 unless this section has different definitions.

4 As used in this article, unless otherwise indicated by the
5 context:

6 (a) "Affected person" means:

7 (1) The applicant;

8 (2) An agency or organization representing consumers;

9 (3) Any individual residing within the geographic area
10 served or to be served by the applicant;

11 (4) Any individual who regularly uses the health care
12 facilities within that geographic area;

13 (5) The health care facilities which provide services similar
14 to the services of the facility under review and which will be
15 significantly affected by the proposed project;

16 (6) The health care facilities which, prior to receipt by the
17 state agency of the proposal being reviewed, have formally
18 indicated an intention to provide similar services in the future;

19 (7) Third-party payors who reimburse health care facilities
20 similar to those proposed for services;

21 (8) Any agency that establishes rates for health care
22 facilities similar to those proposed; or

23 (9) Organizations representing health care providers.

24 (b) "Ambulatory health care facility" means a free-standing
25 facility that provides health care to noninstitutionalized and
26 nonhomebound persons on an outpatient basis. For purposes of
27 this definition, a free-standing facility is not located on the
28 campus of an existing health care facility. This definition does
29 not include the private office practice of any one or more health
30 professionals licensed to practice in this state pursuant to the
31 provisions of chapter thirty of this code: *Provided*, That this
32 exemption from review shall not be construed to include
33 practices where major medical equipment otherwise subject to
34 review under the provisions of this article is acquired, offered
35 or developed: *Provided, however*, That this exemption from
36 review shall not be construed to include certain health services
37 otherwise subject to review under the provisions of subdivision
38 (1), subsection (a), section four of this article.

39 (c) "Ambulatory surgical facility" means a free-standing
40 facility that provides surgical treatment to patients not requiring
41 hospitalization. For purposes of this definition, a free-standing
42 facility is not physically attached to a health care facility. This
43 definition does not include the private office practice of any one
44 or more health professionals licensed to practice surgery in this
45 state pursuant to the provisions of chapter thirty of this code:
46 *Provided*, That this exemption from review shall not be
47 construed to include practices where major medical equipment
48 otherwise subject to review under the provisions of this article

49 is acquired, offered or developed: *Provided, however*, That this
50 exemption from review shall not be construed to include health
51 services otherwise subject to review under the provisions of
52 subdivision (1), subsection (a), section four of this article.

53 (d) "Applicant" means: (1) The governing body or the
54 person proposing a new institutional health service who is, or
55 will be, the health care facility licensee wherein the new
56 institutional health service is proposed to be located; and (2) in
57 the case of a proposed new institutional health service not to be
58 located in a licensed health care facility, the governing body or
59 the person proposing to provide the new institutional health
60 service. Incorporators or promoters who will not constitute the
61 governing body or persons responsible for the new institutional
62 health service may not be an applicant.

63 (e) "Bed capacity" means the number of beds licensed to a
64 health care facility, or the number of adult and pediatric beds
65 permanently staffed and maintained for immediate use by
66 inpatients in patient rooms or wards in an unlicensed facility.

67 (f) "Campus" means the adjacent grounds and buildings, or
68 grounds and buildings not separated by more than a public
69 right-of-way, of a health care facility.

70 (g) "Capital expenditure" means:

71 (1) An expenditure made by or on behalf of a health care
72 facility, which:

73 (A)(i) Under generally accepted accounting principles is not
74 properly chargeable as an expense of operation and mainte-
75 nance; or (ii) is made to obtain either by lease or comparable
76 arrangement any facility or part thereof or any equipment for a
77 facility or part; and

78 (B)(i) Exceeds the expenditure minimum; (ii) is a substan-
79 tial change to the bed capacity of the facility with respect to
80 which the expenditure is made; or (iii) is a substantial change
81 to the services of such facility;

82 (2) The donation of equipment or facilities to a health care
83 facility, which if acquired directly by that facility would be
84 subject to review;

85 (3) The transfer of equipment or facilities for less than fair
86 market value if the transfer of the equipment or facilities at fair
87 market value would be subject to review; or

88 (4) A series of expenditures, if the sum total exceeds the
89 expenditure minimum and if determined by the state agency to
90 be a single capital expenditure subject to review. In making this
91 determination, the state agency shall consider: Whether the
92 expenditures are for components of a system which is required
93 to accomplish a single purpose; whether the expenditures are to
94 be made over a two-year period and are directed towards the
95 accomplishment of a single goal within the health care facility's
96 long-range plan; or whether the expenditures are to be made
97 within a two-year period within a single department such that
98 they will constitute a significant modernization of the depart-
99 ment.

100 (h) "Expenditure minimum" means two million dollars and
101 includes the cost of any studies, surveys, designs, plans,
102 working drawings, specifications and other activities, including
103 staff effort and consulting and other services essential to the
104 acquisition, improvement, expansion or replacement of any
105 plant or equipment.

106 (i) "Health", used as a term, includes physical and mental
107 health.

108 (j) "Health care facility" means a publicly or privately
109 owned facility, agency or entity that offers or provides health
110 care services, whether a for-profit or nonprofit entity and
111 whether or not licensed, or required to be licensed, in whole or
112 in part, and includes, but is not limited to, hospitals; skilled
113 nursing facilities; kidney disease treatment centers, including
114 free-standing hemodialysis units; intermediate care facilities;
115 ambulatory health care facilities; ambulatory surgical facilities;
116 home health agencies; hospice agencies; rehabilitation facili-
117 ties; health maintenance organizations; and community mental
118 health and mental retardation facilities. For purposes of this
119 definition, "community mental health and mental retardation
120 facility" means a private facility which provides such compre-
121 hensive services and continuity of care as emergency, outpa-

122 tient, partial hospitalization, inpatient or consultation and
123 education for individuals with mental illness, mental retardation
124 or drug or alcohol addiction.

125 (k) "Health care provider" means a person, partnership,
126 corporation, facility, hospital or institution licensed or certified
127 or authorized by law to provide professional health care service
128 in this state to an individual during that individual's medical,
129 remedial or behavioral health care, treatment or confinement.

130 (l) "Health maintenance organization" means a public or
131 private organization which:

132 (1) Is required to have a certificate of authority to operate
133 in this state pursuant to section three, article twenty-five-a,
134 chapter thirty-three of this code; or

135 (2) (A) Provides or otherwise makes available to enrolled
136 participants health care services, including substantially the
137 following basic health care services: Usual physician services,
138 hospitalization, laboratory, X ray, emergency and preventive
139 services and out-of-area coverage;

140 (B) Is compensated except for copayments for the provision
141 of the basic health care services listed in paragraph (A) of this
142 subdivision to enrolled participants on a predetermined periodic
143 rate basis without regard to the date the health care services are
144 provided and which is fixed without regard to the frequency,
145 extent or kind of health service actually provided; and

146 (C) Provides physicians' services: (i) Directly through
147 physicians who are either employees or partners of the organi-
148 zation; or (ii) through arrangements with individual physicians
149 or one or more groups of physicians organized on a group
150 practice or individual practice basis.

151 (m) "Health services" means clinically related preventive,
152 diagnostic, treatment or rehabilitative services, including
153 alcohol, drug abuse and mental health services.

154 (n) "Home health agency" means an organization primarily
155 engaged in providing professional nursing services either
156 directly or through contract arrangements and at least one of the

157 following services: Home health aide services, other therapeutic
158 services, physical therapy, speech therapy, occupational
159 therapy, nutritional services or medical social services to
160 persons in their place of residence on a part-time or intermittent
161 basis.

162 (o) "Hospice agency" means a private or public agency or
163 organization licensed in West Virginia for the administration or
164 provision of hospice care services to terminally ill persons in
165 the persons' temporary or permanent residences by using an
166 interdisciplinary team, including, at a minimum, persons
167 qualified to perform nursing services; social work services; the
168 general practice of medicine or osteopathy; and pastoral or
169 spiritual counseling.

170 (p) "Hospital" means a facility licensed as such pursuant to
171 the provisions of article five-b of this chapter, and any acute
172 care facility operated by the state government, that primarily
173 provides inpatient diagnostic, treatment or rehabilitative
174 services to injured, disabled or sick persons under the supervi-
175 sion of physicians and includes psychiatric and tuberculosis
176 hospitals.

177 (q) "Intermediate care facility" means an institution that
178 provides health-related services to individuals with mental or
179 physical conditions that require services above the level of
180 room and board, but do not require the degree of services
181 provided in a hospital or skilled-nursing facility.

182 (r) "Long-range plan" means a document formally adopted
183 by the legally constituted governing body of an existing health
184 care facility or by a person proposing a new institutional health
185 service, which contains the information required by the state
186 agency in rules adopted pursuant to section eight of this article.

187 (s) "Major medical equipment" means a single unit of
188 medical equipment or a single system of components with
189 related functions, which is used for the provision of medical
190 and other health services and costs in excess of two million
191 dollars. This term does not include medical equipment acquired
192 by or on behalf of a clinical laboratory to provide clinical
193 laboratory services if the clinical laboratory is independent of

194 a physician's office and a hospital and it has been determined
195 under Title XVIII of the Social Security Act to meet the
196 requirements of paragraphs ten and eleven of Section 1861(s)
197 of such act, Title 42 U.S.C. §1395x. In determining whether
198 medical equipment is major medical equipment, the cost of
199 studies, surveys, designs, plans, working drawings, specifica-
200 tions and other activities essential to the acquisition of such
201 equipment shall be included. If the equipment is acquired for
202 less than fair market value, the term "cost" includes the fair
203 market value.

204 (t) "Medically underserved population" means the popula-
205 tion of an area designated by the state agency as having a
206 shortage of personal health services. The state agency may
207 consider unusual local conditions that are a barrier to accessibil-
208 ity or availability of health services. The designation shall be in
209 rules adopted by the state agency pursuant to section eight of
210 this article, and the population so designated may include the
211 state's medically underserved population designated by the
212 federal secretary of health and human services under Section
213 330(b)(3) of the Public Health Service Act, as amended, Title
214 42 U.S.C. §254.

215 (u) "New institutional health service" means any service as
216 described in section three of this article.

217 (v) "Offer," when used in connection with health services,
218 means that the health care facility or health maintenance
219 organization holds itself out as capable of providing, or as
220 having the means to provide specified health services.

221 (w) "Person" means an individual, trust, estate, partnership,
222 committee, corporation, association and other organizations
223 such as joint-stock companies and insurance companies, a state
224 or a political subdivision or instrumentality thereof or any legal
225 entity recognized by the state.

226 (x) "Physician" means a doctor of medicine or osteopathy
227 legally authorized to practice by the state.

228 (y) "Proposed new institutional health service" means any
229 service as described in section three of this article.

230 (z) "Psychiatric hospital" means an institution that primar-
231 ily provides to inpatients, by or under the supervision of a
232 physician, specialized services for the diagnosis, treatment and
233 rehabilitation of mentally ill and emotionally disturbed persons.

234 (aa) "Rehabilitation facility" means an inpatient facility
235 operated for the primary purpose of assisting in the rehabilita-
236 tion of disabled persons through an integrated program of
237 medical and other services, which are provided under compe-
238 tent professional supervision.

239 (bb) "Review agency" means an agency of the state,
240 designated by the governor as the agency for the review of state
241 agency decisions.

242 (cc) "Skilled nursing facility" means an institution, or a
243 distinct part of an institution, that primarily provides inpatient
244 skilled nursing care and related services, or rehabilitation
245 services, to injured, disabled or sick persons.

246 (dd) "State agency" means the health care authority created,
247 established and continued pursuant to article twenty-nine-b of
248 this chapter.

249 (ee) "State health plan" means the document approved by
250 the governor after preparation by the former statewide health
251 coordinating council, or that document as approved by the
252 governor after amendment by the former health care planning
253 council or the state agency.

254 (ff) "Substantial change to the bed capacity" of a health
255 care facility means any change, associated with a capital
256 expenditure, that increases or decreases the bed capacity, or
257 relocates beds from one physical facility or site to another, but
258 does not include a change by which a health care facility
259 reassigns existing beds as swing beds between acute care and
260 long-term care categories: *Provided*, That a decrease in bed
261 capacity in response to federal rural health initiatives excluded
262 from this definition.

263 (gg) "Substantial change to the health services" of a health
264 care facility means: (1) The addition of a health service offered
265 by or on behalf of the health care facility, which was not

266 offered by or on behalf of the facility within the twelve-month
267 period before the month in which the service is first offered; or
268 (2) the termination of a health service offered by or on behalf
269 of the facility: *Provided*, That “substantial change to the health
270 services” does not include the providing of ambulance service,
271 wellness centers or programs, adult day care or respite care by
272 acute care facilities.

273 (hh) “To develop,” when used in connection with health
274 services, means to undertake those activities which upon their
275 completion will result in the offer of a new institutional health
276 service or the incurring of a financial obligation, in relation to
277 the offering of such a service.

§16-2D-3. Certificate of need; new institutional health services defined.

1 (a) Except as provided in section four of this article, any
2 new institutional health service may not be acquired, offered or
3 developed within this state except upon application for and
4 receipt of a certificate of need as provided by this article.
5 Whenever a new institutional health service for which a
6 certificate of need is required by this article is proposed for a
7 health care facility for which, pursuant to section four of this
8 article, no certificate of need is or was required, a certificate of
9 need shall be issued before the new institutional health service
10 is offered or developed. No person may knowingly charge or
11 bill for any health services associated with any new institutional
12 health service that is knowingly acquired, offered or developed
13 in violation of this article, and any bill made in violation of this
14 section is legally unenforceable.

15 (b) For purposes of this article, a proposed “new institu-
16 tional health service” includes:

17 (1) The construction, development, acquisition or other
18 establishment of a new health care facility or health mainte-
19 nance organization;

20 (2) The partial or total closure of a health care facility or
21 health maintenance organization with which a capital expendi-
22 ture is associated;

23 (3) Any obligation for a capital expenditure incurred by or
24 on behalf of a health care facility, except as exempted in section
25 four of this article, or health maintenance organization in excess
26 of the expenditure minimum or any obligation for a capital
27 expenditure incurred by any person to acquire a health care
28 facility. An obligation for a capital expenditure is considered to
29 be incurred by or on behalf of a health care facility:

30 (A) When a contract, enforceable under state law, is entered
31 into by or on behalf of the health care facility for the construc-
32 tion, acquisition, lease or financing of a capital asset;

33 (B) When the governing board of the health care facility
34 takes formal action to commit its own funds for a construction
35 project undertaken by the health care facility as its own
36 contractor; or

37 (C) In the case of donated property, on the date on which
38 the gift is completed under state law;

39 (4) A substantial change to the bed capacity of a health care
40 facility with which a capital expenditure is associated;

41 (5) The addition of health services as specified by the state
42 agency which are offered by or on behalf of a health care
43 facility or health maintenance organization and which were not
44 offered on a regular basis by or on behalf of the health care
45 facility or health maintenance organization within the twelve-
46 month period prior to the time the services would be offered.
47 The state agency shall promulgate emergency rules pursuant to
48 the provisions of section fifteen, article three, chapter twenty-
49 nine-a of this code by the first day of July, one thousand nine
50 hundred ninety-nine, to specify the health services which are
51 subject to certificate of need review. The state agency shall
52 specify by rule those health services subject to certificate of
53 need as recommended by the certificate of need study con-
54 ducted pursuant to section nineteen-a, article twenty-nine-b of
55 this chapter;

56 (6) The addition of ventilator services for any nursing
57 facility bed by any health care facility or health maintenance
58 organization;

59 (7) The deletion of one or more health services, previously
60 offered on a regular basis by or on behalf of a health care
61 facility or health maintenance organization which is associated
62 with a capital expenditure;

63 (8) A substantial change to the bed capacity or health
64 services offered by or on behalf of a health care facility,
65 whether or not the change is associated with a proposed capital
66 expenditure, if the change is associated with a previous capital
67 expenditure for which a certificate of need was issued and if the
68 change will occur within two years after the date the activity
69 which was associated with the previously approved capital
70 expenditure was undertaken;

71 (9) The acquisition of major medical equipment;

72 (10) A substantial change in an approved new institutional
73 health service for which a certificate of need is in effect. For
74 purposes of this subsection, "substantial change" shall be
75 defined by the state agency in rules adopted pursuant to section
76 eight of this article; or

77 (11) An expansion of the service area for hospice or home
78 health service, regardless of the time period in which the
79 expansion is contemplated or made.

§16-2D-4. Exemptions from certificate of need program.

1 (a) Except as provided in subsection (b), subdivision (9),
2 section three of this article, nothing in this article or the rules
3 adopted pursuant to the provisions of this article may be
4 construed to authorize the licensure, supervision, regulation or
5 control in any manner of the following:

6 (1) Private office practice of any one or more health
7 professionals licensed to practice in this state pursuant to the
8 provisions of chapter thirty of this code: *Provided*, That such
9 exemption from review of private office practice shall not be
10 construed to include such practices where major medical
11 equipment otherwise subject to review under the provisions of
12 this article is acquired, offered or developed: *Provided, how-*
13 *ever*, That such exemption from review of private office

14 practice shall not be construed to include the acquisition,
15 offering or development of one or more health services,
16 including ambulatory surgical facilities or centers, lithotripsy,
17 magnetic resonance imaging and radiation therapy by one or
18 more health professionals. The state agency shall adopt rules
19 pursuant to section eight of this article which specify the health
20 services acquired, offered or developed by health professionals
21 which are subject to certificate of need review;

22 (2) Dispensaries and first-aid stations located within
23 business or industrial establishments maintained solely for the
24 use of employees: *Provided*, That such facility does not contain
25 inpatient or resident beds for patients or employees who
26 generally remain in the facility for more than twenty-four
27 hours;

28 (3) Establishments, such as motels, hotels and boarding-
29 houses, which provide medical, nursing personnel and health
30 related services;

31 (4) The remedial care or treatment of residents or patients
32 in any home or institution conducted only for those who rely
33 solely upon treatment by prayer or spiritual means in accor-
34 dance with the creed or tenets of any recognized church or
35 religious denomination;

36 (5) The creation of new primary care services located in
37 communities that are underserved with respect to primary care
38 services: *Provided*, That to qualify for this exemption, an
39 applicant must be a community-based nonprofit organization
40 with a community board that provides or will provide primary
41 care services to people without regard to ability to pay: *Pro-*
42 *vided, however*, That the exemption from certificate of need
43 review of new primary care services provided by this subdivi-
44 sion shall not include the acquisition, offering or development
45 of major medical equipment otherwise subject to review under
46 the provisions of this article or to include the acquisition,
47 offering or development of ambulatory surgical facilities,
48 lithotripsy, magnetic resonance imaging or radiation therapy.
49 The office of community and rural health services shall define
50 which services constitute primary care services for purposes of

51 this subdivision, and shall, to prevent duplication of primary
52 care services, determine whether a community is underserved
53 with respect to certain primary care services within the meaning
54 of this subdivision. Any organization planning to qualify for an
55 exemption pursuant to this subdivision shall submit to the state
56 agency a letter of intent describing the proposed new services
57 and area of service; and

58 (6) The creation of birthing centers by nonprofit primary
59 care centers that have a community board and provide primary
60 care services to people in their community without regard to
61 ability to pay, or by nonprofit hospitals with less than one
62 hundred licensed acute care beds: *Provided*, That to qualify for
63 this exemption, an applicant shall be located in an area that is
64 underserved with respect to low-risk obstetrical services:
65 *Provided, however*, That if a primary care center attempting to
66 qualify for this exemption is located in the same county as a
67 hospital that is also eligible for this exemption, or if a hospital
68 attempting to qualify for this exemption is located in the same
69 county as a primary care center that is also eligible for this
70 exemption, then at least one primary care center and at least one
71 hospital from said county shall collaborate for the provision of
72 services at a birthing center in order to qualify for this exemp-
73 tion: *Provided further*, That for purposes of this subsection, a
74 "birthing center" is a short-stay ambulatory health care facility
75 designed for low-risk births following normal uncomplicated
76 pregnancy. Any primary care center or hospital planning to
77 qualify for an exemption pursuant to this subdivision shall
78 submit to the state agency a letter of intent describing the
79 proposed birthing center and area of service.

80 (b) (1) A health care facility is not required to obtain a
81 certificate of need for the acquisition of major medical equip-
82 ment to be used solely for research, the addition of health
83 services to be offered solely for research, or the obligation of a
84 capital expenditure to be made solely for research if the health
85 care facility provides the notice required in subdivision (2) of
86 this subsection, and the state agency does not find, within sixty

87 days after it receives such notice, that the acquisition, offering
88 or obligation will, or will have the effect to:

89 (A) Affect the charges of the facility for the provision of
90 medical or other patient care services other than the services
91 which are included in the research;

92 (B) Result in a substantial change to the bed capacity of the
93 facility; or

94 (C) Result in a substantial change to the health services of
95 the facility.

96 (2) Before a health care facility acquires major medical
97 equipment to be used solely for research, offers a health service
98 solely for research or obligates a capital expenditure solely for
99 research, such health care facility shall notify in writing the
100 state agency of such facility's intent and the use to be made of
101 such medical equipment, health service or capital expenditure.

102 (3) If major medical equipment is acquired, a health service
103 is offered or a capital expenditure is obligated and a certificate
104 of need is not required for such acquisition, offering or obliga-
105 tion as provided in subdivision (1) of this subsection, such
106 equipment or service or equipment or facilities acquired
107 through the obligation of such capital expenditure may not be
108 used in such a manner as to have the effect or to make a change
109 described in paragraphs (A), (B) and (C) of said subdivision
110 unless the state agency issues a certificate of need approving
111 such use.

112 (4) For purposes of this subsection, the term "solely for
113 research" includes patient care provided on an occasional and
114 irregular basis and not as part of a research program.

115 (c) (1) The state agency may adopt rules pursuant to section
116 eight of this article to specify the circumstances under which a
117 certificate of need may not be required for the obligation of a
118 capital expenditure to acquire, either by purchase or under lease
119 or comparable arrangement, an existing health care facility:
120 *Provided*, That a certificate of need is required for the obliga-
121 tion of a capital expenditure to acquire, either by purchase or

122 under lease or comparable arrangement, an existing health care
123 facility if:

124 (A) The notice required by subdivision (2) of this subsec-
125 tion is not filed in accordance with that subdivision with respect
126 to such acquisition; or

127 (B) The state agency finds, within thirty days after the date
128 it receives a notice in accordance with subdivision (2) of this
129 subsection, with respect to such acquisition, that the services or
130 bed capacity of the facility will be changed by reason of said
131 acquisition.

132 (2) Before any person enters into a contractual arrangement
133 to acquire an existing health care facility, such person shall
134 notify the state agency of his or her intent to acquire the facility
135 and of the services to be offered in the facility and its bed
136 capacity. Such notice shall be made in writing and shall be
137 made at least thirty days before contractual arrangements are
138 entered into to acquire the facility with respect to which the
139 notice is given. The notice shall contain all information the state
140 agency requires.

141 (d) The state agency shall adopt rules pursuant to section
142 eight of this article to specify the circumstances under which
143 and the procedures by which a certificate of need may not be
144 required for shared services between two or more acute care
145 facilities providing services made available through existing
146 technology that can reasonably be mobile. The state agency
147 shall specify the types of items in the rules and under what
148 circumstances mobile MRI and mobile lithotripsy may be so
149 exempted from review. In no case, however, will mobile
150 cardiac catheterization be exempted from certificate of need
151 review. In addition, if the shared services mobile unit proves
152 less cost effective than a fixed unit, the acute care facility will
153 not be exempted from certificate of need review.

154 On a yearly basis, the state agency shall review existing
155 technologies to determine if other shared services should be
156 included under this exemption.

§16-2D-4a. Conversion of hospital acute beds to skilled nursing beds.

1 (a) *Legislative findings and purpose.* — The Legislature
2 hereby finds and declares that a need exists for skilled nursing
3 health care beds in this state due to a shortage of existing
4 facilities with adequate bed capacity and lack of willingness to
5 provide such services; that patients in need of skilled nursing
6 services have sometimes been retained in an inappropriate level
7 of care facility; that such practices have resulted in
8 malutilization of health care facilities and resources; that there
9 currently exists a surplus of acute care beds in hospitals,
10 particularly those in rural areas within this state; that the surplus
11 of acute care beds is, for the foreseeable future, permanent in
12 nature; that the same excess capacity of acute care beds
13 promotes economic inefficiencies in operation while failing to
14 meet community needs; that nursing homes are unable under
15 subsection (h), section five of this article, to add intermediate
16 or dually certified beds to skilled nursing beds at the present
17 time in numbers in excess of ten percent or not more than ten
18 beds, whichever is less; and that remedial action by the Legisla-
19 ture is necessary to effectuate relief of these problems to
20 promote the health and welfare of the citizens of the state by
21 allowing, in certain instances, for the conversion of acute care
22 beds to skilled nursing beds by hospitals, but with no increase
23 in overall hospital bed capacity.

24 (b) Notwithstanding the provisions of subsection (h),
25 section five of this article, and, further, notwithstanding the
26 provisions of subsection (b), subdivision (4), section three of
27 this article, the state agency shall adopt rules pursuant to section
28 eight of this article, to exempt from review the conversion of
29 acute care beds to skilled nursing care beds by a licensed
30 hospital by the state department of health and human resources
31 if the hospital meets the following conditions:

32 (1) It is located in a nonmetropolitan statistical area as
33 defined by the bureau of census of the federal government;

34 (2) It has experienced an average occupancy rate of less
35 than fifty percent for the twelve months preceding the date of
36 request for this exemption; and

37 (3) The nursing home service area within which the hospital
38 is located is under the bed ceiling as calculated by the thirty
39 beds per thousand population formula as set forth in the long-
40 term care chapter of the state health plan, except for the
41 purposes of this article existing nursing home beds shall be used
42 in the calculation.

43 (c) The state agency shall include in its rules requirements
44 that:

45 (1) In converting beds, the hospital must change one acute
46 care bed into one skilled nursing care bed;

47 (2) All acute care beds converted shall be permanently
48 deleted from the hospital's acute-care bed complement and the
49 hospital may not thereafter add, by conversion or otherwise,
50 acute-care beds to its bed complement without satisfying the
51 requirements of subsection (b), subdivision (4), section three of
52 this article, for which purposes such an addition, whether by
53 conversion or otherwise, shall be considered a substantial
54 change to the bed capacity of the hospital notwithstanding the
55 definition of that term found in subsection (ff), section two of
56 this article;

57 (3) The hospital shall meet all applicable federal and state
58 licensing requirements for the provisions of skilled nursing
59 services including a requirement that all skilled care beds
60 created under this exemption shall be located in distinct-part,
61 long-term care units;

62 (4) No hospital is permitted to convert more than twenty-
63 five percent of its licensed bed capacity in any twenty-four
64 month period pursuant to this exemption; however, in the event
65 that subsection (g), section five of this article, is repealed and
66 to the extent that other methods of converting acute care beds
67 are available under this article, the hospital may request
68 certificate of need approval of such conversions; and

69 (5) The hospital shall undergo substantial compliance
70 review of a conversion under this exemption under such terms
71 and at such a time as set by the state agency in its rules.

72 (d) Nothing in this section negatively affects the rights of
73 inspection and certification which are elsewhere required by
74 federal law or regulations or by this code or duly adopted rule
75 of an authorized state entity.

§16-2D-5. Powers and duties of state agency.

1 (a) The state agency shall administer the certificate of need
2 program as provided by this article.

3 (b) The state agency is responsible for coordinating and
4 developing the health planning research efforts of the state and
5 for amending and modifying the state health plan which
6 includes the certificate of need standards. The state agency shall
7 review the state health plan, including the certificate of need
8 standards and make any necessary amendments and modifica-
9 tions within three years from the effective date of this section.
10 The state agency shall also review the cost effectiveness of the
11 certificate of need program. The state agency may form task
12 forces to assist it in addressing these issues. The task forces
13 shall be composed of representatives of consumers, business,
14 providers, payers and state agencies.

15 (c) The state agency may seek advice and assistance of
16 other persons, organizations and other state agencies in the
17 performance of the state agency's responsibilities under this
18 article.

19 (d) For health services for which competition appropriately
20 allocates supply consistent with the state health plan, the state
21 agency shall, in the performance of its functions under this
22 article, give priority, where appropriate to advance the purposes
23 of quality assurance, cost effectiveness and access, to actions
24 which would strengthen the effect of competition on the supply
25 of the services.

26 (e) For health services for which competition does not or
27 will not appropriately allocate supply consistent with the state
28 health plan, the state agency shall, in the exercise of its func-

29 tions under this article, take actions, where appropriate to
30 advance the purposes of quality assurance, cost effectiveness
31 and access and the other purposes of this article, to allocate the
32 supply of the services.

33 (f) Notwithstanding the provisions of section seven of this
34 article, the state agency may charge a fee for the filing of any
35 application, the filing of any notice in lieu of an application, the
36 filing of any exemption determination request or the filing of
37 any request for a declaratory ruling. The fees charged may vary
38 according to the type of matter involved, the type of health
39 service or facility involved or the amount of capital expenditure
40 involved. The state agency shall implement this subsection by
41 filing procedural rules pursuant to chapter twenty-nine-a of this
42 code. The fees charged shall be deposited into a special fund
43 known as the certificate of need program fund to be expended
44 for the purposes of this article.

45 (g) No hospital, nursing home or other health care facility
46 shall add any intermediate care or skilled nursing beds to its
47 current licensed bed complement. This prohibition also applies
48 to the conversion of acute care or other types of beds to
49 intermediate care or skilled nursing beds: *Provided*, That
50 hospitals eligible under the provisions of section four-a and
51 subsection (i), section five of this article may convert acute care
52 beds to skilled nursing beds in accordance with the provisions
53 of these sections, upon approval by the state agency. Further-
54 more, no certificate of need shall be granted for the construction
55 or addition of any intermediate care or skilled nursing beds
56 except in the case of facilities designed to replace existing beds
57 in unsafe existing facilities. A health care facility in receipt of
58 a certificate of need for the construction or addition of interme-
59 diate care or skilled nursing beds which was approved prior to
60 the effective date of this section shall incur an obligation for a
61 capital expenditure within twelve months of the date of
62 issuance of the certificate of need. No extensions shall be
63 granted beyond the twelve-month period. The state agency shall
64 establish a task force or utilize an existing task force to study
65 the need for additional nursing facility beds in this state. The
66 study shall include a review of the current moratorium on the

67 development of nursing facility beds; the exemption for the
68 conversion of acute care beds to skilled nursing facility beds;
69 the development of a methodology to assess the need for
70 additional nursing facility beds; and, certification of new beds
71 both by medicare and medicaid. The task force shall be com-
72 posed of representatives of consumers, business, providers,
73 payers and government agencies.

74 (h) No additional intermediate care facility for the mentally
75 retarded (ICF/MR) beds shall be granted a certificate of need,
76 except that prohibition does not apply to ICF/MR beds ap-
77 proved under the Kanawha County circuit court order of the
78 third day of August, one thousand nine hundred eighty-nine,
79 civil action number MISC-81-585 issued in the case of E. H. v.
80 Matin, 168 W.V. 248, 284 S.E.2d 232 (1981).

81 (i) Notwithstanding the provisions of subsection (g), section
82 five of this article and, further notwithstanding the provisions
83 of subsection (b), section three of this article, an existing acute
84 care hospital may apply to the health care authority for a
85 certificate of need to convert acute care beds to skilled nursing
86 beds: *Provided*, That the proposed skilled nursing beds are
87 medicare certified only: *Provided, however*, That any hospital
88 which converts acute care beds to medicare certified only
89 skilled nursing beds shall not bill for any medicaid reimburse-
90 ment for any converted beds. In converting beds, the hospital
91 shall convert a minimum of one acute care bed into one
92 medicare certified only skilled nursing bed. The health care
93 authority may require a hospital to convert up to and including
94 three acute care beds for each medicare certified only skilled
95 nursing bed: *Provided further*, That a hospital designated or
96 provisionally designated by the state agency as a rural primary
97 care hospital may convert up to thirty beds to a distinct-part
98 nursing facility, including skilled nursing beds and intermediate
99 care beds, on a one-for-one basis if the rural primary care
100 hospital is located in a county without a certified free-standing
101 nursing facility and the hospital may bill for medicaid reim-
102 bursement for the converted beds: *And provided further*, That
103 if the hospital rejects the designation as a rural primary care
104 hospital then the hospital may not bill for medicaid reimburse-

105 ment. The health care authority shall adopt rules to implement
106 this subsection which require that:

107 (1) All acute care beds converted shall be permanently
108 deleted from the hospital's acute care bed complement and the
109 hospital may not thereafter add, by conversion or otherwise,
110 acute care beds to its bed complement without satisfying the
111 requirements of subsection (b), section three of this article for
112 which purposes an addition, whether by conversion or other-
113 wise, shall be considered a substantial change to the bed
114 capacity of the hospital notwithstanding the definition of that
115 term found in subsection (ff), section two of this article.

116 (2) The hospital shall meet all federal and state licensing
117 certification and operational requirements applicable to nursing
118 homes including a requirement that all skilled care beds created
119 under this subsection shall be located in distinct-part, long-term
120 care units.

121 (3) The hospital shall demonstrate a need for the project.

122 (4) The hospital shall use existing space for the medicare
123 certified only skilled nursing beds. Under no circumstances
124 shall the hospital construct, lease or acquire additional space for
125 purposes of this section.

126 (5) The hospital shall notify the acute care patient, prior to
127 discharge, of facilities with skilled nursing beds which are
128 located in or near the patient's county of residence. Nothing in
129 this subsection negatively affects the rights of inspection and
130 certification which are otherwise required by federal law or
131 regulations or by this code or duly adopted rules of an autho-
132 rized state entity.

133 (j) (1) Notwithstanding the provisions of subsection (g) of
134 this section, a retirement life care center with no skilled nursing
135 beds may apply to the health care authority for a certificate of
136 need for up to sixty skilled nursing beds provided the proposed
137 skilled beds are medicare certified only. On a statewide basis,
138 a maximum of one hundred eighty skilled beds which are
139 medicare certified only may be developed pursuant to this
140 subsection. The state health plan is not applicable to projects

141 submitted under this subsection. The health care authority shall
142 adopt rules to implement this subsection which shall include a
143 requirement that:

144 (A) The one hundred eighty beds are to be distributed on a
145 statewide basis;

146 (B) There be a minimum of twenty beds and a maximum of
147 sixty beds in each approved unit;

148 (C) The unit developed by the retirement life care center
149 meet all federal and state licensing certification and operational
150 requirements applicable to nursing homes;

151 (D) The retirement center demonstrate a need for the
152 project;

153 (E) The retirement center offer personal care, home health
154 services and other lower levels of care to its residents; and

155 (F) The retirement center demonstrate both short and long-
156 term financial feasibility.

157 (2) Nothing in this subsection negatively affects the rights
158 of inspection and certification which are otherwise required by
159 federal law or regulations or by this code or duly adopted rules
160 of an authorized state entity.

161 (k) The state agency may order a moratorium upon the
162 offering or development of a new institutional health service,
163 when criteria and guidelines for evaluating the need for the new
164 institutional health service have not yet been adopted or are
165 obsolete. The state agency may also order a moratorium on the
166 offering or development of a health service, notwithstanding the
167 provisions of subdivision (5), subsection (b), section three of
168 this article, when it determines that the proliferation of the
169 service may cause an adverse impact on the cost of health care
170 or the health status of the public. A moratorium shall be
171 declared by a written order which shall detail the circumstances
172 requiring the moratorium. Upon the adoption of criteria for
173 evaluating the need for the health service affected by the
174 moratorium, or one hundred eighty days from the declaration of
175 a moratorium, whichever is less, the moratorium shall be

176 declared to be over and applications for certificates of need are
177 processed pursuant to section six of this article.

178 (l) (1) The state agency shall coordinate the collection of
179 information needed to allow the state agency to develop
180 recommended modifications to certificate of need standards as
181 required in this article. When the state agency proposes
182 amendments or modifications to the certificate of need stan-
183 dards, it shall file with the secretary of state, for publication in
184 the state register, a notice of proposed action, including the text
185 of all proposed amendments and modifications, and a date, time
186 and place for receipt of general public comment. To comply
187 with the public comment requirement of this section, the state
188 agency may hold a public hearing or schedule a public com-
189 ment period for the receipt of written statements or documents.

190 (2) All proposed amendments and modifications to the
191 certificate of need standards, with a record of the public hearing
192 or written statements and documents received pursuant to a
193 public comment period, shall be presented to the governor.
194 Within thirty days of receiving the proposed amendments or
195 modifications, the governor shall either approve or disapprove
196 all or part of the amendments and modifications, and, for any
197 portion of amendments or modifications not approved, shall
198 specify the reason or reasons for nonapproval. Any portions of
199 the amendments or modifications not approved by the governor
200 may be revised and resubmitted.

201 (m) The state agency may exempt from or expedite rate
202 review, certificate of need, and annual assessment requirements
203 and issue grants and loans to financially vulnerable health care
204 facilities located in underserved areas that the state agency and
205 the office of community and rural health services determine are
206 collaborating with other providers in the service area to provide
207 cost effective health care services.

§16-2D-6. Minimum criteria for certificate of need reviews.

1 (a) Except as provided in subsection (f), section nine of this
2 article, in making its determination as to whether a certificate
3 of need shall be issued, the state agency shall, at a minimum,

4 consider all of the following criteria that are applicable:
5 *Provided*, That the criteria set forth in subsection (f) of this
6 section apply to all hospitals, nursing homes and health care
7 facilities when ventilator services are to be provided for any
8 nursing facility bed:

9 (1) The relationship of the health services being reviewed
10 to the state health plan;

11 (2) The relationship of services reviewed to the long-range
12 development plan of the person providing or proposing the
13 services;

14 (3) The need that the population served or to be served by
15 the services has for the services proposed to be offered or
16 expanded, and the extent to which all residents of the area, and
17 in particular low income persons, racial and ethnic minorities,
18 women, handicapped persons, other medically underserved
19 population, and the elderly, are likely to have access to those
20 services;

21 (4) The availability of less costly or more effective alterna-
22 tive methods of providing the services to be offered, expanded,
23 reduced, relocated or eliminated;

24 (5) The immediate and long-term financial feasibility of the
25 proposal as well as the probable impact of the proposal on the
26 costs of and charges for providing health services by the person
27 proposing the new institutional health service;

28 (6) The relationship of the services proposed to the existing
29 health care system of the area in which the services are pro-
30 posed to be provided;

31 (7) In the case of health services proposed to be provided,
32 the availability of resources, including health care providers,
33 management personnel, and funds for capital and operating
34 needs, for the provision of the services proposed to be provided
35 and the need for alternative uses of these resources as identified
36 by the state health plan and other applicable plans;

37 (8) The appropriate and nondiscriminatory utilization of
38 existing and available health care providers;

39 (9) The relationship, including the organizational relation-
40 ship, of the health services proposed to be provided to ancillary
41 or support services;

42 (10) Special needs and circumstances of those entities
43 which provide a substantial portion of their services or re-
44 sources, or both, to individuals not residing in the health service
45 areas in which the entities are located or in adjacent health
46 service areas. The entities may include medical and other health
47 professional schools, multidisciplinary clinics and specialty
48 centers;

49 (11) In the case of a reduction or elimination of a service,
50 including the relocation of a facility or a service, the need that
51 the population presently served has for the service, the extent to
52 which that need will be met adequately by the proposed
53 relocation or by alternative arrangements, and the effect of the
54 reduction, elimination or relocation of the service on the ability
55 of low income persons, racial and ethnic minorities, women,
56 handicapped persons, other medically underserved population,
57 and the elderly, to obtain needed health care;

58 (12) In the case of a construction project: (A) The cost and
59 methods of the proposed construction, including the costs and
60 methods of energy provision; and (B) the probable impact of
61 the construction project reviewed on the costs of providing
62 health services by the person proposing the construction project
63 and on the costs and charges to the public of providing health
64 services by other persons;

65 (13) In the case of health services proposed to be provided,
66 the effect of the means proposed for the delivery of proposed
67 health services on the clinical needs of health professional
68 training programs in the area in which the services are to be
69 provided;

70 (14) In the case of health services proposed to be provided,
71 if the services are to be available in a limited number of
72 facilities, the extent to which the schools in the area for health
73 professions will have access to the services for training pur-
74 poses;

75 (15) In the case of health services proposed to be provided,
76 the extent to which the proposed services will be accessible to
77 all the residents of the area to be served by the services;

78 (16) In accordance with section five of this article, the
79 factors influencing the effect of competition on the supply of
80 the health services being reviewed;

81 (17) Improvements or innovations in the financing and
82 delivery of health services which foster competition, in accor-
83 dance with section five of this article, and serve to promote
84 quality assurance and cost effectiveness;

85 (18) In the case of health services or facilities proposed to
86 be provided, the efficiency and appropriateness of the use of
87 existing services and facilities similar to those proposed;

88 (19) In the case of existing services or facilities, the quality
89 of care provided by the services or facilities in the past;

90 (20) In the case where an application is made by an
91 osteopathic or allopathic facility for a certificate of need to
92 construct, expand, or modernize a health care facility, acquire
93 major medical equipment, or add services, the need for that
94 construction, expansion, modernization, acquisition of equip-
95 ment, or addition of services shall be considered on the basis of
96 the need for and the availability in the community of services
97 and facilities for osteopathic and allopathic physicians and their
98 patients. The state agency shall consider the application in
99 terms of its impact on existing and proposed institutional
100 training programs for doctors of osteopathy and medicine at the
101 student, internship, and residency training levels;

102 (21) The special circumstances of health care facilities with
103 respect to the need for conserving energy;

104 (22) The contribution of the proposed service in meeting
105 the health related needs of members of medically underserved
106 populations which have traditionally experienced difficulties in
107 obtaining equal access to health services, particularly those
108 needs identified in the state health plan as deserving of priority.
109 For the purpose of determining the extent to which the proposed
110 service will be accessible, the state agency shall consider:

111 (A) The extent to which medically underserved populations
112 currently use the applicant's services in comparison to the
113 percentage of the population in the applicant's service area
114 which is medically underserved, and the extent to which
115 medically underserved populations are expected to use the
116 proposed services if approved;

117 (B) The performance of the applicant in meeting its
118 obligation, if any, under any applicable federal regulations
119 requiring provision of uncompensated care, community service,
120 or access by minorities and handicapped persons to programs
121 receiving federal financial assistance, including the existence of
122 any civil rights access complaints against the applicant;

123 (C) The extent to which medicare, medicaid and medically
124 indigent patients are served by the applicant; and

125 (D) The extent to which the applicant offers a range of
126 means by which a person will have access to its services,
127 including, but not limited to, outpatient services, admission by
128 a house staff and admission by personal physician;

129 (23) The existence of a mechanism for soliciting consumer
130 input into the health care facility's decision making process.

131 (b) The state agency may include additional criteria which
132 it prescribes by rules adopted pursuant to section eight of this
133 article.

134 (c) Criteria for reviews may vary according to the purpose
135 for which a particular review is being conducted or the types of
136 health services being reviewed.

137 (d) An application for a certificate of need may not be made
138 subject to any criterion not contained in this article or not
139 contained in rules adopted pursuant to section eight of this
140 article.

141 (e) In the case of any proposed new institutional health
142 service, the state agency may not grant a certificate of need
143 under its certificate of need program unless, after consideration
144 of the appropriateness of the use of existing facilities providing
145 services similar to those being proposed, the state agency

146 makes, in addition to findings required in section nine of this
147 article, each of the following findings in writing: (1) That
148 superior alternatives to the services in terms of cost, efficiency
149 and appropriateness do not exist and the development of
150 alternatives is not practicable; (2) that existing facilities
151 providing services similar to those proposed are being used in
152 an appropriate and efficient manner; (3) that in the case of new
153 construction, alternatives to new construction, such as modern-
154 ization or sharing arrangements, have been considered and have
155 been implemented to the maximum extent practicable; (4) that
156 patients will experience serious problems in obtaining care of
157 the type proposed in the absence of the proposed new service;
158 and (5) that in the case of a proposal for the addition of beds for
159 the provision of skilled nursing or intermediate care services,
160 the addition will be consistent with the plans of other agencies
161 of the state responsible for the provision and financing of long-
162 term care facilities or services including home health services.

163 (f) In the case where an application is made by a hospital,
164 nursing home or other health care facility to provide ventilator
165 services which have not previously been provided for a nursing
166 facility bed, the state agency shall consider the application in
167 terms of the need for the service and whether the cost exceeds
168 the level of current medicaid services. No facility may, by
169 providing ventilator services, provide a higher level of service
170 for a nursing facility bed without demonstrating that the change
171 in level of service by provision of the additional ventilator
172 services will result in no additional fiscal burden to the state.

173 (g) In the case where application is made by any person or
174 entity to provide personal care services which are to be billed
175 for medicaid reimbursement, the state agency shall consider the
176 application in terms of the need for the service and whether the
177 cost exceeds the level of the cost of current medicaid services.
178 No person or entity may provide personal care services to be
179 billed for medicaid reimbursement without demonstrating that
180 the provision of the personal care service will result in no
181 additional fiscal burden to the state: *Provided*, That a certificate
182 of need is not required for a person providing specialized foster
183 care personal care services to one individual and those services

184 are delivered in the provider's home. The state agency shall
185 also consider the total fiscal liability to the state for all applica-
186 tions which have been submitted.

§16-2D-7. Procedures for certificate of need reviews.

1 (a) Prior to submission of an application for a certificate of
2 need, the state agency shall require the submission of long-
3 range plans by health care facilities with respect to the develop-
4 ment of proposals subject to review under this article. The plans
5 shall be in such form and contain such information as the state
6 agency requires.

7 (b) An application for a certificate of need shall be submit-
8 ted to the state agency prior to the offering or development of
9 all new institutional services within this state. Persons propos-
10 ing new institutional health services shall submit letters of
11 intent not less than fifteen days prior to submitting an applica-
12 tion. The letters of intent shall be of such detail as specified by
13 the state agency.

14 (c) The state agency may adopt rules pursuant to section
15 eight of this article for:

16 (1) Provision for applications to be submitted in accordance
17 with a timetable established by the state agency;

18 (2) Provision for such reviews to be undertaken in a timely
19 fashion; and

20 (3) Except for proposed new institutional health services
21 which meet the requirements for consideration under subsection
22 (f), section nine of this article with regard to the elimination or
23 prevention of certain imminent safety hazards or to comply
24 with certain licensure or accreditation standards, provision for
25 all completed applications pertaining to similar types of
26 services, facilities or equipment to be considered in relation to
27 each other, at least three times a year.

28 (d) An application for a certificate of need shall specify the
29 time the applicant will require to make such service or equip-
30 ment available or to obligate such expenditure and a timetable

31 for making such service or equipment available or obligating
32 such expenditure.

33 (e) The application shall be in such form and contain such
34 information as the state agency establishes by rule, but requests
35 for information shall be limited to only that information which
36 is necessary for the state agency to perform the review.

37 (f) Within fifteen days of receipt of application, the state
38 agency shall determine if the application is complete. The state
39 agency may request additional information from the applicant.

40 (g) The state agency shall provide timely written notice to
41 the applicant and to all affected persons of the beginning of the
42 review, and to any person who has asked the state agency to
43 place the person's name on a mailing list maintained by the
44 state agency. Notification shall include the proposed schedule
45 for review, the period within which a public hearing during the
46 course of the review may be requested by affected persons,
47 which period may not be less than thirty days from the date of
48 the written notification of the beginning of the review required
49 by this section, and the manner in which notification will be
50 provided of the time and place of any public hearing so re-
51 quested. For the purposes of this subsection, the date of
52 notification is the date on which the notice is sent or the date on
53 which the notice appears in a newspaper of general circulation,
54 whichever is later.

55 (h) Written notification to members of the public and third-
56 party payers may be provided through newspapers of general
57 circulation in the applicable health service area and public
58 information channels; notification to all other affected persons
59 shall be by mail which may be as part of a newsletter.

60 (i) If, after a review has begun, the state agency requires the
61 person subject to the review to submit additional information
62 respecting the subject of the review, such person shall be
63 provided at least fifteen days to submit the information and the
64 state agency shall, at the request of such person, extend the
65 review period by fifteen days. This extension applies to all
66 other applications which have been considered in relation to the
67 application for which additional information is required.

68 (j) The state agency shall adopt schedules for reviews
69 which provide that no review may, to the extent practicable,
70 take longer than ninety days from the date that notification, as
71 described under subsection (g) of this section, is sent to the
72 applicant to the date of the final decision of the state agency,
73 and in the case of expedited applications, may by rules adopted
74 pursuant to section eight of this article provide for a shortened
75 review period.

76 (k) The state agency shall adopt criteria for determining
77 when it would not be practicable to complete a review within
78 ninety days.

79 (l) The state agency shall provide a public hearing in the
80 course of agency review if requested by any affected person and
81 the state agency may on its own initiate such a public hearing:

82 (1) The state agency shall, prior to such hearing, provide
83 notice of such hearing and shall conduct such hearing in
84 accordance with administrative hearing requirements in article
85 five, chapter twenty-nine-a of this code, and its procedure
86 adopted pursuant to this section.

87 (2) In a hearing any person has the right to be represented
88 by counsel and to present oral or written arguments and
89 evidence relevant to the matter which is the subject of the
90 hearing. Any person affected by the matter which is the subject
91 of the hearing may conduct reasonable questioning of persons
92 who make factual allegations relevant to such matter.

93 (3) The state agency shall maintain a verbatim record of the
94 hearing.

95 (4) After the commencement of a hearing on the applicant's
96 application and before a decision is made with respect to it,
97 there may be no ex parte contacts between: (A) The applicant
98 for the certificate of need, any person acting on behalf of the
99 applicant or holder of a certificate of need, or any person
100 opposed to the issuance of a certificate for the applicant; and
101 (B) any person in the state agency who exercises any responsi-
102 bility respecting the application.

103 (5) The state agency may not impose fees for such a public
104 hearing.

105 (m) If a public hearing is not conducted during the review
106 of a new institutional health service, the state agency may, by
107 rules adopted pursuant to section eight of this article, provide
108 for a file closing date during the review period after which date
109 no other factual information or evidence may be considered in
110 the determination of the application for the certificate of need.
111 A detailed itemization of documents in the state agency file on
112 a proposed new institutional health service shall, on request, be
113 made available by the state agency at any time before the file
114 closing date.

115 (n) The extent of additional information received by the
116 state agency from the applicant for a certificate of need after a
117 review has begun on the applicant's proposed new institutional
118 health service, with respect to the impact on such new institu-
119 tional health service and additional information which is
120 received by the state agency from the applicant, may be cause
121 for the state agency to determine the application to be a new
122 proposal, subject to a new review cycle.

123 (o) The state agency shall in timely fashion notify, upon
124 request, providers of health services and other persons subject
125 to review under this article of the status of the state agency
126 review of new institutional health services subject to review,
127 findings made in the course of such review, and other appropri-
128 ate information respecting such review.

129 (p) The state agency shall prepare and publish, at least
130 annually, reports of reviews completed and being conducted,
131 with general statements about the status of each review still in
132 progress and the findings and rationale for each completed
133 review since the publication of the last report.

134 (q) The state agency shall provide for access by the general
135 public to all applications reviewed by the state agency and to all
136 other pertinent written materials essential to agency review.

137 (r) (1) Any person may request in writing a public hearing
138 for purposes of reconsideration of a state agency decision. No

139 fees may be imposed by the state agency for the hearing. For
140 purposes of this section, a request for a public hearing for
141 purposes of reconsideration shall be considered to have shown
142 good cause if, in a detailed statement, it:

143 (A) Presents significant, relevant information not previ-
144 ously considered by the state agency, and demonstrates that
145 with reasonable diligence the information could not have been
146 presented before the state agency made its decision;

147 (B) Demonstrates that there have been significant changes
148 in factors or circumstances relied upon by the state agency in
149 reaching its decision;

150 (C) Demonstrates that the state agency has materially failed
151 to follow its adopted procedures in reaching its decision; or

152 (D) Provides such other bases for a public hearing as the
153 state agency determines constitutes good cause.

154 (2) To be effective, a request for such a hearing shall be
155 received within thirty days after the date of the state agency
156 decision, and the hearing shall commence within thirty days of
157 receipt of the request.

158 (3) Notification of such public hearing shall be sent, prior
159 to the date of the hearing, to the person requesting the hearing,
160 the person proposing the new institutional health service, and
161 to others upon request.

162 (4) The state agency shall hold public reconsideration
163 hearings in accordance with the provisions for administrative
164 hearings contained in:

165 (A) Its adopted procedures;

166 (B) Ex parte contact provisions of subdivision (4), subsec-
167 tion (l) of this section; and

168 (C) The administrative procedures for contested cases
169 contained in article five, chapter twenty-nine-a of this code.

170 (5) The state agency shall make written findings which state
171 the basis for its decision within forty-five days after the
172 conclusion of such hearing.

173 (6) A decision of the state agency following a reconsidera-
174 tion hearing shall be considered a decision of the state agency
175 for purposes of sections nine and ten of this article and for
176 purposes of the notification of the status of review, findings and
177 annual report provisions of subsections (o) and (p) of this
178 section.

179 (s) The state agency may adopt rules pursuant to section
180 eight of this article for reviews and such rules may vary
181 according to the purpose for which a particular review is being
182 conducted or the type of health services being reviewed.

183 (t) Notwithstanding other provisions of this article, the state
184 agency shall adopt rules for determining when there is an
185 application which warrants expedited review.

186 (u) Notwithstanding other provisions of this article, the
187 state agency shall promulgate emergency rules pursuant to the
188 provisions of section fifteen, article three, chapter twenty-nine-a
189 of this code by the first day of July, one thousand nine hundred
190 ninety-nine, to establish a review process for nonhealth related
191 projects. The review process shall not exceed forty-five days.
192 The state agency shall specify in the rule which projects are
193 eligible for this review.

§16-2D-7a. Coordination and filing with consumer advocate.

1 Each health care facility or health care provider filing a
2 certificate of need application with the state agency pursuant to
3 sections four and seven of this article shall notify the director
4 of the office of consumer advocacy established pursuant to
5 section sixteen, article two, chapter thirty-three of this code of
6 said application by submitting a copy of the same to the office
7 of the consumer advocate on or before the date of such filing.

§16-2D-8. Agency to promulgate additional rules.

1 (a) The state agency may promulgate additional rules:
2 (1) To carry out the provisions of this article; and
3 (2) To assure hospitals' compliance with requests for
4 information concerning rates charged for each of the twenty-

5 five most frequently used hospital services in the state including
6 the average semiprivate and private room rates.

7 (b) All rules shall be promulgated pursuant to chapter
8 twenty-nine-a of this code and as described herein. In addition,
9 before adopting proposed rules the state agency shall give
10 interested persons an opportunity to offer written comments on
11 the rules, or any revisions thereof, which it proposes to adopt.

12 (c) Subsequent amendments and modifications to any rule
13 promulgated pursuant to this article may be implemented by
14 emergency rule.

**§16-2D-9. Agency to render final decision; issue certificate of
need; write findings; specify capital expenditure
maximum.**

1 (a) Only the state agency, or the appropriate administrative
2 or judicial review body, may issue, deny or withdraw certifi-
3 cates of need, grant exemptions from certificate of need
4 reviews, or determine that certificate of need reviews are not
5 required.

6 (b) A certificate of need may only be issued if the proposed
7 new institutional health service is:

8 (1) Found to be needed; and

9 (2) Except in emergency circumstances that pose a threat to
10 public health, consistent with the state health plan.

11 (c) The state agency shall render a final decision on every
12 application for a certificate of need or application for exemption
13 in the form of an approval, a denial, or an approval with
14 conditions. Any decision of the state agency with respect to a
15 certificate of need, or exemption, shall be based solely on:

16 (1) The review of the state agency conducted in accordance
17 with procedures and criteria in this article and in rules adopted
18 pursuant to section eight of this article; and

19 (2) The record established in administrative proceedings
20 held with respect to the certificate of need or exemption.

21 (d) Approval with conditions does not give the state agency
22 authority to mandate new institutional health services not

23 proposed by the health care facility or health maintenance
24 organization. Issuance of a certificate of need or exemption may
25 not be made subject to any condition unless the condition
26 directly relates to criteria in this article or in rules adopted
27 pursuant to section eight of this article. Conditions may be
28 imposed upon the operations of the health care facility or health
29 maintenance organization for no longer than a three-year
30 period. Compliance with such conditions may be enforced
31 through the mechanisms detailed in section thirteen of this
32 article.

33 (e) (1) For each proposed new institutional health service it
34 approves, the state agency shall, in addition to the written
35 findings required in subsection (e), section six of this article,
36 make a written finding, which shall take into account the
37 current accessibility of the facility as a whole, on the extent to
38 which the new institutional health service will meet the criteria
39 in subdivisions (3), (11) and (22), subsection (a), section six of
40 this article, regarding the needs of medically underserved
41 population, except in the following cases:

42 (A) Where the proposed new institutional health service is
43 one described in subsection (f) of this section to eliminate or
44 prevent certain imminent safety hazards or to comply with
45 certain licensure or accreditation standards; or

46 (B) Where the new institutional health service is a proposed
47 capital expenditure not directly related to the provision of
48 health services or to beds or major medical equipment.

49 (2) If the state agency disapproves a proposed new institu-
50 tional health service for failure to meet the needs of medically
51 underserved populations, it shall so state in a written finding.

52 (f) (1) Notwithstanding review criteria in section six of this
53 article, an application for a certificate of need shall be ap-
54 proved, if the state agency finds that the facility or service with
55 respect to which such capital expenditure is proposed to be
56 made is needed and that the obligation of such capital expendi-
57 ture is consistent with the state health plan, for a capital
58 expenditure which is required:

59 (A) To eliminate or prevent imminent safety hazards as
60 defined by federal, state or local fire, building or life safety
61 codes, rules or regulations;

62 (B) To comply with state licensure standards; or

63 (C) To comply with accreditation or certification standards,
64 compliance with which is required to receive reimbursements
65 under Title XVIII of the Social Security Act or payments under
66 the state plan for medical assistance approved under Title XIX
67 of such act.

68 (2) An application for a certificate of need approved under
69 this subsection shall be approved only to the extent that the
70 capital expenditure is required to eliminate or prevent the
71 hazards described in subparagraph (A), subdivision (1),
72 subsection (f) of this section, or to comply with the standards
73 described in either subparagraph (B) or (C), subdivision (1),
74 subsection (f) of this section.

75 (g) The state agency shall send its decision along with
76 written findings to the person proposing the new institutional
77 health service or exemption and shall make it available to
78 others upon request.

79 (h) In the case of a final decision to approve or approve
80 with conditions a proposal for a new institutional health service,
81 the state agency shall issue a certificate of need to the person
82 proposing the new institutional health service.

83 (i) The state agency shall specify in the certificate the
84 maximum amount of capital expenditures which may be
85 obligated under such certificate. The state agency shall pre-
86 scribe the method used to determine capital expenditure
87 maximums and shall adopt rules pursuant to section eight of
88 this article for the review of approved new institutional health
89 services for which the capital expenditure maximum is ex-
90 ceeded or is expected to be exceeded.

91 (j) If the state agency fails to make a decision within the
92 time period specified for the review, the applicant may, within
93 one year following the expiration of such period, bring an

94 action, at the election of the applicant, in either the circuit court
95 of Kanawha County, or with the judge thereof in vacation, or in
96 the circuit court of the county in which the applicant or any one
97 of the applicants resides or does business, or with the judge
98 thereof in vacation to require the state agency to approve or
99 disapprove the application. An application for a proposed new
100 institutional health service or exemption may not be approved
101 or denied by the circuit court solely because the state agency
102 failed to reach a decision.

§16-2D-10. Appeal of certificate of need decisions.

1 (a) A final decision of the state agency, including a state
2 agency decision issued after a reconsideration, if such reconsid-
3 eration was requested and granted under subsection (r), section
4 seven of this article, and the record upon which it was made,
5 shall upon request of any affected persons be reviewed by an
6 agency of the state (other than the state agency) designated by
7 the governor. To be effective, such request shall be received
8 within thirty days after the date the affected person received
9 notice of the state agency decision, and the hearing shall
10 commence within thirty days of receipt of the request.

11 (b) To the extent not inconsistent with this section, for the
12 purpose of administrative reviews of state agency decisions, the
13 review agency shall conduct its proceedings in conformance
14 with the West Virginia rules of civil procedure for trial courts
15 of record and the local rules for use in the civil courts of
16 Kanawha County and shall review appeals in accordance with
17 the provisions governing the judicial review of contested
18 administrative cases in section four, article five, chapter twenty-
19 nine-a of this code, notwithstanding the exceptions of section
20 five, article five, chapter twenty-nine-a of this code.

21 (c) The decision of the reviewing agency shall be made in
22 writing within forty-five days after the conclusion of such
23 hearing.

24 (d) The written findings of the review agency shall be sent
25 to the person who requested the review, to the person proposing
26 the new institutional health service and to the state agency, and

27 shall be made available by the state agency to others upon
28 request.

29 (e) The decision of the reviewing agency shall be consid-
30 ered the final decision of the state agency; however, the
31 reviewing agency may remand the matter to the state agency for
32 further action or consideration.

33 (f) Upon the entry of a final decision by the reviewing
34 agency any "person adversely affected by the review" has
35 standing in and may within thirty days after the date such
36 person received notice of the decision of the review agency take
37 an appeal at the election of the petitioner, in either the circuit
38 court of Kanawha County, or in the circuit court of the county
39 in which the petitioner or any of the petitioners resides or does
40 business, from any decision of the state agency granting, with
41 or without conditions, denying or withdrawing a certificate of
42 need or exemption. The decision of the review agency shall be
43 reviewed by such circuit court in accordance with the provi-
44 sions for the judicial review of administrative decisions
45 contained in section four, article five, chapter twenty-nine-a of
46 this code. For the purposes of this subsection, "person adversely
47 affected by the review" includes the state agency and any
48 person who meets the definition of affected person in section
49 two of this article.

**§16-2D-11. Nontransference, time period compliance and with-
drawal of certificate of need.**

1 (a) A certificate of need is nontransferable and shall be
2 valid for a maximum of one year from the date of issuance. A
3 transfer includes the sale, lease, transfer of stock or partnership
4 shares, or other comparable arrangement which has the effect
5 of transferring the control of the owner of the certificate of
6 need. Upon the expiration of the certificate or during the
7 certification period, the person proposing the new institutional
8 health service shall provide the state agency such information
9 on the development of the project as the state agency may
10 request. The state agency shall periodically monitor capital
11 expenditures obligated under certificates, determine whether
12 sufficient progress is being made in meeting the timetable

13 specified in the approved application for the certificate and
14 whether there has been compliance with the application and any
15 conditions of certification. The certificate of need may be
16 extended by the state agency for additional periods of time as
17 are reasonably necessary to expeditiously complete the project.
18 A certificate of need may no longer be in effect, and may no
19 longer be required, after written notice of substantial compli-
20 ance with the approved application and any conditions of
21 certification is issued to the applicant, after the activity is
22 undertaken for which the certificate of need was issued, and
23 after the state agency is provided written notice of such
24 undertaking. The person proposing a new institutional health
25 service may not be issued a license therefor until the state
26 agency has issued a written notice of substantial compliance
27 with the approved application and any conditions of certifica-
28 tion, nor may a new institutional health service be used until
29 such person has received such notice. A new institutional health
30 service may not be found to be in substantial compliance with
31 the approved application and any conditions of certification if
32 there is a substantial change, as defined in rules adopted
33 pursuant to subsection (b), subdivision (10), section three of
34 this article, in the approved new institutional health service for
35 which change a certificate of need has not been issued.

36 (b) (1) The certificate of need may be withdrawn by the
37 state agency for:

38 (A) Insufficient progress in meeting the timetable specified
39 in the approved application for the certificate and for not
40 making a good faith effort to meet it in developing the project;
41 or

42 (B) Noncompliance with any conditions of certification; or

43 (C) A substantial change, as defined in rules adopted
44 pursuant to subdivision (10), subsection (b), section three of
45 this article, in an approved new institutional health service for
46 which change a certificate of need has not been issued; or

47 (D) Material misrepresentation by an applicant upon which
48 the state agency relied in making its decision; or

49 (E) Other reasons that may be established by the state
50 agency in rules adopted pursuant to section eight of this article.

51 (2) Any decision of the state agency to withdraw a certifi-
52 cate of need shall be based solely on:

53 (A) The provisions of this article and on rules adopted in
54 accordance with section eight of this article; and

55 (B) The record established in administrative proceedings
56 held with respect to the state agency's proposal to withdraw the
57 certificate.

58 (3) In the case of a proposed withdrawal of a certificate of
59 need:

60 (A) After commencement of a hearing on the state agency's
61 proposal to withdraw a certificate of need and before a decision
62 is made on withdrawal, there may be no ex parte contacts
63 between: (i) The holder of the certificate of need, any person
64 acting on behalf of the holder, or any person in favor of the
65 withdrawal; and (ii) any person in the state agency who
66 exercises responsibility respecting withdrawal of the certificate;

67 (B) The state agency shall follow the notification of review
68 provisions of subsections (g) and (h), the public hearing
69 provisions of subsection (l), the notification of the status of
70 review and findings provisions of subsection (o), the annual
71 report provisions of subsection (p), and the reconsideration
72 provisions of subsection (r), all of section seven of this article,
73 and the conditional decision provisions of subsection (d), and
74 the notification of decision and findings provisions of subsec-
75 tion (g), section nine of this article; and

76 (C) Appeals of withdrawals of certificates of need shall be
77 made pursuant to section ten of this article.

78 (4) A new institutional health service may not be acquired,
79 offered, or developed within this state if a certificate of need
80 authorizing that new institutional health service has been
81 withdrawn by the state agency and the acquisition, offering, or
82 development of the new institutional health service is subject to
83 review under this article.

§16-2D-13. Injunctive relief; civil penalty.

1 (a) In addition to all other remedies, and aside from various
2 penalties provided by law, if any person acquires, offers or
3 develops any new institutional health service for which a
4 certificate of need is required under this article without first
5 having a certificate of need therefor as herein provided, or
6 violates any other provision of this article or any lawful rule
7 promulgated thereunder, the state agency may maintain a civil
8 action in the circuit court of the county wherein such violation
9 has occurred, or wherein such person may be found, to enjoin,
10 restrain or prevent such violation. No injunction bond shall be
11 required to be filed in any such proceeding.

12 (b) The state agency may assess a civil penalty for violation
13 of this article. Upon the state agency determining that there is
14 probable cause to believe that any person is knowingly offering,
15 developing, or has acquired any new institutional health service
16 subject to certificate of need review without having first
17 obtained a certificate of need therefor or that any person is
18 otherwise in violation of the provisions of this article, or any
19 lawful rule promulgated thereunder, the state agency shall
20 provide such person with written notice which shall state the
21 nature of the alleged violation and the time and place at which
22 such person shall appear to show good cause why a civil
23 penalty should not be imposed, at which time and place such
24 person shall be afforded an opportunity to cross-examine the
25 state agency's witnesses and afforded an opportunity to present
26 testimony and other evidence in support of his position. The
27 hearing shall be conducted in accordance with the administra-
28 tive hearing provisions of section four, article five, chapter
29 twenty-nine-a of this code. If, after reviewing the record of such
30 hearing, the state agency director determines that such person
31 is in violation of the certificate of need law, the state agency
32 shall assess a civil penalty of not less than five hundred dollars
33 nor more than twenty-five thousand dollars. In determining the
34 amount of the penalty, the state agency shall consider the
35 degree and extent of harm caused by the violation and the cost
36 of rectifying the damage. Any person assessed shall be notified
37 of the assessment in writing, and the notice shall specify the

38 reasons for the assessment. If the person assessed fails to pay
39 the amount of the assessment to the state agency within thirty
40 days, the state agency may institute a civil action in the circuit
41 court of the county wherein such violation has occurred, or
42 wherein such person may be found to recover the amount of the
43 assessment. In any such civil action, the scope of the court's
44 review of the state agency's action, which shall include a
45 review of the amount of the assessment, shall be as provided in
46 section four, article five, chapter twenty-nine-a of this code for
47 the judicial review of contested administrative cases.

§16-2D-15. Previously approved rules.

1 All rules previously promulgated to implement this article
2 shall continue in force following the amendments to this article;
3 except that, where such previous rules differ from the require-
4 ments of the amendments to this article, then such part of those
5 rules are hereby abrogated and shall have no further legal
6 effect. The state agency shall commence a review of such rules
7 and shall promulgate revised rules.

CHAPTER 136

(S. B. 550 — By Senators Helmick and Ross)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a, relating to the conversion of certain hospitals' acute care beds to nursing beds certified by medicare and medicaid; providing the criteria for such conversions; and providing an exception to agency rules and certain statutory requirements.

Be it enacted by the Legislature of West Virginia:

That article two-d, 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 five-a, to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-5a. Exception permitting certain nursing beds.

1 (a) Notwithstanding any provision contained in this article
2 and any rule issued by the state agency, on and after the first
3 day of January, one thousand nine hundred ninety-nine, any
4 critical access hospital, designated by the state as a critical
5 access hospital after meeting all federal eligibility criteria, that
6 was previously a for-profit organization and which has been
7 certified as a not-for-profit organization within the five years
8 prior to the first month in which this section becomes effective,
9 may apply for a certificate of need to add up to twenty-five
10 licensed distinct part nursing beds for certification by both
11 medicare and medicaid for reimbursement purposes, if the
12 hospital meets all federal and state licensing requirements for
13 the provision of nursing services, and if the nursing beds
14 created are located in distinct long-term care units in a previ-
15 ously constructed part of the hospital suitable for that purpose.

16 (b) Notwithstanding any provision of law to the contrary,
17 and any rule issued by the state agency, any rural hospital that
18 was formerly owned and operated by the county but now is
19 owned by a nonprofit multi-hospital chain owning two or more
20 rural hospitals, that is eligible in the rural health plan for, but
21 not currently designated as, a critical access hospital and
22 currently have one to twenty-five nursing beds, may apply for
23 a certificate of need to convert up to sixteen beds of existing
24 licensed acute care beds to nursing beds for certification by
25 both medicare and medicaid for reimbursement purposes,
26 provided that the following conditions are met:

27 (1) There is no overall increase in the bed capacity of the
28 hospital; one acute care bed is converted to one dually certified
29 medicare and medicaid nursing bed.

30 (2) All converted acute care beds shall be permanently
31 deleted from the acute care bed compliment of the hospital,
32 which may not thereafter add, by conversion or otherwise, acute
33 care beds to its bed compliment without satisfying the require-
34 ments of subdivision (4), subsection (b), section three of this
35 article, for which purposes the addition, whether by conversion
36 or otherwise, shall be considered a substantial change to the bed
37 capacity of the hospital notwithstanding the definition of that
38 term as found in subsection (e), section two of this article.

39 (3) After the conversion, the hospital shall have no more
40 than fifty licensed acute care beds.

41 (4) The hospital shall meet all federal and state licensing
42 requirements for the provisions of skilled nursing services.
43 Additionally, all skilled nursing beds created under this
44 exemption shall be located in distinct long-term care units in a
45 previously constructed part of the hospital that can be used for
46 that purpose.

47 (5) Nothing in this section negatively affects the rights of
48 inspection and certification which are elsewhere required by
49 federal law or regulations.

CHAPTER 137

(S. B. 612 — By Senators Walker and Bowman)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and eight, article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to emergency medical services personnel; clarifying the definition of "ambulance"; and specifying staffing and personnel requirements for specialized multipatient medical transports.

Be it enacted by the Legislature of West Virginia:

That sections three and eight, article four-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 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-3. Definitions.

§16-4C-8. Standards for emergency medical service personnel.

§16-4C-3. Definitions.

1 As used in this article, unless the context clearly requires a
2 different meaning:

3 (a) "Ambulance" means any privately or publicly-owned
4 vehicle or aircraft which is designed, constructed or modified;
5 equipped or maintained; and operated for the transportation of
6 patients, including, but not limited to, emergency medical
7 services vehicles; rotary and fixed wing air ambulances;
8 gsa kkk-A-1822 federal standard type I, type II and type III
9 vehicles; and specialized multipatient medical transport
10 vehicles operated by an emergency medical services agency;

11 (b) "Commissioner" means the commissioner of the bureau
12 of public health;

13 (c) "Council" means the emergency medical service
14 advisory council created pursuant to section five of this article;

15 (d) "Emergency medical services" means all services which
16 are set forth in Public Law 93-154 "The Emergency Medical
17 Services Systems Act of 1973" and those included in and made
18 a part of the emergency medical services plan of the department
19 of health and human resources inclusive of, but not limited to,
20 responding to the medical needs of an individual to prevent the
21 loss of life or aggravation of illness or injury;

22 (e) "Emergency medical service agency" means any agency
23 licensed under section six-a of this article to provide emergency
24 medical services;

25 (f) "Emergency medical service attendant" means a person
26 certified by the commissioner pursuant to the provisions of
27 section eight of this article to render the services authorized
28 pursuant to the provisions of section fourteen of this article;

29 (g) "Emergency medical service personnel" means any
30 person certified by the commissioner to provide emergency
31 medical services authorized in section eight of this article and
32 includes, but is not limited to, emergency medical service
33 attendant, emergency medical technician-basic and emergency
34 medical technician-paramedic;

35 (h) "Emergency medical service provider" means any
36 authority, person, corporation, partnership or other entity,
37 public or private, which owns or operates a licensed emergency
38 medical services agency providing emergency medical service
39 in this state;

40 (i) "Emergency medical technician-basic" means a person
41 certified by the commissioner pursuant to the provisions of
42 section eight of this article to render the services authorized
43 pursuant to the provisions of section fourteen of this article;

44 (j) "Emergency medical technician-paramedic" means a
45 person certified by the commissioner pursuant to the provisions
46 of section eight of this article to render services as authorized
47 pursuant to the provisions of section fourteen of this article;

48 (k) "Governing body" has the meanings ascribed to it as
49 applied to a municipality in subdivision (1), subsection (b),
50 section two, article one, chapter eight of this code;

51 (l) "Line officer" means the emergency medical service
52 personnel, present at the scene of an accident, injury or illness,
53 who has taken the responsibility for patient care;

54 (m) "Medical command" means the issuing of orders by a
55 physician from a medical facility to emergency medical service
56 personnel for the purpose of providing appropriate patient care;

57 (n) "Municipality" has the meaning ascribed to it in
58 subdivision (1), subsection (a), section two, article one, chapter
59 eight of this code;

60 (o) "Patient" means any person who is a recipient of the
61 services provided by emergency medical services;

62 (p) "Service reciprocity" means the provision of emergency
63 medical services to citizens of this state by emergency medical

64 service personnel certified to render those services by a
65 neighboring state;

66 (q) "Small emergency medical service provider" means any
67 emergency medical service provider which is made up of less
68 than twenty emergency medical service personnel; and

69 (r) "Specialized multipatient medical transport" means a
70 type of ambulance transport provided for patients with medical
71 needs greater than those of the average population, which may
72 require the presence of a trained emergency medical technician
73 during the transport of the patient: *Provided*, That the require-
74 ment of "greater medical need" may not prohibit the transporta-
75 tion of a patient whose need is preventive in nature.

§16-4C-8. Standards for emergency medical service personnel.

1 (a) Every ambulance operated by an emergency medical
2 service agency shall carry at least two personnel. At least one
3 person shall be certified in cardiopulmonary resuscitation or
4 first aid and the person in the patient-compartment shall be
5 certified as an emergency medical technician-basic at a mini-
6 mum, except that in the case of a specialized multipatient
7 medical transport, only one staff person is required and that
8 person shall be certified, at a minimum, at the level of an
9 emergency medical technician-basic.

10 (b) As a minimum the training for each class of emergency
11 medical service personnel shall include:

12 (1) Emergency medical service attendant: Shall have earned
13 and possess valid certificates from the department or by
14 authorities recognized and approved by the commissioner;

15 (2) Emergency medical technician-basic: Shall have
16 successfully completed the course for certification as an
17 emergency medical technician-basic as established by the
18 commissioner or authorities recognized and approved by the
19 commissioner; and

20 (3) Emergency medical technician-paramedic: Shall have
21 successfully completed the course for certification as an
22 emergency medical technician-paramedic established by the
23 commissioner or authorities recognized and approved by the
24 commissioner.

25 The foregoing may not be considered to limit the power of
26 the commissioner to prescribe training, certification and
27 recertification standards.

28 (c) Any person desiring emergency medical service
29 personnel certification shall apply to the commissioner using
30 forms and procedures prescribed by the commissioner. Upon
31 receipt of the application, the commissioner shall determine
32 whether the applicant meets the certification requirements and
33 may examine the applicant, if necessary to make that determi-
34 nation. If it is determined that the applicant meets all of the
35 requirements, the commissioner shall issue an appropriate
36 emergency medical service personnel certificate which shall be
37 valid for a period as determined by the commissioner.

38 State and county continuing education and recertification
39 programs for all levels of emergency medical service providers
40 shall be available to emergency medical service providers at a
41 convenient site within one hundred miles of the provider's
42 primary place of operation at sites determined by the regional
43 emergency medical services offices. The continuing education
44 program shall be provided at a cost specified in a fee schedule
45 to be promulgated by legislative rule in accordance with the
46 provisions of article three, chapter twenty-nine-a of this code by
47 the division of health to all nonprofit emergency medical
48 service personnel.

49 (d) The commissioner may issue a temporary emergency
50 medical service personnel certificate to an applicant, with or
51 without examination of the applicant, when he or she finds that
52 issuance to be in the public interest. Unless suspended or
53 revoked, a temporary certificate shall be valid initially for a
54 period not exceeding one hundred twenty days and may not be
55 renewed unless the commissioner finds the renewal to be in the
56 public interest. The expiration date of a temporary certificate
57 shall be extended until the holder is afforded at least one
58 opportunity to take an emergency medical service personnel
59 training course within the general area where he or she serves
60 as an emergency medical service personnel, but the expiration
61 date may not be extended for any longer period of time or for
62 any other reason.

CHAPTER 138

(H. B. 3040 — By Delegates Givens, Linch, Staton, Mahan,
Hutchins, Webb and Faircloth)

[Passed March 12, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to directing the commissioner of the bureau of public health to propose for promulgation, legislative rules for licensure and inspection of certain fire department rapid response services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-23. Authority of the commissioner to make rules.

- 1 (a) The commissioner shall propose for promulgation,
- 2 legislative rules pursuant to article three, chapter twenty-nine-a
- 3 of this code to carry out the purposes of this article.

- 4 (b) Notwithstanding the provisions of subsection (a),
- 5 section six of this article, the commissioner shall propose for
- 6 promulgation a legislative rule regulating fire department rapid
- 7 response services, pursuant to article three, chapter twenty-
- 8 nine-a of this code which: (1) Establishes licensure and
- 9 certification requirements for fire department rapid response
- 10 services who do not charge for their services or transport
- 11 patients; (2) incorporates necessary applicable emergency
- 12 medical services requirements for licensure for "emergency
- 13 medical services" as the requirements apply to fire departments
- 14 and as defined in subsection (d), section three of this article;

15 and (3) creates an exemption from license and inspection fees
16 for fire departments that do not charge fees for their services
17 and which authorizes such fire departments to conduct self
18 inspections of their emergency vehicles in accordance with any
19 applicable state or federal requirements for emergency medical
20 service vehicles. The commissioner shall file the rule required
21 by this subsection as an emergency rule on or before the first
22 day of July, one thousand nine hundred ninety-nine. The
23 Legislature hereby finds that an emergency exists compelling
24 promulgation of an emergency rule, consistent with the
25 provisions of this subsection.

CHAPTER 139

(Com. Sub. for H. B. 2269 — By Delegates Staton, Facemyer and Martin)

[Passed March 11, 1999; 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 a new article, designated article four-d, relating to automated external defibrillators; setting forth legislative purposes and findings; defining terms; establishing certain criteria for entities providing an early defibrillation program, including training for designated operators within a defibrillation program; involving a physician medical director in the medical protocols of a defibrillation program; notifying emergency medical services system when an entity establishes an early defibrillation program; activating the emergency medical services system when an automated external defibrillator is used by an operator; authorizing the development of guidelines for coordination of early defibrillator programs by the office of emergency medical services; and providing limitation of liability for compliance with the statutory provisions except in instances of gross misconduct.

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 a new article, designated article four-d, to read as follows:

ARTICLE 4D. AUTOMATED EXTERNAL DEFIBRILLATORS.

§16-4D-1. Purpose and findings.

§16-4D-2. Definitions.

§16-4D-3. Early defibrillation programs.

§16-4D-4. Limitation on liability.

§16-4D-1. Purpose and findings.

1 (a) The West Virginia Legislature hereby finds and declares
2 that each year more than two hundred fifty thousand Americans
3 die from out-of-hospital incidents of sudden cardiac arrest.
4 More than ninety-five percent of these incidents result in death
5 and, in many cases, death occurs because properly trained
6 persons with life-saving automated external defibrillators arrive
7 at the scene too late.

8 (b) The American Heart Association estimates that more
9 than twenty thousand deaths could be prevented each year if
10 early defibrillation were more widely available.

11 (c) Many communities around the country have invested in
12 911 emergency notification systems and emergency medical
13 services, including well-trained emergency personnel and
14 ambulance vehicles. However, in many communities, there are
15 not enough strategically placed automated external defibrill-
16 ators and persons trained to properly operate them.

17 (d) It is, therefore, the intent of this Legislature to improve
18 access to early defibrillation by encouraging the establishment
19 of automated external defibrillator programs in careful coordi-
20 nation with the emergency medical services system.

§16-4D-2. Definitions.

1 (a) "Automated external defibrillator", hereinafter referred
2 to as AED, means a medical device heart monitor and
3 defibrillator that: (1) Has undergone the premarket approval
4 process pursuant to the Federal Food, Drug and Cosmetic Act,
5 21 U.S.C. § 360, as amended; (2) is capable of recognizing the

6 presence or absence of ventricular fibrillation; (3) is capable of
7 determining, without intervention by the operator, whether
8 defibrillation should be performed; and (4) upon determining
9 that defibrillation should be performed, automatically charges
10 and requests delivery of an electrical impulse to an individual's
11 heart.

12 (b) "Early defibrillation program" means a coordinated
13 program that meets the requirements of section three of this
14 article and one that provides early public access to defibrillation
15 for individuals experiencing sudden cardiac arrest through the
16 use of an automated external defibrillator.

17 (c) "Emergency medical services (EMS)" means all
18 services established by the Emergency Medical Services Act of
19 1973 in article four-c of this chapter including, but not limited
20 to, the emergency medical services plan of the department of
21 health and human resources providing a response to the medical
22 needs of an individual to prevent the loss of life or aggravation
23 of illness or injury.

24 (d) "Entity" means a public or private group, organization,
25 business, association or agency that meets the requirements of
26 section three of this article. "Entity" does not include emer-
27 gency medical services operational programs or licensed
28 commercial ambulance services.

29 (e) "Medical director" means a duly licensed physician who
30 serves as the designated medical coordinator for an entity's
31 early defibrillation program.

§16-4D-3. Early defibrillation programs.

1 (a) An entity providing an early defibrillation program
2 shall:

3 (1) Register the program with the office of emergency
4 medical services, pursuant to article four-c of this chapter,
5 identifying the placement of AEDs, training of AED operators,
6 preplanned EMS system coordination, designation of a medical
7 director, maintenance of AED equipment and reports of AED
8 utilization;

9 (2) Require the operator of an AED to receive appropriate
10 training in cardiopulmonary resuscitation, referred to as “CPR”,
11 in the operation of an AED and in the determination of advance
12 directives from the American Heart Association, American Red
13 Cross, any other nationally recognized course in CPR and AED,
14 or an AED and CPR training program approved by the office of
15 emergency medical services;

16 (3) Maintain and test the AED in accordance with the
17 manufacturer’s guidelines, and keep written records of this
18 maintenance and testing;

19 (4) Designate a medical director for the coordination of the
20 program, which shall include, but not limited to, training,
21 coordinating with EMS, creating AED deployment strategies
22 and reviewing each operation of an AED;

23 (5) Notify the local EMS system and public safety answer-
24 ing point or other appropriate emergency dispatch center of the
25 existence of an entity’s early defibrillation program, the
26 location of the program and the program’s plan for coordination
27 with the EMS system;

28 (6) Provide that an operator of an AED who renders
29 emergency care or treatment on a person experiencing cardiac
30 arrest shall activate the EMS system as soon as possible and
31 shall report the use of an AED to the program medical director;
32 and

33 (7) Comply with the guidelines of the West Virginia office
34 of emergency medical services regarding data collection and
35 reporting.

§16-4D-4. Limitation on liability.

1 A person is not liable for civil damages as a result of any
2 act or omission in rendering emergency medical care or
3 treatment involving the use of an AED if the care or treatment
4 does not amount to gross negligence and the following condi-
5 tions are met:

6 (1) The person, entity, certified trainer or medical director
7 of the early defibrillation program is in compliance with the
8 provisions of section three of this article; and

- 9 (2) The person is an operator of an AED who gratuitously
10 and in good faith rendered emergency medical care, pursuant to
11 the requirements of section three of this article, other than in the
12 ordinary course of the person's employment or profession.

CHAPTER 140

(Com. Sub. for S. B. 90 — By Senator Hunter)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-nine, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to copying medical records; permitting indigent persons and their authorized representatives to obtain free copies of medical records to support claims or appeals for social security benefits; defining terms; and establishing limitations.

Be it enacted by the Legislature of West Virginia:

That section two, article twenty-nine, 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 29. HEALTH CARE RECORDS.

§16-29-2. Reasonable expenses to be reimbursed.

- 1 (a) The provider shall be reimbursed by the person request-
2 ing in writing a copy of the records at the time of delivery for
3 all reasonable expenses incurred in complying with this article:
4 *Provided*, That the cost may not exceed seventy-five cents per
5 page for the copying of any record or records which have
6 already been reduced to written form and a search fee may not
7 exceed ten dollars.

- 8 (b) Notwithstanding the provisions of subsection (a) of this
9 section, a provider shall not impose a charge on an indigent

10 person or his or her authorized representative if the medical
11 records are necessary for the purpose of supporting a claim or
12 appeal under any provisions of the Social Security Act, 42
13 U.S.C. § 301 et seq.

14 (c) For purposes of this section, a person is considered
15 indigent if he or she:

16 (1) Is represented by an organization or affiliated pro bono
17 program that provides legal assistance to indigents; or

18 (2) Verifies on a medical records request and release form
19 that the records are requested for purposes of supporting a
20 social security claim or appeal and submits with the release
21 form reasonable proof that the person is financially unable to
22 pay full copying charges by reason of unemployment, disabili-
23 ty, income below the federal poverty level, or receipt of state
24 or federal income assistance.

25 (d) Any person requesting free copies of written medical
26 records pursuant to the provisions of subsection (b) of this
27 section is limited to one set of copies per provider. Any
28 additional requests for the same records from the same provider
29 shall be subject to the fee provisions of subsection (a).

CHAPTER 141

**(S. B. 455 — By Senators Walker, Craigo, Jackson, Hunter, Helmick,
Bailey, Snyder, Mitchell, McCabe, Plymale, Prezioso, Edgell, Sharpe,
Bowman, Kessler, Redd, Unger, Ball, Ross, Oliverio, McKenzie,
Schoonover, Love and Dittmar)**

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, six and seven, article nine, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the West Virginia works act; excluding certain supplemental security income benefits from the definition of income; excluding adult recipients

of supplemental security income from benefit groups for purposes of determining financial eligibility for temporary assistance for needy families; requiring the department of health and human resources and all college and university systems to develop a plan utilizing available college programs for participants of the works program; and requiring the submission of the plan and other recommendations to the legislative oversight commission on health and human resources.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. WEST VIRGINIA WORKS PROGRAM.

§9-9-3. Definitions.

§9-9-6. Program participation.

§9-9-7. Work requirements.

§9-9-3. Definitions.

1 In addition to the rules for the construction of statutes in
2 section ten, article two, chapter two of this code and the words
3 and terms defined in section two, article one of this chapter,
4 unless a different meaning appears from the context:

5 (a) "At-risk family" means a group of persons living in the
6 same household, living below the federally-designated poverty
7 level, lacking the resources to become self-supporting, and
8 consisting of a dependent minor child or children living with a
9 parent, stepparent or caretaker-relative; an "at-risk family" may
10 include an unmarried minor parent and his or her dependent
11 child or children who live in an adult-supervised setting;

12 (b) "Beneficiary" or "participant" means any parent or
13 caretaker-relative in an at-risk family who receives cash
14 assistance for himself or herself and family members;

15 (c) "Cash assistance" means temporary assistance for needy
16 families or diversionary assistance;

17 (d) "Challenge" means any fact, circumstance or situation
18 that prevents a person from becoming self-sufficient or from

19 seeking, obtaining or maintaining employment of any kind,
20 including physical or mental disabilities, lack of education,
21 testing, training, counseling, child care arrangements, transpor-
22 tation, medical treatment or substance abuse treatment;

23 (e) "Community or personal development" means activities
24 designed or intended to eliminate challenges to participation in
25 self-sufficiency activities. These activities are to provide
26 community benefit and enhance personal responsibility,
27 including, but not limited to, classes or counseling for learning
28 life skills or parenting, dependent care, job readiness, volunteer
29 work, participation in sheltered workshops or substance abuse
30 treatment;

31 (f) "Department" means the state department of health and
32 human resources;

33 (g) "Division" means the division of human services;

34 (h) "Income" means money received by any member of an
35 at-risk family which can be used at the discretion of the
36 household to meet its basic needs: *Provided*, That "income"
37 does not include:

38 (1) Supplemental security income paid to any member or
39 members of the at-risk family;

40 (2) Earnings of minor children; or

41 (3) Payments received from earned income tax credit or tax
42 refunds;

43 (i) "Personal responsibility contract" means a written
44 agreement entered into by the division and a beneficiary which
45 establishes the responsibilities and obligations of the benefi-
46 ciary;

47 (j) "Secretary" means the secretary of the state department
48 of health and human resources;

49 (k) "Subsidized employment" means employment with
50 earnings provided by an employer who receives a subsidy from
51 the division for the creation and maintenance of the employ-
52 ment position;

53 (l) "Support services" includes, but is not limited to, the
54 following services: Child care; medicaid; transportation
55 assistance; information and referral; resource development
56 services which includes assisting families to receive child
57 support enforcement and supplemental security income; family
58 support services which includes parenting, budgeting and
59 family planning; relocation assistance; and mentoring services;

60 (m) "Unsubsidized employment" means employment with
61 earnings provided by an employer who does not receive a
62 subsidy from the division for the creation and maintenance of
63 the employment position;

64 (n) "Work" means unsubsidized employment, subsidized
65 employment, work experience or community or personal
66 development; and

67 (o) "Work experience" means unpaid structured work
68 activities that are provided in an environment where perfor-
69 mance expectations are similar to those existing in unsubsidized
70 employment and which provide training in occupational areas
71 that can realistically be expected to lead to unsubsidized
72 employment.

§9-9-6. Program participation.

1 (a) Unless otherwise noted in this article, all adult recipients
2 of cash assistance shall be required to participate in the West
3 Virginia works program in accordance with the provisions of
4 this article. The level of participation, services to be delivered
5 and work requirements shall be defined within the terms of the
6 personal responsibility contract and through rules established
7 by the secretary.

8 (b) To the extent funding permits, any individual exempt
9 under the provisions of section eight of this article may partici-
10 pate in the activities and programs offered through the West
11 Virginia works program.

12 (c) Support services other than cash assistance through the
13 works program may be provided to at-risk families to eliminate
14 the need for cash assistance.

15 (d) Cash assistance through the works program may be
16 provided to an at-risk family if the combined family income, as
17 defined in subsection (h), section three of this article, is below
18 the income and asset test levels established by the division:
19 *Provided*, That any adult member of an at-risk family who
20 receives supplemental security income shall be excluded from
21 the benefit group: *Provided, however*, That an at-risk family
22 that includes a married man and woman and dependent children
23 of either one or both may receive an additional cash assistance
24 benefit in an amount ten percent greater than the cash assistance
25 benefit provided to the same size household in which there are
26 no married adults: *Provided further*, That an at-risk family shall
27 receive an additional cash assistance benefit in an amount equal
28 to the amount of child support collected in a month on behalf of
29 a child or children of the at-risk family, not to exceed fifty
30 dollars.

§9-9-7. Work requirements.

1 (a) Unless otherwise exempted by the provisions of section
2 eight of this article, the West Virginia works program shall
3 require that anyone who possesses a high school diploma, or its
4 equivalent, or anyone who is of the age of twenty years or
5 more, to work or attend an educational or training program for
6 a minimum of twenty hours per week to receive any form of
7 cash assistance. In accordance with federal law or regulation,
8 the work, education and training requirements of this section
9 are waived for any qualifying participant with a child under six
10 years of age if the participant is unable to obtain appropriate
11 and available child care services. In order for any participant to
12 receive cash assistance, he or she shall enter into personal
13 responsibility contracts pursuant to the provisions of section
14 nine of this article.

15 (b) The department of health and human resources and
16 representatives of all college and university systems of West
17 Virginia shall develop a plan to utilize the programs available
18 at the colleges and universities to assist beneficiaries or
19 participants who are enrolled in two and four year programs to
20 meet the work activity requirements of the federal government
21 or the provisions of this article.

22 (c) On or before the first day of December, one thousand
23 nine hundred ninety-nine, the department shall submit the plan
24 and any findings, conclusions and recommendations, together
25 with drafts of any legislation necessary to effectuate its recom-
26 mendations, to the legislative oversight commission on health
27 and human resources for consideration pursuant to the provi-
28 sions of section nineteen of this article.

CHAPTER 142

(S. B. 214 — By Senator Helmick)

[Passed March 3, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article seven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the reserve requirements for life insurance policies and annuities; authorizing rules related thereto; and disapproving certain legislative rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. ASSETS AND LIABILITIES.

§33-7-9. Standard valuation law.

1 (a) *Title.* — This section shall be known as the standard
2 valuation law.

3 (b) *Reserve valuation.* — The commissioner shall annually
4 value, or cause to be valued, the reserve liabilities (hereinafter
5 called reserves) for all outstanding life insurance policies and
6 annuity and pure endowment contracts of every life insurance
7 company doing business in this state, and may certify the
8 amount of any such reserves specifying the mortality table or

9 tables, rate or rates of interest and methods (net level premium
10 method or other) used in the calculation of such reserves. In
11 calculating such reserves, he or she may use group methods and
12 approximate averages for fractions of a year or otherwise. In
13 lieu of the valuation of the reserves herein required of any
14 foreign or alien company, he or she may accept any valuation
15 made, or caused to be made, by the insurance supervisory
16 official of any state or other jurisdiction when such valuation
17 complies with the minimum standard herein provided and if the
18 official of such state or jurisdiction accepts as sufficient and for
19 all valid legal purposes the certificate of valuation of the
20 commissioner when such certificate states the valuation to have
21 been made in a specified manner according to which the
22 aggregate reserves would be at least as large as if they had been
23 computed in the manner prescribed by the law of that state or
24 jurisdiction.

25 (c) *Actuarial opinion of reserves.* — This subsection shall
26 become operative on the first day of January, one thousand nine
27 hundred ninety-six.

28 (1) *General.* — Every life insurance company doing
29 business in this state shall annually submit the opinion of a
30 qualified actuary as to whether the reserves and related actuarial
31 items held in support of the policies and contracts specified by
32 the commissioner by regulation are computed appropriately, are
33 based on assumptions which satisfy contractual provisions, are
34 consistent with prior reported amounts and comply with
35 applicable laws of this state. The commissioner by regulation
36 shall define the specifics of this opinion and add any other
37 items considered to be necessary to its scope.

38 (2) *Actuarial analysis of reserves and assets supporting*
39 *such reserves.*

40 (A) Every life insurance company, except as exempted by
41 or pursuant to regulation, shall also annually include in the
42 opinion required by subdivision (1) of this subsection, an
43 opinion of the same qualified actuary as to whether the reserves
44 and related actuarial items held in support of the policies and
45 contracts specified by the commissioner by regulation, when

46 considered in light of the assets held by the company with
47 respect to the reserves and related actuarial items, including, but
48 not limited to, the investment earnings on the assets and the
49 considerations anticipated to be received and retained under the
50 policies and contracts, make adequate provision for the com-
51 pany's obligations under the policies and contracts, including,
52 but not limited to, the benefits under and expenses associated
53 with the policies and contracts.

54 (B) The commissioner may provide by regulation for a
55 transition period for establishing any higher reserves which the
56 qualified actuary may consider necessary in order to render the
57 opinion required by this subsection.

58 (3) *Requirement for opinion under subdivision (2).* — Each
59 opinion required by subdivision (2) of this subsection shall be
60 governed by the following provisions:

61 (A) A memorandum in form and substance acceptable to
62 the commissioner as specified by regulation shall be prepared
63 to support each actuarial opinion.

64 (B) If the insurance company fails to provide a supporting
65 memorandum at the request of the commissioner within a
66 period specified by regulation or the commissioner determines
67 that the supporting memorandum provided by the insurance
68 company fails to meet the standards prescribed by the regula-
69 tions or is otherwise unacceptable to the commissioner, the
70 commissioner may engage a qualified actuary at the expense of
71 the company to review the opinion and the basis for the opinion
72 and prepare such supporting memorandum as is required by the
73 commissioner.

74 (4) *Requirement for all opinions.* — Every opinion shall be
75 governed by the following provisions:

76 (A) The opinion shall be submitted with the annual state-
77 ment reflecting the valuation of such reserve liabilities for each
78 year ending on or after the thirty-first day of December, one
79 thousand nine hundred ninety-five.

80 (B) The opinion shall apply to all business in force,
81 including individual and group health insurance plans, in form

82 and substance acceptable to the commissioner as specified by
83 regulation.

84 (C) The opinion shall be based on standards adopted from
85 time to time by the actuarial standards board and on such
86 additional standards as the commissioner may by regulation
87 prescribe.

88 (D) In the case of an opinion required to be submitted by a
89 foreign or alien company, the commissioner may accept the
90 opinion filed by that company with the insurance supervisory
91 official of another state if the commissioner determines that the
92 opinion reasonably meets the requirements applicable to a
93 company domiciled in this state.

94 (E) For the purposes of this section, "qualified actuary"
95 means a member in good standing of the American academy of
96 actuaries who meets the requirements set forth in such regula-
97 tions.

98 (F) Except in cases of fraud or willful misconduct, the
99 qualified actuary shall not be liable for damages to any person
100 (other than the insurance company and the commissioner) for
101 any act, error, omission, decision or conduct with respect to the
102 actuary's opinion.

103 (G) Disciplinary action by the commissioner against the
104 company or the qualified actuary shall be defined in regulations
105 by the commissioner.

106 (H) Any memorandum in support of the opinion and any
107 other material provided by the company to the commissioner in
108 connection therewith shall be kept confidential by the commis-
109 sioner and shall not be made public and shall not be subject to
110 subpoena, other than for the purpose of defending an action
111 seeking damages from any person by reason of any action
112 required by this section or by regulations promulgated hereun-
113 der: *Provided*, That the memorandum or other material may
114 otherwise be released by the commissioner: (i) With the written
115 consent of the company; or (ii) to the American academy of
116 actuaries upon request stating that the memorandum or other
117 material is required for the purpose of professional disciplinary

118 proceedings and setting forth procedures satisfactory to the
119 commissioner for preserving the confidentiality of the memo-
120 randum or other material. Once any portion of the confidential
121 memorandum is cited by the company in its marketing or is
122 cited before any governmental agency other than a state
123 insurance department or is released by the company to the news
124 media, all portions of the confidential memorandum shall be no
125 longer confidential.

126 (d) *Computation of minimum standards.* — Except as
127 otherwise provided in subsections (e), (f) and (m) of this
128 section, the minimum standard for the valuation of all such
129 policies and contracts issued prior to the effective date of this
130 section shall be that provided by the laws in effect immediately
131 prior to such date. Except as otherwise provided in subsections
132 (e), (f) and (m) of this section, the minimum standard for the
133 valuation of all such policies and contracts issued on or after the
134 effective date of this section shall be the commissioners reserve
135 valuation methods defined in subsections (g), (h), (k) and (m)
136 of this section, three and one-half percent interest, or in the case
137 of life insurance policies and contracts, other than annuity and
138 pure endowment contracts, issued on or after the first day of
139 June, one thousand nine hundred seventy-four, four percent
140 interest for such policies issued prior to the sixth day of April,
141 one thousand nine hundred seventy-seven, five and one-half
142 percent interest for single premium life insurance policies and
143 four and one-half percent interest for all other such policies
144 issued on and after the sixth day of April, one thousand nine
145 hundred seventy-seven, and the following tables:

146 (1) For all ordinary policies of life insurance issued on the
147 standard basis, excluding any disability and accidental death
148 benefits in such policies: The commissioners 1941 standard
149 ordinary mortality table for such policies issued prior to the
150 operative date of subsection (4a), section thirty, article thirteen
151 of this chapter, the commissioners 1958 standard ordinary
152 mortality table for such policies issued on or after the operative
153 date of said subsection and prior to the operative date of
154 subsection (4c) of said section: *Provided*, That for any category
155 of such policies issued on female risks, all modified net

156 premiums and present values referred to in this section may be
157 calculated according to an age not more than six years younger
158 than the actual age of the insured; and for such policies issued
159 on or after the operative date of subsection (4c), section thirty,
160 article thirteen of this chapter: (i) The commissioners 1980
161 standard ordinary mortality table; or (ii) at the election of the
162 company for any one or more specified plans of life insurance,
163 the commissioners 1980 standard ordinary mortality table with
164 ten-year select mortality factors; or (iii) any ordinary mortality
165 table, adopted after the year one thousand nine hundred eighty
166 by the national association of insurance commissioners, that is
167 approved by regulation promulgated by the commissioner for
168 use in determining the minimum standard of valuation for such
169 policies.

170 (2) For all industrial life insurance policies issued on the
171 standard basis, excluding any disability and accidental death
172 benefits in such policies: The 1941 standard industrial mortality
173 table for such policies issued prior to the operative date of
174 subsection (4b), section thirty, article thirteen of this chapter,
175 and for such policies issued on or after such operative date, the
176 commissioners 1961 standard industrial mortality table or any
177 industrial mortality table, adopted after the year one thousand
178 nine hundred eighty by the national association of insurance
179 commissioners, that is approved by regulation promulgated by
180 the commissioner for use in determining the minimum standard
181 of valuation for such policies.

182 (3) For individual annuity and pure endowment contracts,
183 excluding any disability and accidental death benefits in such
184 policies: The 1937 standard annuity mortality table, or at the
185 option of the company, the annuity mortality table for 1949,
186 ultimate, or any modification of either of these tables approved
187 by the commissioner.

188 (4) For group annuity and pure endowment contracts,
189 excluding any disability and accidental death benefits in such
190 policies: The group annuity mortality table for 1951, any
191 modification of such table approved by the commissioner, or at
192 the option of the company, any of the tables or modifications of

193 tables specified for individual annuity and pure endowment
194 contracts.

195 (5) For total and permanent disability benefits in or
196 supplementary to ordinary policies or contracts: For policies or
197 contracts issued on or after the first day of January, one
198 thousand nine hundred sixty-six, the tables of period two
199 disablement rates and the 1930 to 1950 termination rates of the
200 1952 disability study of the society of actuaries, with due regard
201 to the type of benefit or any tables of disablement rates and
202 termination rates adopted after the year one thousand nine
203 hundred eighty, by the national association of insurance
204 commissioners, that are approved by regulation promulgated by
205 the commissioner for use in determining the minimum standard
206 of valuation for such policies; for policies or contracts issued on
207 or after the first day of January, one thousand nine hundred
208 sixty-one, and prior to the first day of January, one thousand
209 nine hundred sixty-six, either such tables or, at the option of the
210 company, the Class (3) disability table (1926); and for policies
211 issued prior to the first day of January, one thousand nine
212 hundred sixty-one, the Class (3) disability table (1926). Any
213 such table shall, for active lives, be combined with a mortality
214 table permitted for calculating the reserves for life insurance
215 policies.

216 (6) For accidental death benefits in or supplementary to
217 policies issued on or after the first day of January, one thousand
218 nine hundred sixty-six, the 1959 accidental death benefits table
219 or any accidental death benefits table adopted after the year one
220 thousand nine hundred eighty by the national association of
221 insurance commissioners, that is approved by regulation
222 promulgated by the commissioner for use in determining the
223 minimum standard of valuation for such policies, for policies
224 issued on or after the first day of January, one thousand nine
225 hundred sixty-one, and prior to the first day of January, one
226 thousand nine hundred sixty-six, either such table or, at the
227 option of the company, the inter-company double indemnity
228 mortality table; and for policies issued prior to the first day of
229 January, one thousand nine hundred sixty-one, the
230 inter-company double indemnity mortality table. Either table

231 shall be combined with a mortality table for calculating the
232 reserves for life insurance policies.

233 (7) For group life insurance, life insurance issued on the
234 substandard basis and other special benefits: Such tables as may
235 be approved by the commissioner.

236 (e) *Computation of minimum standard for annuities.* —
237 Except as provided in subsection (f) of this section, the mini-
238 mum standard for the valuation of all individual annuity and
239 pure endowment contracts issued on or after the operative date
240 of this subsection, as defined herein, and for all annuities and
241 pure endowments purchased on or after such operative date
242 under group annuity and pure endowment contracts, shall be the
243 commissioner's reserve valuation methods defined in subsec-
244 tions (g) and (h) of this section, and the following tables and
245 interest rates:

246 (1) For individual annuity and pure endowment contracts
247 issued prior to the sixth day of April, one thousand nine
248 hundred seventy-seven, excluding any disability and accidental
249 death benefits in such contracts: The 1971 individual annuity
250 mortality table, or any modification of this table approved by
251 the commissioner, and six percent interest for single premium
252 immediate annuity contracts and four percent interest for all
253 other individual annuity and pure endowment contracts;

254 (2) For individual single premium immediate annuity
255 contracts issued on or after the sixth day of April, one thousand
256 nine hundred seventy-seven, excluding any disability and
257 accidental death benefits in such contracts: The 1971 individual
258 annuity mortality table or any individual annuity mortality
259 table, adopted after the year one thousand nine hundred eighty
260 by the national association of insurance commissioners that is
261 approved by regulation promulgated by the commissioner for
262 use in determining the minimum standard of valuation for such
263 contracts, or any modification of these tables approved by the
264 commissioner, and seven and one-half percent interest;

265 (3) For individual annuity and pure endowment contracts
266 issued on or after the sixth day of April, one thousand nine

267 hundred seventy-seven, other than single premium immediate
268 annuity contracts, excluding any disability and accidental death
269 benefits in such contracts: The 1971 individual annuity mortal-
270 ity table or any individual annuity mortality table adopted after
271 the year one thousand nine hundred eighty by the national
272 association of insurance commissioners, that is approved by
273 regulation promulgated by the commissioner for use in deter-
274 mining the minimum standard of valuation for such contracts,
275 or any modification of these tables approved by the commis-
276 sioner, and five and one-half percent interest for single pre-
277 mium deferred annuity and pure endowment contracts and four
278 and one-half percent interest for all other such individual
279 annuity and pure endowment contracts;

280 (4) For all annuities and pure endowments purchased prior
281 to the sixth day of April, one thousand nine hundred sev-
282 enty-seven, under group annuity and pure endowment contracts,
283 excluding any disability and accidental death benefits pur-
284 chased under such contracts: The 1971 group annuity mortality
285 table, or any modification of this table approved by the com-
286 missioner, and six percent interest;

287 (5) For all annuities and pure endowments purchased on or
288 after the sixth day of April, one thousand nine hundred sev-
289 enty-seven, under group annuity and pure endowment contracts,
290 excluding any disability and accidental death benefits pur-
291 chased under such contracts: The 1971 group annuity mortality
292 table, or any group annuity mortality table adopted after the
293 year one thousand nine hundred eighty by the national associa-
294 tion of insurance commissioners, that is approved by regulation
295 promulgated by the commissioner for use in determining the
296 minimum standard of valuation for such annuities and pure
297 endowments, or any modification of these tables approved by
298 the commissioner, and seven and one-half percent interest.

299 After the third day of June, one thousand nine hundred
300 seventy-four, any company may file with the commissioner a
301 written notice of its election to comply with the provisions of
302 this subsection after a specified date before the first day of
303 January, one thousand nine hundred seventy-nine, which shall

304 be the operative date of this subsection for such company,
305 provided, if a company makes no such election, the operative
306 date of this section for such company shall be the first day of
307 January, one thousand nine hundred seventy-nine.

308 (f) *Computation of minimum standard by calendar year of*
309 *issue.*

310 (1) *Applicability of this section.* — The interest rates used
311 in determining the minimum standard for the valuation of:

312 (A) All life insurance policies issued in a particular
313 calendar year, on or after the operative date of subsection (4c),
314 section thirty, article thirteen of this chapter as amended;

315 (B) All individual annuity and pure endowment contracts
316 issued in a particular calendar year on or after the first day of
317 January, one thousand nine hundred eighty-two;

318 (C) All annuities and pure endowments purchased in a
319 particular calendar year on or after the first day of January, one
320 thousand nine hundred eighty-two, under group annuity and
321 pure endowment contracts; and

322 (D) The net increase, if any, in a particular calendar year
323 after the first day of January, one thousand nine hundred
324 eighty-two, in amounts held under guaranteed interest contracts,
325 shall be the calendar year statutory valuation interest rates as
326 defined in this subsection.

327 (2) *Calendar year statutory valuation interest rates.*

328 (A) The calendar year statutory valuation interest rates, I,
329 shall be determined as follows and the results rounded to the
330 nearer one-quarter of one percent:

331 (i) For life insurance,

332 $I = .03 + W(R_1 - .03) + W/2(R_2 - .09)$;

333 (ii) For single premium immediate annuities and for annuity
334 benefits involving life contingencies arising from other annu-
335 ities with cash settlement options and from guaranteed interest
336 contracts with cash settlement options,

337 $I = .03 + W(R - .03)$

338 where R_1 is the lesser of R and $.09$,

339 R_2 is the greater of R and $.09$,

340 R is the reference interest rate defined in this subsection
341 and W is the weighting factor defined in this section;

342 (iii) For other annuities with cash settlement options and
343 guaranteed interest contracts with cash settlement options,
344 valued on an issue year basis, except as stated in subparagraph
345 (ii) of this paragraph, the formula for life insurance stated in
346 subparagraph (i) of this paragraph shall apply to annuities and
347 guaranteed interest contracts with guarantee durations in excess
348 of ten years and the formula for single premium immediate
349 annuities stated in subparagraph (ii) of this paragraph shall
350 apply to annuities and guaranteed interest contracts with
351 guarantee duration of ten years or less;

352 (iv) For other annuities with no cash settlement options and
353 for guaranteed interest contracts with no cash settlement
354 options, the formula for single premium immediate annuities
355 stated in subparagraph (ii) of this paragraph shall apply;

356 (v) For other annuities with cash settlement options and
357 guaranteed interest contracts with cash settlement options,
358 valued on a change in fund basis, the formula for single
359 premium immediate annuities stated in subparagraph (ii) of this
360 paragraph shall apply.

361 (B) However, if the calendar year statutory valuation
362 interest rate for any life insurance policies issued in any
363 calendar year determined without reference to this sentence
364 differs from the corresponding actual rate for similar policies
365 issued in the immediately preceding calendar year by less than
366 one half of one percent the calendar year statutory valuation
367 interest rate for such life insurance policies shall be equal to the
368 corresponding actual rate for the immediately preceding
369 calendar year. For purposes of applying the immediately
370 preceding sentence, the calendar year statutory valuation
371 interest rate for life insurance policies issued in a calendar year

372 shall be determined for the year one thousand nine hundred
 373 eighty (using the reference interest rate defined for the year one
 374 thousand nine hundred seventy-nine) and shall be determined
 375 for each subsequent calendar year regardless of when subsection
 376 (4c), section thirty, article thirteen of this chapter, as
 377 amended, becomes operative.

378 (3) *Weighting factors.*

379 (A) The weighting factors referred to in the formulas stated
 380 above are given in the following tables:

381 (i) Weighting Factors for Life Insurance:

382	Guarantee	
383	Duration	Weighting
384	<u>(Years)</u>	<u>Factors</u>
385	10 or less	.50
386	More than 10, but not more than 20	.45
387	More than 20	.35

388 For life insurance, the guarantee duration is the maximum
 389 number of years the life insurance can remain in force on a
 390 basis guaranteed in the policy or under options to convert to
 391 plans of life insurance with premium rates or nonforfeiture
 392 values or both which are guaranteed in the original policy;

393 (ii) Weighting factor for single premium immediate
 394 annuities and for annuity benefits involving life contingencies
 395 arising from other annuities with cash settlement options and
 396 guaranteed interest contracts with cash settlement options: .80;

397 (iii) Weighting factors for other annuities and for guaran-
 398 teed interest contracts, except as stated in subparagraph (ii) of
 399 this paragraph, shall be as specified in clauses (I), (II) and (III)
 400 below, according to the rules and definitions in clauses (IV),
 401 (V) and (VI) below:

402 (I) For annuities and guaranteed interest contracts valued on
 403 an issue year basis:

404	Guarantee	Weighting Factor		
		for Plan Type		
405	Duration			
406	(Years)	<u>A</u>	<u>B</u>	<u>C</u>
407	5 or less:	.80	.60	.50
408	More than 5, but not more than 10:	.75	.60	.50
409	More than 10, but not more than 20:	.65	.50	.45
410	More than 20:	.45	.35	.35

411 (II) For annuities and guaranteed interest contracts valued
 412 on a change in fund basis, the factors shown in subparagraph (i)
 413 of this paragraph increased by:

414		Weighting Factor		
		for Plan Type		
415				
416		<u>A</u>	<u>B</u>	<u>C1</u>
417		.15	.25	.05

418 (III) For annuities and guaranteed interest contracts valued
 419 on an issue year basis (other than those with no cash settlement
 420 options) which do not guarantee interest on considerations
 421 received more than one year after issue or purchase and for
 422 annuities and guaranteed interest contracts valued on a change
 423 in fund basis which do not guarantee interest rates on consider-
 424 ations received more than twelve months beyond the valuation
 425 date, the factors shown in (I) or derived in (II) increased by:

426		Weighting Factor		
		for Plan Type		
427				
428		<u>A</u>	<u>B</u>	<u>C1</u>
429		.05	.05	.05

430 (IV) For other annuities with cash settlement options and
 431 guaranteed interest contracts with cash settlement options, the
 432 guarantee duration is the number of years for which the contract
 433 guarantees interest rates in excess of the calendar year statutory
 434 valuation interest rate for life insurance policies with guarantee
 435 duration in excess of twenty years. For other annuities with no
 436 cash settlement options and for guaranteed interest contracts

437 with no cash settlement options, the guaranteed duration is the
438 number of years from the date of issue or date of purchase to
439 the date annuity benefits are scheduled to commence.

440 (V) Plan type as used in the above tables is defined as
441 follows:

442 Plan Type A:

443 At any time policyholder may withdraw funds only: (1)
444 With an adjustment to reflect changes in interest rates or asset
445 values since receipt of the funds by the insurance company; or
446 (2) without such adjustment but in installments over five years
447 or more; or (3) as an immediate life annuity; or (4) no with-
448 drawal permitted;

449 Plan Type B:

450 Before expiration of the interest rate guarantee, policy-
451 holder may withdraw funds only: (1) With an adjustment to
452 reflect changes in interest rates or asset values since receipt of
453 the funds by the insurance company; or (2) without such
454 adjustment but in installments over five years or more; or (3) no
455 withdrawal permitted. At the end of interest rate guarantee,
456 funds may be withdrawn without such adjustment in a single
457 sum or installments over less than five years;

458 Plan Type C:

459 Policyholder may withdraw funds before expiration of
460 interest rate guarantee in a single sum or installments over less
461 than five years either: (1) Without adjustment to reflect changes
462 in interest rates or asset values since receipt of the funds by the
463 insurance company; or (2) subject only to a fixed surrender
464 charge stipulated in the contract as a percentage of the fund.

465 (VI) A company may elect to value guaranteed interest
466 contracts with cash settlement options and annuities with cash
467 settlement options on either an issue year basis or on a change
468 in fund basis. Guaranteed interest contracts with no cash
469 settlement options and other annuities with no cash settlement
470 options must be valued on an issue year basis. As used in this
471 section, an issue year basis of valuation refers to a valuation

472 basis under which the interest rate used to determine the
473 minimum valuation standard for the entire duration of the
474 annuity or guaranteed interest contract is the calendar year
475 valuation interest rate for the year of issue or year of purchase
476 of the annuity or guaranteed interest contract and the change in
477 fund basis of valuation refers to a valuation basis under which
478 the interest rate used to determine the minimum valuation
479 standard applicable to each change in the fund held under the
480 annuity or guaranteed interest contract is the calendar year
481 valuation interest rate for the year of the change in the fund.

482 (4) *Reference interest rate.*

483 (A) Reference interest rate referred to in subparagraph (ii),
484 paragraph (A), subdivision (2) of this subsection shall be
485 defined as follows:

486 (i) For all life insurance, the lesser of the average over a
487 period of thirty-six months and the average over a period of
488 twelve months, ending on the thirtieth day of June of the
489 calendar year next preceding the year of issue, of the monthly
490 average of the composite yield on seasoned corporate bonds, as
491 published by Moody's Investors Service, Inc.

492 (ii) For single premium immediate annuities and for annuity
493 benefits involving life contingencies arising from other annu-
494 ities with cash settlement options and guaranteed interest
495 contracts with cash settlement options, the average over a
496 period of twelve months, ending on the thirtieth day of June of
497 the calendar year of issue or year of purchase, of the monthly
498 average of the composite yield on seasoned corporate bonds, as
499 published by Moody's Investors Service, Inc.

500 (iii) For other annuities with cash settlement options and
501 guaranteed interest contracts with cash settlement options,
502 valued on a year of issue basis, except as stated in subparagraph
503 (ii) of this paragraph, with guarantee duration in excess of ten
504 years, the lesser of the average over a period of thirty-six
505 months and the average over a period of twelve months, ending
506 on the thirtieth day of June of the calendar year of issue or
507 purchase, of the monthly average of the composite yield on

508 seasoned corporate bonds, as published by Moody's Investors
509 Service, Inc.

510 (iv) For other annuities with cash settlement options and
511 guaranteed interest contracts with cash settlement options,
512 valued on a year of issue basis, except as stated in (ii) above,
513 with guarantee duration of ten years or less, the average over a
514 period of twelve months, ending on the thirtieth day of June of
515 the calendar year of issue or purchase, of the monthly average
516 of the composite yield on seasoned corporate bonds, as pub-
517 lished by Moody's Investors Service, Inc.

518 (v) For other annuities with no cash settlement options and
519 for guaranteed interest contracts with no cash settlement
520 options, the average over a period of twelve months, ending on
521 the thirtieth day of June of the calendar year of issue or pur-
522 chase, of the monthly average of the composite yield on
523 seasoned corporate bonds, as published by Moody's Investors
524 Service, Inc.

525 (vi) For other annuities with cash settlement options and
526 guaranteed interest contracts with cash settlement options,
527 valued on a change in fund basis, except as stated in subpara-
528 graph (ii) of this paragraph, the average over a period of twelve
529 months, ending on the thirtieth day of June of the calendar year
530 of the change in the fund, of the monthly average of the
531 composite yield on seasoned corporate bonds, as published by
532 Moody's Investors Service, Inc.

533 (5) *Alternative method for determining reference interest*
534 *rates.*

535 In the event that the monthly average of the composite yield
536 on seasoned corporate bonds is no longer published by Moody's
537 Investors Service, Inc., or in the event that the national associa-
538 tion of insurance commissioners determines that the monthly
539 average of the composite yield on seasoned corporate bonds as
540 published by Moody's Investors Service, Inc., is no longer
541 appropriate for the determination of the reference interest rate,
542 then an alternative method for determination of the reference
543 interest rate, which is adopted by the national association of

544 insurance commissioners and approved by regulation promul-
545 gated by the commissioner, may be substituted.

546 (g) *Reserve valuation method — life insurance and endow-*
547 *ment benefits.*

548 Except as otherwise provided in subsections (h), (k) and
549 (m) of this section, reserves according to the commissioners
550 reserve valuation method, for the life insurance and endowment
551 benefits of policies providing for a uniform amount of insur-
552 ance and requiring the payment of uniform premiums shall be
553 the excess, if any, of the present value, at the date of valuation,
554 of such future guaranteed benefits provided for by such
555 policies, over the then present value of any future modified net
556 premiums therefor. The modified net premiums for any such
557 policy shall be such uniform percentage of the respective
558 contract premiums for such benefits that the present value, at
559 the date of issue of the policy, of all such modified net premi-
560 ums shall be equal to the sum of the then present value of such
561 benefits provided for by the policy and the excess of subdivi-
562 sion (1) over subdivision (2), as follows:

563 (1) A net level annual premium equal to the present value,
564 at the date of issue, of such benefits provided for after the first
565 policy year, divided by the present value, at the date of issue, of
566 an annuity of one per annum payable on the first and each
567 subsequent anniversary of such policy on which a premium
568 falls due: *Provided*, That such net level annual premium shall
569 not exceed the net level annual premium on the nineteen year
570 premium whole life plan for insurance of the same amount at an
571 age one year higher than the age at issue of such policy.

572 (2) A net one year term premium for such benefits provided
573 for in the first policy year: *Provided*, That for any life insurance
574 policy issued on or after the first day of January, one thousand
575 nine hundred eighty-five, for which the contract premium in the
576 first policy year exceeds that of the second year and for which
577 no comparable additional benefit is provided in the first year for
578 such excess and which provides an endowment benefit or a cash
579 surrender value or a combination thereof in an amount greater
580 than such excess premium, the reserve according to the com-

581 missioners' reserve valuation method as of any policy anniver-
582 sary occurring on or before the assumed ending date defined
583 herein as the first policy anniversary on which the sum of any
584 endowment benefit and any cash surrender value then available
585 is greater than such excess premium shall, except as otherwise
586 provided in subsection (k) of this section, be the greater of the
587 reserve as of such policy anniversary calculated as described in
588 the preceding paragraph and the reserve as of such policy
589 anniversary calculated as described in that paragraph, but with:
590 (i) The value defined in subdivision (1) of that paragraph being
591 reduced by fifteen percent of the amount of such excess first
592 year premium; (ii) all present values of benefits and premiums
593 being determined without reference to premiums or benefits
594 provided for by the policy after the assumed ending date; (iii)
595 the policy being assumed to mature on such date as an endow-
596 ment; and (iv) the cash surrender value provided on such date
597 being considered as an endowment benefit. In making the above
598 comparison the mortality and interest bases stated in subsec-
599 tions (d) and (f) of this section shall be used.

600 Reserves according to the commissioners' reserve valuation
601 method for: (i) Life insurance policies providing for a varying
602 amount of insurance or requiring the payment of varying
603 premiums; (ii) group annuity and pure endowment contracts
604 purchased under a retirement plan or plan of deferred compen-
605 sation, established or maintained by an employer (including a
606 partnership or sole proprietorship) or by an employee organiza-
607 tion, or by both, other than a plan providing individual retire-
608 ment accounts or individual retirement annuities under Section
609 408 of the Internal Revenue Code (26 U.S.C. §408), as now or
610 hereafter amended; (iii) disability and accidental death benefits
611 in all policies and contracts; and (iv) all other benefits, except
612 life insurance and endowment benefits in life insurance policies
613 and benefits provided by all other annuity and pure endowment
614 contracts, shall be calculated by a method consistent with the
615 principles of the preceding paragraphs of this section.

616 (h) *Reserve valuation method — annuity and pure endow-*
617 *ment benefits.*

618 This subsection shall apply to all annuity and pure endow-
619 ment contracts other than group annuity and pure endowment
620 contracts purchased under a retirement plan or plan of deferred
621 compensation, established or maintained by an employer
622 (including a partnership or sole proprietorship) or by an
623 employee organization, or by both, other than a plan providing
624 individual retirement accounts or individual retirement annu-
625 ities under Section 408 of the Internal Revenue Code (26 U.S.C.
626 §408), as now or hereafter amended.

627 Reserves according to the commissioners' annuity reserve
628 method for benefits under annuity or pure endowment con-
629 tracts, excluding any disability and accidental death benefits in
630 such contracts, shall be the greatest of the respective excesses
631 of the present values, at the date of valuation, of the future
632 guaranteed benefits, including guaranteed nonforfeiture
633 benefits, provided for by such contracts at the end of each
634 respective contract year, over the present value, at the date of
635 valuation, of any future valuation considerations derived from
636 future gross considerations, required by the terms of such
637 contract, that become payable prior to the end of such respec-
638 tive contract year. The future guaranteed benefits shall be
639 determined by using the mortality table, if any, and the interest
640 rate, or rates, specified in such contracts for determining
641 guaranteed benefits. The valuation considerations are the
642 portions of the respective gross considerations applied under the
643 terms of such contracts to determine nonforfeiture values.

644 (i) *Minimum reserves.*

645 (1) In no event shall a company's aggregate reserves for all
646 life insurance policies, excluding disability and accidental death
647 benefits, issued on or after the effective date of this section, be
648 less than the aggregate reserves calculated in accordance with
649 the methods set forth in subsections (g), (h), (k) and (l) of this
650 section and the mortality table or tables and rate or rates of
651 interest used in calculating nonforfeiture benefits for such
652 policies.

653 (2) In no event shall the aggregate reserves for all policies,
654 contracts and benefits be less than the aggregate reserves

655 determined by the qualified actuary to be necessary to render
656 the opinion required by subsection (c) of this section.

657 (j) *Optional reserve calculation.*

658 Reserves for all policies and contracts issued prior to the
659 effective date of this section may be calculated, at the option of
660 the company, according to any standards which produce greater
661 aggregate reserves for all such policies and contracts than the
662 minimum reserves required by the laws in effect immediately
663 prior to such date.

664 Reserves for any category of policies, contracts or benefits
665 as established by the commissioner, issued on or after the
666 effective date of this section, may be calculated, at the option of
667 the company, according to any standards which produce greater
668 aggregate reserves for such category than those calculated
669 according to the minimum standard herein provided, but the
670 rate or rates of interest used for policies and contracts, other
671 than annuity and pure endowment contracts, shall not be higher
672 than the corresponding rate or rates of interest used in calculat-
673 ing any nonforfeiture benefits provided therein.

674 Any such company which at any time shall have adopted
675 any standard of valuation producing greater aggregate reserves
676 than those calculated according to the minimum standard herein
677 provided may, with the approval of the commissioner, adopt
678 any lower standard of valuation, but not lower than the mini-
679 mum herein provided: *Provided*, That for the purposes of this
680 section, the holding of additional reserves previously deter-
681 mined by a qualified actuary to be necessary to render the
682 opinion required by subsection (c) of this section shall not be
683 considered to be the adoption of a higher standard of valuation.

684 (k) *Reserve calculation — valuation net premium exceeding*
685 *the gross premium charged.*

686 If in any contract year the gross premium charged by any
687 life insurance company on any policy or contract is less than the
688 valuation net premium for the policy or contract calculated by
689 the method used in calculating the reserve thereon but using the
690 minimum valuation standards of mortality and rate of interest,
691 the minimum reserve required for such policy or contract shall

692 be the greater of either the reserve calculated according to the
693 mortality table, rate of interest and method actually used for
694 such policy or contract, or the reserve calculated by the method
695 actually used for such policy or contract but using the minimum
696 valuation standards of mortality and rate of interest and
697 replacing the valuation net premium by the actual gross
698 premium in each contract year for which the valuation net
699 premium exceeds the actual gross premium. The minimum
700 valuation standards of mortality and rate of interest referred to
701 in this section are those standards stated in subsections (d) and
702 (f) of this section: *Provided*, That for any life insurance policy
703 issued on or after the first day of January, one thousand nine
704 hundred eighty-five, for which the gross premium in the first
705 policy year exceeds that of the second year and for which no
706 comparable additional benefit is provided in the first year for
707 such excess and which provides an endowment benefit or a cash
708 surrender value or a combination thereof in an amount greater
709 than such excess premium, the foregoing provisions of this
710 subsection shall be applied as if the method actually used in
711 calculating the reserve for such policy were the method
712 described in subsection (g) of this section, ignoring the second
713 paragraph of said subsection. The minimum reserve at each
714 policy anniversary of such a policy shall be the greater of the
715 minimum reserve calculated in accordance with said subsection,
716 including the second paragraph of that section, and the mini-
717 mum reserve calculated in accordance with this subsection.

718 (l) *Reserve calculation — indeterminate premium plans.*

719 In the case of any plan of life insurance which provides for
720 future premium determination, the amounts of which are to be
721 determined by the insurance company based on then estimates
722 of future experience, or in the case of any plan of life insurance
723 or annuity which is of such a nature that the minimum reserves
724 cannot be determined by the methods described in subsections
725 (g), (h) and (k) of this section, the reserves which are held under
726 any such plan must:

727 (1) Be appropriate in relation to the benefits and the pattern
728 of premiums for that plan; and

729 (2) Be computed by a method which is consistent with the
730 principles of this standard valuation law, as determined by
731 regulations promulgated by the commissioner.

732 (m) *Minimum standards for health (disability, accident and*
733 *sickness) plans.*

734 The commissioner shall promulgate a regulation containing
735 the minimum standards applicable to the valuation of health
736 (disability, sickness and accident) plans.

737 (n) The commissioner shall promulgate a rule on or before
738 the first day of November, one thousand nine hundred
739 ninety-five, prescribing the guidelines and standards for
740 statements of actuarial opinion which are to be submitted in
741 accordance with subsection (c) of this section and for memo-
742 randa in support thereof; guidelines and standards for state-
743 ments of actuarial opinion which are to be submitted when a
744 company is exempt from subdivision (2), subsection (c) of the
745 standard valuation law; and rules applicable to the appointment
746 of an appointed actuary.

747 (o) *Effective date.*

748 All acts and parts of acts inconsistent with the provision of
749 this section are hereby repealed as of the effective date of this
750 section. This section shall take effect the first day of January,
751 one thousand nine hundred ninety-six.

752 (p) *Modification of the standard valuation law for certain*
753 *types of contracts.*

754 (1) The commissioner may, by rule, establish alternative
755 methods of calculating reserve liabilities, which methods shall
756 be used to calculate reserve liabilities for the types of policies,
757 annuities or other contracts identified in the rule: *Provided,*
758 That the method specified in the rule shall be one which, in the
759 opinion of the commissioner and in light of the methods applied
760 to such contracts by the insurance regulators of other states, is
761 appropriate to such contracts. This power shall be in addition to,
762 and in no way diminish, rule-making power granted to the
763 commissioner elsewhere in this code.

764 (2) The legislative rule filed in the state register on the
765 twentieth day of August, one thousand nine hundred ninety-six,
766 (valuation of life insurance policies, 114 CSR 49) is hereby
767 disapproved and is not authorized for promulgation: *Provided*,
768 That for purposes of determining the legal effects of the
769 aforementioned rule, this provision shall be considered to have
770 taken effect on the thirty-first day of December, one thousand
771 nine hundred ninety-seven. This disapproval shall in no way
772 limit the commissioner's power to promulgate in the future a
773 rule similar or identical to the rule here disapproved.

CHAPTER 143

(H. B. 2836 — By Delegates Beane, Johnson, Amores,
H. White, Facemyer and L. White)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.] .

AN ACT to amend and reenact sections two and two-a, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to changing insurance agent education procedures by exempting from educational requirements persons who have been licensed in good standing in other states, and by authorizing the insurance commissioner to automatically suspend the insurance license of those persons who fail to meet continuing insurance education requirements.

Be it enacted by the Legislature of West Virginia:

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

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

§33-12-2. Qualifications.

§33-12-2a. Continuing education required.

§33-12-2. Qualifications.

1 For the protection of the people of West Virginia, the
2 commissioner shall not issue, renew or permit to exist any
3 agent's, broker's or solicitor's license except to an individual
4 who:

5 (a) Is eighteen years of age or more.

6 (b) Is a resident of West Virginia, except that a broker's
7 license shall be issued only to nonresidents, and except for
8 nonresident life and accident and sickness agents as provided in
9 section eight of this article.

10 Effective the first day of June, one thousand nine hundred
11 ninety-one, brokers' licenses shall cease to exist. Licensing of
12 nonresidents for property casualty will be made pursuant to
13 section eight-a of this article.

14 (c) Is, in the case of an agent applicant, appointed as agent
15 by a licensed insurer for the kind or kinds of insurance for
16 which application is made, subject to issuance of license, or, in
17 the case of a solicitor applicant, appointed as solicitor by a
18 licensed resident agent, subject to issuance of license, except
19 that on or after the first day of June, one thousand nine hundred
20 ninety, no solicitor's license will be issued which is not a
21 renewal of an existing license.

22 (d) Does not intend to use the license principally for the
23 purpose, in the case of life or accident and sickness insurance,
24 of procuring insurance on himself or herself, members of his or
25 her family or his or her relatives; or, as to insurance other than
26 life and accident and sickness, upon his or her property or
27 insurable interests of those of his or her family or his or her
28 relatives or those of his or her employer, employees or firm, or
29 corporation in which he or she owns a substantial interest, or of
30 the employees of such firm or corporation, or on property or
31 insurable interests for which the applicant or any such relative,
32 employer, firm or corporation is the trustee, bailee or receiver.
33 For the purposes of this provision, a vendor's or lender's
34 interest in property sold or being sold under contract or which

35 is the security for any loan, shall not be deemed to constitute
36 property or an insurable interest of such vendor or lender.

37 (e) Satisfies the commissioner that he or she is trustworthy
38 and competent. The commissioner may test the competency of
39 an applicant for a license under this section by examination.
40 Each examinee shall pay a twenty-five dollar examination fee
41 for each examination to the commissioner who shall deposit
42 said examination fee into the state treasury for the benefit of the
43 state fund, general revenue. The commissioner may, at his or
44 her discretion, designate an independent testing service to
45 prepare and administer such examination subject to direction
46 and approval by the commissioner, and examination fees
47 charged by such service shall be paid by the applicant.

48 (f) For new agents first licensed on or after the first day of
49 July, one thousand nine hundred eighty-nine, completes a
50 program of insurance education as established below: *Provided*,
51 That a written waiver from the insurance education require-
52 ments for life, accident and sickness, or property and casualty
53 insurance may be granted to any person who can demonstrate
54 to the satisfaction of the commissioner that he or she has been
55 licensed as a resident agent in good standing in another state
56 within the sixty-day period immediately preceding his or her
57 application for a resident license in West Virginia. The waiver,
58 if granted, does not exempt the applicant from an examination
59 pertaining to the laws of this state for each kind of insurance for
60 which application is made.

61 There is hereby created the board of insurance agent
62 education. The board of insurance agent education shall consist
63 of the commissioner of insurance and six members appointed
64 by the commissioner. The members appointed by the commis-
65 sioner shall be two licensed property and casualty insurance
66 agents, one licensed life insurance agent, one licensed health
67 and accident insurance agent, one representative of a domestic
68 insurance company, and one representative of a foreign
69 insurance company: *Provided*, That no board shall be appointed
70 that fails to include companies or agents for companies repre-
71 senting at least two thirds of the net written insurance premiums

72 in the state. Each member shall serve a term of three years and
73 shall be eligible for reappointment.

74 (1) The board of insurance agent education shall establish
75 the criteria for a program of insurance education and submit the
76 proposal for the approval of the commissioner on or before the
77 thirty-first day of December of each year.

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

***§33-12-2a. Continuing education required.**

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

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

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

13 (2) Sickness, accident and health insurance;

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

15 (4) All other lines of insurance for which an examination is
16 required for licensing.

17 (b) This section does not apply to:

* **Clerk's Note:** This section was also amended by HB 2043 (Chapter 144), which passed prior to this act.

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

23 (2) Individuals selling credit life or credit accident and
24 health insurance.

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

38 No program shall be approved by the commissioner that
39 includes a requirement that any agent complete more than thirty
40 hours of continuing insurance education biennially. No program
41 shall be approved by the commissioner that includes a require-
42 ment that any of the following individuals complete more than
43 six hours of continuing insurance education biennially:

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

46 (B) Insurance agents who engage solely in telemarketing
47 insurance products by a scripted presentation which scripted
48 presentation has been filed with and approved by the commis-
49 sioner.

50 (2) The commissioner and the board, under standards
51 established by the board, may approve any course or program
52 of instruction developed or sponsored by an authorized insurer,
53 accredited college or university, agents' association, insurance

54 trade association or independent program of instruction that
55 presents the criteria and the number of hours that the board and
56 commissioner determine appropriate for the purpose of this
57 section.

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

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

68 (f) Any person, failing to meet the requirements mandated
69 in this section, and who has not been granted an extension of
70 time, with respect to such requirements, or who has submitted
71 to the commissioner a false or fraudulent certificate of compli-
72 ance shall have his or her license automatically suspended and
73 no further license may be issued to the person for any kind or
74 kinds of insurance until such time as the person demonstrates
75 to the satisfaction of the commissioner that he or she has
76 complied with all of the requirements mandated by this section
77 and all other applicable laws or rules.

78 (g) The commissioner shall notify the person of his or her
79 suspension pursuant to subsection (f) of this section by certified
80 mail, return receipt requested, to the last address on file with the
81 commissioner pursuant to section twenty-nine of this article.
82 Any person who has had a suspension order entered against him
83 or her pursuant to this section may, within thirty calendar days
84 of receipt of the order, file with the commissioner a request for
85 a hearing for reconsideration of the matter.

86 (h) Any person who does not satisfactorily demonstrate
87 compliance with this section and all other laws applicable
88 thereto as of the last day of the biennium following his or her
89 suspension shall have his or her license automatically canceled

90 and is subject to the education and examination requirements of
91 section two of this article.

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

CHAPTER 144

(Com. Sub. for H. B. 2043 — By Delegate Douglas)

[Passed March 11, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section nineteen, article fifteen of said chapter; to amend and reenact section four, article fifteen-a of said chapter; and to further amend said chapter by adding thereto a new article, designated article twenty-five-d, all relating to prepaid limited health service organizations; establishing requirements for doing business; continuing education requirements for agents; coordination with medicaid; the relationship to long-term care insurance; conditions for and revocation of certificates of authority; providing minimum capital requirements; establishing powers of a prepaid limited health service organization; providing enrollee participation; setting requirements for provider contracts; setting requirements for premiums; requiring approval of approval forms; requiring financial statements; setting grievance procedures; regulating marketing; providing for financial examinations; establishing a quality assurance program; providing for civil and criminal penalties and enforcement; and dictating statutory construction and relationship to other laws.

Be it enacted by the Legislature of West Virginia:

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

Article

12. Agents, Brokers, Solicitors and Excess Line.

15. Accident and Sickness Insurance.

15A. West Virginia Long-term Care Insurance Act.

25D. Prepaid Limited Health Service Organization Act.

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

***§33-12-2a. Continuing education required.**

1 (a) The purpose of this provision is to provide continuing
2 education under guidelines set up under the insurance commis-
3 sioner's office, with the guidelines to be set up under the board
4 of insurance agent education. Nothing in this section prohibits
5 an individual from receiving commissions which have been
6 vested and earned while that individual maintained an approved
7 insurance agent's license.

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

10 (1) Life insurance, annuity contracts, variable annuity
11 contracts and variable life insurance;

12 (2) Sickness, accident and health insurance;

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

14 (4) All other lines of insurance for which an examination is
15 required for licensing.

16 (c) This section does not apply to:

17 (1) Persons holding resident licenses for any kind or kinds
18 of insurance offered in connection with loans or other credit
19 transactions or insurance for which an examination is not

*** Clerk's Note:** This section was also amended by HB 2836 (Chapter 143), which passed subsequent to this act.

20 required by the commissioner, nor does it apply to any limited
21 or restricted license as the commissioner may exempt;

22 (2) Individuals selling credit life or credit accident and
23 health insurance.

24 (d) (1) The board of insurance agent education as estab-
25 lished by section two of this article shall develop a program of
26 continuing insurance education and submit the proposal for the
27 approval of the commissioner on or before the thirty-first day
28 of December of each year. The program shall contain a require-
29 ment that any person appointed to be an agent on behalf of a
30 licensed health maintenance organization or prepaid limited
31 health service organization at any time during the relevant
32 biennium shall, as a component of his or her mandatory
33 continuing insurance education, complete a minimum of six
34 hours of continuing insurance education during the biennium
35 which is on topics specific to managed care organizations.

36 No program may be approved by the commissioner that
37 includes a requirement that any agent complete more than thirty
38 hours of continuing insurance education biennially. No program
39 may be approved by the commissioner that includes a require-
40 ment that any of the following individuals complete more than
41 six hours of continuing insurance education biennially:

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

44 (B) Insurance agents who engage solely in telemarketing
45 insurance products by a scripted presentation which scripted
46 presentation has been filed with and approved by the commis-
47 sioner.

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

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

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

66 (g) Any person, failing to meet the requirements mandated
67 in this section, and who has not been granted an extension of
68 time, with respect to such requirements, or who has submitted
69 to the commissioner a false or fraudulent certificate of compli-
70 ance shall have his or her license automatically suspended and
71 no further license may be issued to the person for any kind or
72 kinds of insurance until such time as the person demonstrates
73 to the satisfaction of the commissioner that he or she has
74 complied with all of the requirements mandated by this section
75 and all other applicable laws or rules.

76 (h) The commissioner shall notify the person of his or her
77 suspension pursuant to subsection (g) of this section by certified
78 mail, return receipt requested, to the last address on file with the
79 commissioner pursuant to section twenty-nine of this article.
80 Any person who has had a suspension order entered against him
81 or her pursuant to this section may, within thirty calendar days
82 of receipt of the order, file with the commissioner a request for
83 a hearing for reconsideration of the matter.

84 (i) Any person who does not satisfactorily demonstrate
85 compliance with this section and all other laws applicable
86 thereto as of the last day of the biennium following his or her
87 suspension shall have his or her license automatically canceled
88 and is subject to the education and examination requirements of
89 section two of this article.

90 (j) The commissioner is authorized to hire personnel and
91 make reasonable expenditures as deemed necessary for pur-

92 poses of establishing and maintaining a system of continuing
93 education for insurers.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

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

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

ARTICLE 15A. WEST VIRGINIA LONG-TERM CARE INSURANCE ACT.

§33-15A-4. Definitions.

1 (a) "Long-term care insurance" means any insurance policy
2 or rider advertised, marketed, offered or designed to provide
3 benefits for not less than twenty-four consecutive months for
4 each covered person on an expense incurred, indemnity, prepaid
5 or other basis; for one or more necessary or medically necessary
6 diagnostic, preventive, therapeutic, rehabilitative, maintenance
7 or personal care services, provided in a setting other than an
8 acute care unit of a hospital. The term includes group and
9 individual policies or riders whether issued by insurers;
10 fraternal benefit societies; nonprofit health, hospital, and
11 medical service corporations; prepaid health plans; health
12 maintenance organizations, prepaid limited health service
13 organizations or any similar organization. Any insurance policy
14 which is offered primarily to provide basic medicare supple-
15 ment coverage, basic hospital expense coverage, basic medi-
16 cal-surgical expense coverage, hospital confinement indemnity
17 coverage, major medical expense coverage, disability income
18 protection coverage, accident only coverage, specified disease
19 or specified accident coverage, or limited benefit health

20 coverage which also contains long-term care insurance benefits
21 for at least six months shall comply with the provisions of this
22 article.

23 (b) "Applicant" means:

24 (1) In the case of an individual long-term care insurance
25 policy, the person who seeks to contract for benefits; and

26 (2) In the case of a group long-term care insurance policy,
27 the proposed certificate holder.

28 (c) "Certificate" means, for the purposes of this article, any
29 certificate issued under a group long-term care insurance
30 policy, which policy has been delivered or issued for delivery
31 in this state.

32 (d) "Commissioner" means the insurance commissioner of
33 this state.

34 (e) "Group long-term care insurance" means a long-term
35 care insurance policy which is delivered or issued for delivery
36 in this state and issued to:

37 (1) One or more employers or labor organizations, or to a
38 trust or to the trustees of a fund established by one or more
39 employers or labor organizations, or a combination thereof, for
40 employees or former employees or a combination thereof or for
41 members or former members or a combination thereof, of the
42 labor organizations; or

43 (2) Any professional, trade or occupational association for
44 its members or former or retired members, or combination
45 thereof, if the association:

46 (A) Is composed of individuals all of whom are or were
47 actively engaged in the same profession, trade or occupation;
48 and

49 (B) Has been maintained in good faith for purposes other
50 than obtaining insurance; or

51 (3) An association or a trust or the trustee or trustees of a
52 fund established, created or maintained for the benefit of

53 members of one or more associations. Prior to advertising,
54 marketing or offering the policy within this state, the associa-
55 tion or associations, or the insurer of the association or associa-
56 tions, shall file evidence with the commissioner that the
57 association or associations have at the outset a minimum of one
58 hundred persons and have been organized and maintained in
59 good faith for the purposes other than that of obtaining insur-
60 ance; have been in active existence for at least one year; and
61 have a constitution and bylaws which provide that:

62 (A) The association or associations hold regular meetings
63 not less than annually to further purposes of the members;

64 (B) Except for credit unions, the association or associations
65 collect dues or solicit contributions from members; and

66 (C) The members have voting privileges and representation
67 on the governing board and committees.

68 Thirty days after the filing the association or associations
69 will be deemed to satisfy such organizational requirements,
70 unless the commissioner makes a finding that the association or
71 associations do not satisfy those organizational requirements.

72 (4) A group other than as described in subdivisions (1), (2)
73 and (3), subsection (e) of this section, subject to a finding by the
74 commissioner that:

75 (A) The issuance of the group policy is not contrary to the
76 best interest of the public;

77 (B) The issuance of the group policy would result in
78 economies of acquisition or administration;

79 (C) The benefits are reasonable in relation to the premiums
80 charged.

81 (f) "Policy" means, for the purposes of this article, any
82 policy, contract, subscriber agreement, rider or endorsement
83 delivered or issued for delivery in this state by an insurer;
84 fraternal benefit society; nonprofit health, hospital, or medical
85 service corporation; prepaid health plan; health maintenance
86 organization, prepaid limited health service organization or any
87 similar organization.

ARTICLE 25D. PREPAID LIMITED HEALTH SERVICE ORGANIZATION ACT.

- §33-25D-1. Short title.
- §33-25D-2. Definitions.
- §33-25D-3. Application for certificate of authority; addition of services.
- §33-25D-4. Conditions precedent to issuance or maintenance of a certificate of authority; renewal of certificate of authority; effect of bankruptcy proceedings.
- §33-25D-5. Issuance of certificate of authority.
- §33-25D-6. Minimum capital.
- §33-25D-7. Powers of organization.
- §33-25D-8. Governing body; enrollee participation.
- §33-25D-9. Fiduciary responsibilities of managers; fidelity bond.
- §33-25D-10. Provider contracts.
- §33-25D-11. Evidence of coverage; review of enrollee records; charges for limited health services; cancellation of contract by enrollee.
- §33-25D-12. Annual and quarterly reports.
- §33-25D-13. Annual report to enrollees.
- §33-25D-14. Grievance procedure.
- §33-25D-15. Prohibited practices.
- §33-25D-16. Agent licensing and appointment required; regulation of marketing.
- §33-25D-17. Powers of insurers, hospital service corporations, medical service corporations, dental service corporations, health service corporations and health maintenance organizations.
- §33-25D-18. Examinations.
- §33-25D-19. Quality assurance.
- §33-25D-20. Suspension or revocation of certificate of authority.
- §33-25D-21. Rehabilitation, liquidation or conservation of prepaid limited health service organization.
- §33-25D-22. Rules.
- §33-25D-23. Administrative procedures.
- §33-25D-24. Fees.
- §33-25D-25. Penalties and enforcement.
- §33-25D-26. Statutory construction and relationship to other laws.
- §33-25D-27. Filing and reports as public documents.
- §33-25D-28. Confidentiality of medical information.
- §33-25D-29. Authority to contract with prepaid limited health service organizations under medicaid.
- §33-25D-30. Authority of commissioner to propose rules regarding affiliate and subsidiary operating results.

§33-25D-1. Short title.

- 1 This article may be cited as the "Prepaid Limited Health
- 2 Service Organization Act."

§33-25D-2. Definitions.

1 (a) "Capitation" means the fixed amount paid by a prepaid
2 limited health service organization to a health care provider
3 under contract with the prepaid limited health service organiza-
4 tion in exchange for the rendering of no more than four limited
5 health services.

6 (b) "Commissioner" means the commissioner of insurance.

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

10 (d) "Coordinating provider" means the provider of a
11 particular limited health service who is chosen or designated for
12 each subscriber and who will be responsible for coordinating
13 the provision of that particular limited health service to the
14 subscriber, including necessary referrals to other providers of
15 the limited health service: *Provided*, That if a subscriber is also
16 enrolled in a health maintenance organization, the coordinating
17 provider shall send a written report at least annually to the
18 subscriber's primary care physician, as defined in article
19 twenty-five-a of this chapter, describing the limited health
20 service provided to the subscriber: *Provided, however*, That the
21 coordinating provider may disclose data or information only as
22 permitted under section twenty-eight of this article.

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

28 (f) "Employee" means a person in some official employ-
29 ment or position working for a salary or wage continuously for
30 no less than one calendar quarter and who is in such a relation
31 to another person that the latter may control the work of the
32 former and direct the manner in which the work is done.

33 (g) "Employer" means any individual, corporation, partner-
34 ship, other private association, or state or local government that

35 employs the equivalent of at least two full-time employees
36 during any four consecutive calendar quarters.

37 (h) "Enrollee," "subscriber," or "member" means an
38 individual who has been voluntarily enrolled in a prepaid
39 limited health service organization, including individuals on
40 whose behalf a contractual arrangement has been entered into
41 with a prepaid limited health service organization to receive no
42 more than four limited health services.

43 (i) "Evidence of coverage" means any certificate, agree-
44 ment or contract issued to an enrollee setting out the coverage
45 and other rights to which the enrollee is entitled.

46 (j) "Group practice" means a professional corporation,
47 partnership, association, or other organization composed solely
48 of health professionals licensed to practice medicine or osteopa-
49 thy and of such other licensed health professionals, including
50 podiatrists, dentists, optometrists and chiropractors, as are
51 necessary for the provision of limited health services for which
52 the group is responsible:

53 (1) A majority of the members of which are licensed to
54 practice medicine, osteopathy or chiropractic;

55 (2) Who as their principal professional activity engage in
56 the coordinated practice of their profession;

57 (3) Who pool their income for practice as members of the
58 group and distribute it among themselves according to a
59 prearranged salary, drawing account or other plan; and

60 (4) Who share medical and other records and substantial
61 portions of major equipment and professional, technical and
62 administrative staff.

63 (k) "Impaired" means a financial situation in which, based
64 upon the financial information which would be required by this
65 chapter for the preparation of the prepaid limited health service
66 organization's annual statement, the assets of the prepaid
67 limited health service organization are less than the sum of all
68 of its liabilities and required reserves including any minimum
69 capital and surplus required of the prepaid limited health

70 service organization by this chapter so as to maintain its
71 authority to transact the kinds of business or insurance it is
72 authorized to transact.

73 (l) "Individual practice arrangement" means any agreement
74 or arrangement to provide medical services on behalf of a
75 prepaid limited health service organization among or between
76 providers or between a prepaid limited health service organiza-
77 tion and individual providers or groups of providers, where the
78 providers are not employees or partners of the prepaid limited
79 health service organization and are not members of or affiliated
80 with a group practice.

81 (m) "Insolvent" or "insolvency" means a financial situation
82 in which, based upon the financial information which would be
83 required by this chapter for the preparation of the prepaid
84 limited health service organization's annual statement, the
85 assets of the prepaid limited health service organization are less
86 than the sum of all of its liabilities and required reserves.

87 (n) "Limited health service" means mental or behavioral
88 health services (including mental illness, mental retardation,
89 developmental disabilities, substance abuse, and chemical
90 dependency), together with any services or goods included in
91 the furnishing to any individual of a limited health service.
92 "Limited health service" does not include inpatient services,
93 hospital surgical services or emergency services except as such
94 services are provided incident to and directly related to a
95 limited health service set forth in this subsection.

96 (o) "Premium" means a prepaid per capita or prepaid
97 aggregate fixed sum unrelated to the actual or potential utiliza-
98 tion of services of any particular person which is charged by the
99 prepaid limited health service organization for health services
100 provided to an enrollee.

101 (p) "Prepaid limited health service organization" means a
102 public or private organization which provides, or otherwise
103 makes available to enrollees, no more than four limited health
104 services and which:

105 (1) Receives premiums for the provision of no more than
106 four limited health services to enrollees on a prepaid per capita
107 or prepaid aggregate fixed sum basis, excluding copayments;

108 (2) Provides no more than four limited health services
109 primarily:

110 (A) Directly through an exclusive panel of physicians or
111 other providers who are employees or partners of the organiza-
112 tion;

113 (B) Through arrangements with individual physicians or
114 other providers or one or more groups of physicians or other
115 providers organized on a group practice or individual practice
116 arrangement; or

117 (C) Some combination of paragraphs (A) and (B) of this
118 subdivision;

119 (3) Assures the availability, accessibility and quality,
120 including effective utilization, of the limited health service or
121 services that it provides or makes available through clearly
122 identifiable focal points of legal and administrative responsibil-
123 ity; and

124 (4) Offers services through an organized delivery system,
125 in which a coordinating provider of a limited health service is
126 designated for each subscriber to that limited health service.
127 Prepaid limited health service organization does not include an
128 entity otherwise authorized pursuant to the laws of this state to
129 indemnify for any limited-health service, or a provider or entity
130 when providing a limited health service pursuant to a contract
131 with a prepaid limited health service organization, a health
132 maintenance organization, a health insurer or a self-insurance
133 plan.

134 (q) "Provider" means any physician or other person or
135 organization licensed or otherwise authorized in this state to
136 furnish a limited health service.

137 (r) "Qualified independent actuary" means an actuary who
138 is a member of the American academy of actuaries or the
139 society of actuaries and has experience in establishing rates for

140 prepaid limited health service organizations and who has no
141 financial or employment interest in the prepaid limited health
142 service organization.

143 (s) "Quality assurance" means an ongoing program
144 designed to objectively and systematically monitor and evaluate
145 the quality and appropriateness of the enrollee's care, pursue
146 opportunities to improve the enrollee's care, and resolve
147 identified problems at the prevailing professional standard of
148 care.

149 (t) "Service area" means the county or counties approved
150 by the commissioner within which the prepaid limited health
151 service organization may provide or arrange for a limited health
152 service to be available to its subscribers.

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

156 (v) "Surplus" means the amount by which a corporation's
157 assets exceed its liabilities and required reserves based upon the
158 financial information which would be required by this chapter
159 for the preparation of the corporation's annual statement except
160 that assets pledged to secure debts not reflected on the books of
161 the prepaid limited health service organization shall not be
162 included in surplus.

163 (w) "Surplus notes" means debt which has been subordi-
164 nated to all claims of subscribers and all creditors of the
165 organization.

166 (x) "Uncovered expenses" means the cost of a limited
167 health service covered by a prepaid limited health service
168 organization, for which a subscriber would also be liable in the
169 event of the insolvency of the organization.

170 (y) "Utilization management" means a system for the
171 evaluation of the necessity, appropriateness, and efficiency of
172 the use of health care services, procedures and facilities.

**§33-25D-3. Application for certificate of authority; addition of
services.**

1 (a) Notwithstanding any law of this state to the contrary,
2 any person may apply to the commissioner for and obtain a
3 certificate of authority to establish or operate a prepaid limited
4 health service organization in compliance with this article:
5 *Provided*, That the organization for which a certificate of
6 authority to operate a prepaid limited health service organiza-
7 tion is sought shall be incorporated under the provisions of
8 article one, chapter thirty-one of this code. No person may sell
9 prepaid limited health service organization enrollee contracts,
10 nor may any prepaid limited health service organization
11 commence services, prior to receipt of a certificate of authority
12 from the commissioner. Any person may, however, establish
13 the feasibility of a prepaid limited health service organization
14 prior to receipt of a certificate of authority through funding
15 drives and by receiving loans and grants.

16 (b) Every prepaid limited health service organization in
17 operation as of the effective date of this article shall submit an
18 application for a certificate of authority under this section
19 within thirty days of the effective date of this article. Each
20 applicant may continue to operate until the commissioner acts
21 upon the application. In the event that an application is denied
22 pursuant to section five of this article, the applicant shall be
23 treated as a prepaid limited health service organization whose
24 certificate of authority has been revoked.

25 (c) The commissioner may require any organization
26 providing or arranging for one or more limited health services
27 on a prepaid per capita or prepaid aggregate fixed sum basis to
28 apply for a certificate of authority under this article. Any
29 organization directed to apply for a certificate of authority is
30 subject to the provisions of subsection (b) of this section.

31 (d) Each application for a certificate of authority shall be
32 sworn to by an officer or authorized representative of the
33 applicant before a notary public, shall be in a form prescribed
34 by the commissioner and shall set forth or be accompanied by
35 any and all information required by the commissioner, includ-
36 ing:

37 (1) The basic organizational document;

- 38 (2) The bylaws or rules;
- 39 (3) A list of the names, addresses and official positions of
40 each member of the governing body, which shall contain a full
41 disclosure in the application of any financial interest by the
42 officer or member of the governing body or any provider or any
43 organization or corporation owned or controlled by that person
44 and the prepaid limited health service organization and the
45 extent and nature of any contract or financial arrangements
46 between that person and the prepaid limited health service
47 organization;
- 48 (4) A description of the prepaid limited health service
49 organization and the limited health service or services to be
50 offered;
- 51 (5) A copy of each evidence of coverage form and of each
52 enrollee contract form;
- 53 (6) Financial statements which include the assets, liabilities
54 and sources of financial support of the applicant and any
55 corporation or organization owned or controlled by the appli-
56 cant;
- 57 (7)(A) A description of the proposed method of marketing
58 the plan;
- 59 (B) A schedule of proposed charges; and
- 60 (C) A financial plan which includes a three-year projection
61 of the expenses and income and other sources of future capital;
- 62 (8) A power of attorney duly executed by the applicant, if
63 not domiciled in this state, appointing the commissioner and his
64 or her successors in office, and duly authorized deputies, as the
65 true and lawful attorney of the applicant in and for this state
66 upon whom all lawful process in any legal action or proceeding
67 against the prepaid limited health service organization on a
68 cause of action arising in this state may be served;
- 69 (9) A statement reasonably describing the service area or
70 areas to be served and the type or types of enrollees to be
71 served;

72 (10) A description of the complaint procedures to be
73 utilized as required under section fourteen of this article;

74 (11) A description of the mechanism by which enrollees
75 will be afforded an opportunity to participate in matters of
76 policy and operation under section eight of this article;

77 (12) A complete biographical statement on forms pre-
78 scribed by the commissioner and an independent investigation
79 report on all of the individuals referred to in subdivision (3) of
80 this subsection and all officers, directors and persons holding
81 five percent or more of the common stock of the organization;

82 (13) A comprehensive feasibility study, performed by a
83 qualified independent actuary in conjunction with a certified
84 public accountant which shall contain a certification by the
85 qualified actuary and an opinion by the certified public account-
86 tant as to the feasibility of the proposed organization. The study
87 shall be for the greater of three years or until the prepaid limited
88 health service organization has been projected to be profitable
89 for twelve consecutive months. The study shall show that the
90 prepaid limited health service organization would not, at the
91 end of any month of the projection period, have less than the
92 minimum capital and surplus as required by section six of this
93 article. The qualified independent actuary shall certify that:

94 (A) The rates for each limited health service offered are
95 neither inadequate nor excessive nor unfairly discriminatory;

96 (B) The rates are appropriate for the classes of risks for
97 which they have been computed;

98 (C) The rating methodology is appropriate: *Provided*, That
99 the certification shall include an adequate description of the
100 rating methodology showing that the methodology follows
101 consistent and equitable actuarial principles;

102 (D) The prepaid limited health service organization is
103 actuarially sound: *Provided*, That the certification shall con-
104 sider the rates, benefits, and expenses of, and any other funds
105 available for the payment of obligations of, the organization;

106 (E) The rates being charged or to be charged are actuarially
107 adequate to the end of the period for which rates have been
108 guaranteed; and

109 (F) Incurred but not reported claims and claims reported but
110 not fully paid have been adequately provided for;

111 (14) A description of the prepaid limited health service
112 organization's quality assurance program; and

113 (15) Such other information as the commissioner may
114 require to be provided.

115 (e) A prepaid limited health service organization shall,
116 unless otherwise provided for by rules promulgated by the
117 commissioner, file notice prior to any modification of the
118 operations or documents filed pursuant to this section or as the
119 commissioner may require by rule. If the commissioner does
120 not disapprove of the filing within ninety days of filing, it is
121 considered approved and may be implemented by the prepaid
122 limited health service organization: *Provided*, That an applica-
123 tion to add one or more limited health services to those offered
124 by the organization shall be submitted and reviewed in accord-
125 dance with subsection (f) of this section.

126 (f) If a prepaid limited health service organization wishes
127 to offer one or more additional limited health services to
128 subscribers, the organization shall submit an application in
129 accordance with the procedure set forth in subsection (d) of this
130 section, with respect to the additional service or services:
131 *Provided*, That the organization may not at any time offer more
132 than four limited health services. The organization is not
133 required to submit the information required by subdivisions (1),
134 (2), (3), (8), (10), (11) or (12), subsection (d) of this section, if
135 there has been no change in the information required by the
136 respective subdivisions since the information was most recently
137 filed with the commissioner.

**§33-25D-4. Conditions precedent to issuance or maintenance of a
certificate of authority; renewal of certificate of
authority; effect of bankruptcy proceedings.**

1 (a) As a condition precedent to the issuance or maintenance
2 of a certificate of authority, a prepaid limited health service
3 organization shall file or have on file with the commissioner:

4 (1) An acknowledgment that a delinquency proceeding
5 pursuant to article ten of this chapter or supervision by the
6 commissioner pursuant to article thirty-four of this chapter is
7 the sole and exclusive method for the liquidation, rehabilitation,
8 reorganization, or conservation of a prepaid limited health
9 service organization;

10 (2) A waiver of any right to file or be subject to a bank-
11 ruptcy proceeding;

12 (3) Within thirty days of any change in the membership of
13 the governing body of the organization or in the officers or
14 persons holding five percent or more of the common stock of
15 the organization, or as otherwise required by the commissioner:

16 (A) An amended list of the names, addresses and official
17 positions of each member of the governing body, and a full
18 disclosure of any financial interest by a member of the govern-
19 ing body or any provider or any organization or corporation
20 owned or controlled by that person and the prepaid limited
21 health service organization and the extent and nature of any
22 contract or financial arrangements between that person and the
23 prepaid limited health service organization; and

24 (B) A complete biographical statement on forms prescribed
25 by the commissioner and an independent investigation report on
26 each such person for whom a biographical statement and
27 independent investigation report have not previously been
28 submitted.

29 (b) All certificates of authority issued to prepaid limited
30 health service organizations expire at midnight on the thirty-
31 first day of May of each year. The commissioner shall renew
32 annually the certificates of authority of all prepaid limited
33 health service organizations which continue to meet all require-
34 ments of this section and subsection (b), section five of this
35 article, make application therefor upon a form prescribed by the
36 commissioner and pay the renewal fee prescribed: *Provided,*

37 That a prepaid limited health service organization does not
38 qualify for renewal of its certificate of authority if the organiza-
39 tion has no subscribers in this state within twelve months after
40 issuance of the certificate of authority: *Provided, however,* That
41 an organization not qualifying for renewal may apply for a new
42 certificate of authority under section three of this article.

43 (c) The commencement of a bankruptcy proceeding either
44 by or against a prepaid limited health service organization, by
45 operation of law:

46 (1) Terminates the prepaid limited health service organiza-
47 tion's certificate of authority; and

48 (2) Vests in the commissioner for the use and benefit of the
49 subscribers of the prepaid limited health service organization
50 the title to any deposits of the prepaid limited health service
51 organization held by the commissioner.

52 (d) If the bankruptcy proceeding is initiated by a party other
53 than the prepaid limited health service organization, the
54 operation of subsection (c) of this section is stayed for a period
55 of sixty days following the date of commencement of the
56 proceeding.

§33-25D-5. Issuance of certificate of authority.

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

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

9 (2) Arrangements for an ongoing evaluation of the quality
10 of health care provided by the organization and utilization
11 review which meet the minimum standards set forth in section
12 nineteen of this article;

13 (3) That the organization has a procedure to develop,
14 compile, evaluate and report statistics relating to the cost of its

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

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

24 (1) The prepaid limited health service organization's
25 proposed plan of operation meets the requirements of subsec-
26 tion (a) of this section;

27 (2) The prepaid limited health service organization will
28 effectively provide or arrange for the provision of no more than
29 four limited health services on a prepaid basis except for
30 copayments: *Provided*, That nothing in this section relieves a
31 prepaid limited health service organization from the obligations
32 to provide a limited health service because of the nonpayment
33 of copayments unless the enrollee fails to make payment in at
34 least three instances over any twelve-month period: *Provided*,
35 *however*, That nothing in this section permits a prepaid limited
36 health service organization to charge copayments to medicare
37 beneficiaries or medicaid recipients in excess of the
38 copayments permitted under those programs, nor is a prepaid
39 limited health service organization required to provide a limited
40 health service to medicare beneficiaries or medicaid recipients
41 in excess of the benefits compensated under those programs;

42 (3) The prepaid limited health service organization is
43 financially responsible and may reasonably be expected to meet
44 its obligations to enrollees and prospective enrollees. In making
45 this determination, the commissioner may consider:

46 (A) The financial soundness of the prepaid limited health
47 service organization's arrangements for no more than four
48 limited health services and the proposed schedule of charges
49 used in connection with each limited health service offered;

50 (B) Arrangements for maintenance of the minimum capital
51 and surplus required under section six of this article;

52 (C) Any arrangements which will guarantee the continua-
53 tion of benefits and payments to providers for services rendered
54 both prior to and after insolvency for the duration of the
55 contract period for which payment has been made, except that
56 benefits to members who are confined on the date of insolvency
57 in an inpatient facility shall be continued until their discharge;
58 and

59 (D) Any agreement with providers for the provision of
60 limited health care services;

61 (4) The enrollees will be afforded an opportunity to
62 participate in matters of policy and operation pursuant to
63 section eight of this article;

64 (5) The prepaid limited health service organization has
65 demonstrated that it will assume full financial risk on a pro-
66 spective basis for the provision of no more than four limited
67 health services: *Provided*, That notwithstanding the requirement
68 of this subdivision, a prepaid limited health service organization
69 may obtain reinsurance acceptable to the commissioner from an
70 accredited reinsurer or make other arrangements:

71 (A) For the cost of providing to any enrollee limited health
72 services, the aggregate value of which exceeds four thousand
73 dollars in any year;

74 (B) For the cost of providing no more than four limited
75 health services to its enrollees on a nonelective emergency
76 basis; or

77 (C) For not more than ninety-five percent of the amount by
78 which the prepaid limited health service organization's costs for
79 any of its fiscal years exceed one hundred five percent of its
80 income for those fiscal years;

81 (6) The ownership, control and management of the prepaid
82 limited health service organization is competent and trustwor-
83 thy and possesses managerial experience that would make the
84 proposed organization operation beneficial to the subscribers.
85 The commissioner may, at his or her discretion, refuse to grant
86 or continue authority to transact the business of a prepaid

87 limited health service organization in this state at any time
88 during which the commissioner has probable cause to believe
89 that the ownership, control or management of the organization
90 includes any person whose business operations are or have been
91 marked by business practices or conduct that is to the detriment
92 of the public, stockholders, investors or creditors; and

93 (7) The prepaid limited health service organization has
94 deposited and maintained in trust with the state treasurer, for
95 the protection of its subscribers or its subscribers and creditors,
96 cash or government securities eligible for the investment of
97 capital funds of domestic insurers as described in section seven,
98 article eight of this chapter in the amount of fifty thousand
99 dollars.

100 (c) A certificate of authority may be denied only after
101 compliance with the requirements of section twenty-three of
102 this article.

103 (d) No person who has not been issued a certificate of
104 authority may use the words "prepaid limited health service
105 organization" or the initials "PLHSO" in its name, contracts,
106 logo or literature: *Provided*, That persons who are operating
107 under a contract with, operating in association with, enrolling
108 enrollees for, or otherwise authorized by a prepaid limited
109 health service organization licensed under this article to act on
110 its behalf may use the terms "prepaid limited health service
111 organization" or "PLHSO" for the limited purpose of denoting
112 or explaining their association or relationship with the autho-
113 rized prepaid limited health service organization. No prepaid
114 limited health service organization which has a minority of
115 board members who are consumers may use the words "con-
116 sumer controlled" in its name or in any way represent to the
117 public that it is controlled by consumers.

§33-25D-6. Minimum capital.

1 (a) Each prepaid limited health service organization shall
2 have and maintain fully paid-in capital stock, if a for-profit
3 stock corporation, or statutory surplus funds, if a nonprofit
4 corporation, totaling at least:

5 (1) The greater of two hundred fifty thousand dollars or ten
6 percent of its expenses for the previous twelve-month period as
7 reported in its most recent financial statement filed pursuant to
8 subsection (a), section twelve of this article, with respect to
9 each limited health service for which the organization will not
10 offer inpatient services up to a maximum total for all limited
11 health services of the required capital and surplus for an insurer
12 under article three, section five-b of this chapter; and

13 (2) The greater of one million dollars or ten percent of its
14 expenses for the previous twelve-month period as reported in its
15 most recent financial statement filed pursuant to subsection (a),
16 section twelve of this article, with respect to each limited health
17 service for which the organization will offer inpatient services
18 up to a maximum total for all limited health services of the
19 required capital and surplus for an insurer under article three,
20 section five-b of this chapter.

21 (b) For purposes of this section, “expenses” means those
22 costs set forth by the national association of insurance commis-
23 sioners (NAIC) in the statement of revenues, expenses and net
24 worth contained in the annual statement instruction—limited
25 health service organization and the official NAIC annual
26 statement blanks—limited health service organization.

§33-25D-7. Powers of organization.

1 (a) Upon obtaining a certificate of authority as required
2 under this article, a prepaid limited health service organization
3 may enter into limited health service contracts in this state and
4 engage in any activities, consistent with the purposes and
5 provisions of this article, which are necessary to the perfor-
6 mance of its obligations under such contracts, subject to the
7 limitations provided for in this article: *Provided*, That nothing
8 in this article authorizes any prepaid limited health service
9 organization to transact any insurance other than that for which
10 the organization is granted a certificate of authority under this
11 article.

12 (b) The commissioner may propose rules for legislative
13 approval in accordance with the provisions of article three,

14 chapter twenty-nine-a of this code, limiting or regulating the
15 powers of prepaid limited health service organizations which he
16 or she finds to be in the public interest.

§33-25D-8. Governing body; enrollee participation.

1 (a) The governing body of any prepaid limited health
2 service organization may include enrollees, providers, or other
3 individuals.

4 (b) The governing body shall establish a mechanism to
5 afford the enrollees an opportunity to participate in matters of
6 policy and operation through the establishment of advisory
7 panels, by the use of advisory referenda on major policy
8 decisions, or through the use of other mechanisms as may be
9 prescribed by the commissioner.

§33-25D-9. Fiduciary responsibilities of managers; fidelity bond.

1 (a) Any director, officer or other manager of a prepaid
2 limited health service organization who receives, collects,
3 disburses or invests funds in connection with the activities of
4 the organization is responsible for the funds in a fiduciary
5 relationship to the enrollees.

6 (b) A prepaid limited health service organization shall
7 maintain a blanket fidelity bond covering all directors, officers,
8 managers and employees of the organization who receive,
9 collect, disburse or invest funds in connection with the activi-
10 ties of the organization, issued by an insurer licensed in this
11 state or, if the fidelity bond required by this subdivision is not
12 available from an insurer licensed in this state, a fidelity bond
13 procured by an excess line broker licensed in this state, in an
14 amount at least equal to the minimum amount of fidelity
15 insurance as provided in the national association of insurance
16 commissioners handbook, as amended, or as the commissioner
17 may by rule, propose for legislative approval in accordance
18 with the provisions of article three, chapter twenty-nine-a of
19 this code, require.

§33-25D-10. Provider contracts.

1 (a) A prepaid limited health service organization shall file
2 with the commissioner any contracts made with providers of a

3 limited health service, enabling the prepaid limited health
4 service organization to provide limited health services autho-
5 rized under this article. The commissioner may require the
6 immediate cancellation of a contract or the immediate renegoti-
7 ation of a contract by the parties if he or she determines that a
8 contract provides for excessive payments, fails to include
9 reasonable incentives for cost control, or otherwise substan-
10 tially and unreasonably contributes to escalation of the costs of
11 providing a limited health service to enrollees.

12 (b) Whenever a contract exists between a prepaid limited
13 health service organization and a provider and the organization
14 fails to meet its obligations to pay fees for services already
15 rendered to a subscriber, the prepaid limited health service
16 organization is liable for the fee or fees rather than the sub-
17 scriber; and the contract shall state that liability.

18 (c) No enrollee of a prepaid limited health service organiza-
19 tion is liable to any provider of a limited health service for any
20 service covered by the prepaid limited health service organiza-
21 tion if at any time during the provision of the service, the
22 provider or its agents are aware the individual to whom the
23 service is provided is an enrollee of a prepaid limited health
24 service organization.

25 (d) If at any time during the provision of a limited health
26 service, a provider or its agents are aware that the subscriber is
27 a prepaid limited health service organization enrollee for the
28 service provided, the provider of services or any agent or
29 representative of the provider may not collect or attempt to
30 collect from a subscriber any money for services covered by a
31 prepaid limited health service organization, and no provider or
32 agent or representative of the provider may maintain any action
33 at law against a subscriber of a prepaid limited health service
34 organization to collect money owed to the provider by a prepaid
35 limited health service organization.

36 (e) Every contract between a prepaid limited health service
37 organization and a provider of a limited health service shall be
38 in writing and shall contain a provision that the subscriber is not
39 liable to the provider for any services covered by the sub-

40 scriber's contract with the prepaid limited health service
41 organization.

42 (f) The provisions of this section do not apply to the amount
43 of any deductible or copayment not payable by the prepaid
44 limited health service organization pursuant to its contract with
45 its subscriber.

46 (g) When a subscriber receives covered emergency health
47 care services from a noncontracting provider, the prepaid
48 limited health service organization is responsible for payment
49 of the provider's normal charges for the health care services,
50 exclusive of any applicable deductibles or copayments.

51 (h) For all provider contracts executed on or after the
52 effective date of this article and within one hundred eighty days
53 of that date for contracts in existence on that date:

54 (1) The contracts shall provide that the provider provide
55 sixty days advance written notice to the prepaid limited health
56 service organization and the commissioner before canceling the
57 contract with the prepaid limited health service organization for
58 any reason; and

59 (2) The contract shall provide that nonpayment for goods or
60 services rendered by the provider to the prepaid limited health
61 service organization is not a valid reason for avoiding the sixty-
62 day advance notice of cancellation.

63 (i) Upon receipt by the prepaid limited health service
64 organization of a sixty-day cancellation notice, the prepaid
65 limited health service organization may, if requested by the
66 provider, terminate the contract in less than sixty days if the
67 prepaid limited health service organization is not financially
68 impaired or insolvent.

**§33-25D-11. Evidence of coverage; review of enrollee records;
charges for limited health services; cancellation of
contract by enrollee.**

1 (a)(1) Every enrollee is entitled to evidence of coverage in
2 accordance with this section. The prepaid limited health service

3 organization or its designated representative shall issue the
4 evidence of coverage.

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

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

11 (A) The limited health service and the insurance or other
12 benefits, if any, to which the enrollee is entitled;

13 (B) Any exclusions or limitations on the service, kind of
14 service, benefits, or kind of benefits, to be provided, including
15 any copayments;

16 (C) Where and in what manner information is available as
17 to how a service may be obtained: *Provided*, That with respect
18 to any limited health service for which inpatient services,
19 hospital surgical services or emergency services are provided,
20 the evidence of coverage shall contain a definition of inpatient
21 services, hospital surgical services or emergency services,
22 respectively; describe procedures for determination by the
23 prepaid limited health service organization of whether the
24 services qualify for reimbursement as inpatient services,
25 hospital surgical services or emergency services; and contain
26 specific examples of situations in which the services would be
27 made available;

28 (D) The total amount of payment and copayment, if any, for
29 the limited health service and the indemnity or service benefits,
30 if any, which the enrollee is obligated to pay with respect to
31 individual contracts, or an indication whether the plan is
32 contributory or noncontributory with respect to group certifi-
33 cates;

34 (E) A description of the prepaid limited health service
35 organization's method for resolving enrollee grievances; and

36 (F) The following exact statement in bold print:

37 “Each subscriber or enrollee, by acceptance of the benefits
38 described in this evidence of coverage, consents to the examina-
39 tion of his or her medical records for purposes of utilization
40 review, quality assurance and peer review by the prepaid
41 limited health service organization or its designee.”

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

44 (5) A copy of the form of the evidence of coverage to be
45 used in this state, and any amendment thereto, is subject to the
46 filing and approval requirements of subdivision (2), subsection
47 (a) of this section, unless the commissioner promulgates a rule
48 dispensing with this requirement or unless it is subject to the
49 jurisdiction of the commissioner under the laws governing
50 health insurance or hospital, medical, dental or health service
51 corporations, in which event the filing and approval provisions
52 of those laws apply. To the extent, however, that those provi-
53 sions do not apply the requirements in subdivision (3), subsec-
54 tion (a) of this section, are applicable.

55 (b)(1) Premiums for each limited health service offered
56 may be established in accordance with actuarial principles:
57 *Provided*, That premiums may not be excessive, inadequate, or
58 unfairly discriminatory. A certification by a qualified independ-
59 ent actuary shall accompany a rate filing for each limited health
60 service offered and shall certify that:

61 (A) The rates are neither inadequate nor excessive nor
62 unfairly discriminatory;

63 (B) That the rates are appropriate for the classes of risks for
64 which they have been computed;

65 (C) Provide an adequate description of the rating methodol-
66 ogy showing that the methodology follows consistent and
67 equitable actuarial principles; and

68 (D) The rates being charged are actuarially adequate to the
69 end of the period for which rates have been guaranteed.

70 (2) In determining whether the charges are reasonable, the
71 commissioner shall consider whether the prepaid limited health
72 service organization has:

73 (A) Made a vigorous, good faith effort to control rates paid
74 to limited health service providers;

75 (B) Established a premium schedule, including copayments,
76 if any, which encourages enrollees to seek out preventive
77 limited health services; and

78 (C) Made a good faith effort to secure arrangements
79 whereby the limited health service can be obtained by subscrib-
80 ers from local providers to the extent that the providers offer the
81 services.

82 (c) Rates for a particular limited health service are inade-
83 quate if the premiums derived from the rating structure, plus
84 investment income, copayments, and revenues from coordina-
85 tion of benefits and subrogation, fees-for-service and reinsur-
86 ance recoveries are not set at a level at least equal to the
87 anticipated cost of benefits for the limited health service during
88 the period for which the rates are to be effective and the other
89 expenses which would be incurred if other expenses were at the
90 level for the current or nearest future period during which the
91 prepaid limited health service organization is projected to make
92 a profit. For this analysis, total investment income added to
93 premiums, copayments and revenues from coordination of
94 benefits and subrogation, fees-for-service and reinsurance
95 recoveries with respect to all limited health services offered
96 may not exceed three percent of the prepaid limited health
97 service organization's total projected revenues.

98 (d) The commissioner shall within a reasonable period
99 approve any form if the requirements of subsection (a) of this
100 section are met and any schedule of charges if the requirements
101 of subsections (b) and (c) of this section are met. It is unlawful
102 to issue the form or to use the schedule of charges until ap-
103 proved. If the commissioner disapproves of the filing, he or she
104 shall notify the filer promptly. In the notice, the commissioner
105 shall specify the reasons for his or her disapproval and the
106 findings of fact and conclusions which support his or her
107 reasons. A hearing will be granted by the commissioner within
108 forty-five days after a request in writing, by the person filing,
109 has been received by the commission. If the commissioner does

110 not disapprove any form or schedule of charges within sixty
111 days of the filing of the forms or charges, they are approved.

112 (e) The commissioner may require the submission of
113 whatever relevant information in addition to the schedule of
114 charges which he or she considers necessary in determining
115 whether to approve or disapprove a filing made pursuant to this
116 section.

117 (f) An individual enrollee may cancel a contract with a
118 prepaid limited health service organization at any time for any
119 reason: *Provided*, That a prepaid limited health service organi-
120 zation may require that the enrollee give thirty days advance
121 notice: *Provided, however*, That an individual enrollee whose
122 premium rate was determined pursuant to a group contract may
123 cancel a contract with a prepaid limited health service organiza-
124 tion pursuant to the terms of that contract.

§33-25D-12. Annual and quarterly reports.

1 (a) Every prepaid limited health service organization shall
2 comply with and is subject to the provisions of section fourteen,
3 article four of this chapter relating to filing of financial state-
4 ments with the commissioner and the national association of
5 insurance commissioners. The annual financial statement
6 required by that section shall include, but not be limited to, the
7 following:

8 (1) A statutory financial statement of the organization,
9 including its balance sheet and receipts and disbursements for
10 the preceding year certified by an independent certified public
11 accountant, reflecting at least:

12 (A) All prepayment and other payments received for
13 limited health services rendered;

14 (B) Expenditures to all providers, by classes or groups of
15 providers, and insurance companies or nonprofit health service
16 plan corporations engaged to fulfill obligations arising out of
17 the limited health service contract;

18 (C) Expenditures for capital improvements, or additions
19 thereto, including, but not limited to, construction, renovation
20 or purchase of facilities and capital equipment; and

- 21 (D) The organization's fidelity bond;
- 22 (2) The number of new enrollees enrolled during the year,
23 the number of enrollees as of the end of the year and the
24 number of enrollees terminated during the year on a form
25 prescribed by the commissioner;
- 26 (3) A summary of information compiled pursuant to
27 subdivision (3), subsection (a), section five of this article in
28 such form as the commissioner requires;
- 29 (4) A report of the names and residence addresses of all
30 persons set forth in subdivision (3), subsection (d), section three
31 of this article who were associated with the prepaid limited
32 health service organization during the preceding year, and the
33 amount of wages, expense reimbursements, or other payments
34 to those individuals for services to the prepaid limited health
35 service organization, including a full disclosure of all financial
36 arrangements during the preceding year required to be disclosed
37 pursuant to subdivision (3), subsection (d), section three of this
38 article; and
- 39 (5) Other information relating to the performance of the
40 prepaid limited health service organization as is reasonably
41 necessary to enable the commissioner to carry out his or her
42 duties under this article.

§33-25D-13. Annual report to enrollees.

1 Every prepaid limited health service organization or its
2 representative shall annually, before the first day of April,
3 provide to each enrollee a summary of: Its most recent annual
4 financial statement, including a balance sheet and statement of
5 receipts and disbursements; a description of the prepaid limited
6 health service organization, each limited health service offered,
7 its facilities and personnel for each limited health service
8 offered, any material changes therein since the last report, the
9 current evidence of coverage for each limited health service for
10 which the enrollee is enrolled, and a clear and understandable
11 description of the prepaid limited health service organization's
12 method for resolving enrollee complaints: *Provided*, That with
13 respect to enrollees who have been enrolled through contracts

14 between a prepaid limited health service organization and an
15 employer, the prepaid limited health service organization
16 satisfies the requirement of this section by providing the
17 requisite summary to each enrolled employee: *Provided,*
18 *however,* That with respect to medicaid recipients enrolled
19 under a group contract between a prepaid limited health service
20 organization and the governmental agency responsible for
21 administering the medicaid program, the prepaid limited health
22 service organization satisfies the requirement of this section by
23 providing the requisite summary to each local office of the
24 governmental agency responsible for administering the
25 medicaid program for inspection by enrollees of the prepaid
26 limited health service organization.

§33-25D-14. Grievance procedure.

1 (a) A prepaid limited health service organization shall
2 establish and maintain a grievance procedure, which has been
3 approved by the commissioner, to provide adequate and
4 reasonable procedures for the expeditious resolution of written
5 grievances initiated by enrollees concerning any matter relating
6 to any provisions of the organization's limited health service
7 contracts, including, but not limited to, claims regarding the
8 scope of coverage for health care services; denials, cancella-
9 tions or nonrenewals of enrollee coverage; observance of an
10 enrollee's rights as a patient; and the quality of the health care
11 services rendered.

12 (b) A detailed description of the prepaid limited health
13 service organization's subscriber grievance procedure shall be
14 included in all group and individual contracts as well as any
15 certificate or member handbook provided to subscribers. This
16 procedure shall be administered at no cost to the subscriber. A
17 prepaid limited health service organization subscriber grievance
18 procedure shall include the following:

19 (1) Both informal and formal steps shall be available to
20 resolve the grievance. A grievance is not considered formal
21 until a written grievance is executed by the subscriber or
22 completed on forms prescribed and received by the prepaid
23 limited health service organization;

24 (2) Each prepaid limited health service organization shall
25 designate at least one grievance coordinator who is responsible
26 for the implementation of the prepaid limited health service
27 organization's grievance procedure;

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

36 (4) An address shall be included for written grievances;

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

40 (6) The prepaid limited health service organization shall
41 process the formal written subscriber grievance through all
42 phases of the grievance procedure in a reasonable length of time
43 not to exceed forty-five days, unless the subscriber and prepaid
44 limited health service organization mutually agree to extend the
45 time frame. If the complaint involves the collection of informa-
46 tion outside the service area, the prepaid limited health service
47 organization has thirty additional days to process the subscriber
48 complaint through all phases of the grievance procedure. The
49 time limitations prescribed in this subdivision requiring
50 completion of the grievance process within sixty days are tolled
51 after the prepaid limited health service organization has notified
52 the subscriber, in writing, that additional information is
53 required in order to properly complete review of the grievance.
54 Upon receipt by the prepaid limited health service organization
55 of the additional information requested, the time for completion
56 of the grievance process set forth in this subdivision resumes;

57 (7) The subscriber grievance procedure shall state that the
58 subscriber has the right to appeal to the commissioner within
59 thirty days of receipt by the subscriber of a written ruling by the

60 prepaid limited health service organization which denies, in
61 whole or in part, relief requested by the subscriber in a formal
62 written subscriber grievance. There shall be the additional
63 requirement that subscribers under a group contract between the
64 prepaid limited health service organization and a department or
65 division of the state shall first appeal to the state agency
66 responsible for administering the relevant program, and if either
67 party is not satisfied with the outcome of the appeal, the
68 unsatisfied party may appeal to the commissioner. The prepaid
69 limited health service organization shall provide the subscriber
70 a written notice of the right to appeal upon completion of the
71 full grievance procedure and supply the commissioner with a
72 copy of the final decision letter. A subscriber has thirty days
73 after receipt of the written notice to appeal to the commissioner
74 if the prepaid limited health service organization's ruling denies
75 the relief requested by the subscriber, in whole or in part;

76 (8) The prepaid limited health service organization shall
77 have provider involvement in reviewing grievances related to
78 a provider's services. Provider involvement in the grievance
79 process may not be limited to the subscriber's coordinating
80 provider, but shall include at least one other provider;

81 (9) The prepaid limited health service organization shall
82 offer to meet with the subscriber during the formal grievance
83 process. The location of the meeting shall be at the administra-
84 tive offices of the prepaid limited health service organization
85 within the service area or at a location within the service area
86 which is convenient to the subscriber;

87 (10) The prepaid limited health service organization may
88 not establish time limits of less than one year from the date of
89 occurrence for the subscriber to file a formal grievance. The
90 date of occurrence is the date upon which a claim, service or
91 other matter sought by the subscriber was denied by the prepaid
92 limited health service organization or date of occurrence of the
93 event which gave rise to the grievance;

94 (11) Each prepaid limited health service organization shall
95 maintain an accurate record of each formal grievance. Each
96 record shall include the following:

97 (A) A complete description of the grievance, the sub-
98 scriber's name and address, the provider's name and address
99 and the prepaid limited health service organization's name and
100 address;

101 (B) A complete description of the prepaid limited health
102 service organization's factual findings and conclusions after
103 completion of the full formal grievance procedure;

104 (C) A complete description of the prepaid limited health
105 service organization's conclusions pertaining to the grievance
106 as well as the prepaid limited health service organization's final
107 disposition of the grievance; and

108 (D) A statement as to which levels of the grievance
109 procedure the grievance has been processed and how many
110 more levels of the grievance procedure are remaining before the
111 grievance has been processed through the prepaid limited health
112 service organization's entire grievance procedure.

113 (12) Copies of the grievances and the responses thereto
114 shall be available to the commissioner and the public for
115 inspection for three years.

116 (c) Any subscriber grievance in which time is of the essence
117 shall be handled on an expedited basis, so that a reasonable
118 person would believe that a prevailing subscriber would be able
119 to realize the full benefit of a decision in his or her favor.

120 (d) Each prepaid limited health service organization shall
121 submit to the commissioner an annual report in a form pre-
122 scribed by the commissioner which describes the grievance
123 procedure and contains a compilation and analysis of the
124 grievances filed, their disposition, and their underlying causes.

§33-25D-15. Prohibited practices.

1 (a) No prepaid limited health service organization, or
2 representative thereof, may cause or knowingly permit the use
3 of advertising which is untrue or misleading, solicitation which
4 is untrue or misleading, or any form of evidence of coverage
5 which is deceptive. No advertising may be used until it has been
6 approved by the commissioner. Advertising which has not been

7 disapproved by the commissioner within sixty days of filing is
8 considered approved. For purposes of this article:

9 (1) A statement or item of information is untrue if it does
10 not conform to fact in any respect which is or may be signifi-
11 cant to an enrollee of, or person considering enrollment in, a
12 prepaid limited health service organization;

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

25 (3) An evidence of coverage is deceptive if the evidence of
26 coverage taken as a whole, and with consideration given to
27 typography and format, as well as language, causes a reasonable
28 person, not possessing special knowledge regarding prepaid
29 limited health service organizations, and evidences of coverage
30 therefor, to expect benefits, services or other advantages which
31 the evidence of coverage does not provide or which the prepaid
32 limited health service organization issuing the evidence of
33 coverage does not regularly make available for enrollees
34 covered under the evidence of coverage; and

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

37 (b)(1) No prepaid limited health service organization may
38 cancel or fail to renew the coverage of an enrollee except for:

39 (A) Failure to pay the charge for health care coverage;

40 (B) Termination of the prepaid limited health service
41 organization;

- 42 (C) Termination of the group plan;
- 43 (D) Enrollee moving out of the area served;
- 44 (E) Enrollee moving out of an eligible group; or
- 45 (F) Other reasons established in rules promulgated by the
46 commissioner.

47 (2) No prepaid limited health service organization may use
48 any technique of rating or grouping to cancel or fail to renew
49 the coverage of an enrollee. An enrollee shall be given thirty
50 days' notice of any cancellation or nonrenewal and the notice
51 shall include the reasons for the cancellation or nonrenewal:
52 *Provided*, That each enrollee moving out of an eligible group
53 shall be granted the opportunity to enroll in the prepaid limited
54 health service organization on an individual basis. A prepaid
55 limited health service organization may not disenroll an
56 enrollee for nonpayment of copayments unless the enrollee has
57 failed to make payment in at least three instances over any
58 twelve-month period: *Provided, however*, That the enrollee may
59 not be disenrolled if the disenrollment would constitute
60 abandonment of a patient. Any enrollee wrongfully disenrolled
61 shall be reenrolled.

62 (c)(1) No prepaid limited health service organization may
63 use in its name, contracts, logo or literature any of the words
64 "insurance," "casualty," "surety," "mutual" or any other words
65 which are descriptive of the insurance, casualty or surety
66 business or deceptively similar to the name or description of
67 any insurance or surety corporation doing business in this state:
68 *Provided*, That when a prepaid limited health service organiza-
69 tion has contracted with another insurer for any coverage
70 permitted by this article, it may so state; and

71 (2) No person who has not been issued a certificate of
72 authority under this article may use the words "prepaid limited
73 health service organization" or the initials "PLHSO" in its
74 name, contracts, logo or literature to imply, directly or indi-
75 rectly, that it is a prepaid limited health service organization or
76 hold itself out to be a prepaid limited health service organiza-
77 tion.

78 (d) The providers of a prepaid limited health service
79 organization who provide limited health services and the
80 prepaid limited health service organization do not have recourse
81 against enrollees for amounts above those specified in the
82 evidence of coverage as the periodic prepayment or copayment
83 for health care services.

84 (e) No prepaid limited health service organization may
85 discriminate in enrollment policies or quality of services against
86 any person on the basis of race, sex, age, religion, place of
87 residence, health status or source of payment: *Provided*, That
88 differences in rates based on valid actuarial distinctions,
89 including distinctions relating to age and sex, are not considered
90 discrimination in enrollment policies.

91 (f) (1) No agent of a prepaid limited health service organi-
92 zation or person selling enrollments in a prepaid limited health
93 service organization may sell an enrollment in a prepaid limited
94 health service organization unless the agent or person first
95 discloses in writing to the prospective purchaser the following
96 information using the following exact terms in bold print:

97 (A) "Services offered," including any exclusions or
98 limitations;

99 (B) "Full cost," including copayments;

100 (C) "Facilities available and hours of services";

101 (D) "Transportation services";

102 (E) "Disenrollment rate"; and

103 (F) "Staff," including the names of all full-time staff
104 physicians, consulting specialists and inpatient facilities, if any,
105 associated with the prepaid limited health service organization.

106 (2) In any home solicitation, any three-day cooling-off
107 period applicable to consumer transactions generally applies in
108 the same manner as consumer transactions.

109 (3) The form disclosure statement may not be used in sales
110 until it has been approved by the commissioner. Any person
111 who fails to disclose the requisite information prior to the sale

112 of an enrollment may be held liable in an amount equivalent to
113 one year's subscription rate to the prepaid limited health service
114 organization, plus costs and a reasonable attorney's fee.

115 (g) No contract with an enrollee may prohibit an enrollee
116 from canceling his or her enrollment at any time for any reason
117 except that the contract may require thirty days' notice to the
118 prepaid limited health service organization.

119 (h) No contract with an enrollee may contain any provision
120 purporting to make any portion of the articles of incorporation,
121 charter, bylaws or other organizational document of the prepaid
122 limited health service organization a part of the contract unless
123 the provision is set forth in full in the contract.

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

**§33-25D-16. Agent licensing and appointment required; regula-
tion of marketing.**

1 (a) Prepaid limited health service organizations are subject
2 to the provisions of article twelve of this chapter.

3 (b) With respect to individual or group contracts covering
4 fewer than twenty-five subscribers, after a subscriber signs a
5 prepaid limited health service organization enrollment applica-
6 tion and before the prepaid limited health service organization
7 may process the application changing or initiating the sub-
8 scriber coverage, each prepaid limited health service organiza-
9 tion shall verify in writing, in a form prescribed by the commis-
10 sioner, the intent and desire of the individual subscriber to join
11 the prepaid limited health service organization. The verification
12 shall be conducted by someone outside the prepaid limited
13 health service organization's marketing department and shall
14 show that:

15 (1) The subscriber intends and desires to join the prepaid
16 limited health service organization;

17 (2) If the subscriber is a medicare or medicaid recipient, the

18 subscriber understands that by joining the prepaid limited
19 health service organization he or she will be limited to the
20 benefits provided by the prepaid limited health service organi-
21 zation, and medicare or medicaid will pay the prepaid limited
22 health service organization for the subscriber coverage;

23 (3) The subscriber understands the applicable restrictions
24 of prepaid limited health service organizations, especially that
25 he or she must use the prepaid limited health service organiza-
26 tion providers and secure approval from the prepaid limited
27 health service organization to use health care providers outside
28 the plan; and

29 (4) If the subscriber is a member of a prepaid limited health
30 service organization, the subscriber understands that he or she
31 is transferring to another prepaid limited health service organi-
32 zation.

33 (c) The prepaid limited health service organization may not
34 pay a commission, fee, money or any other form of scheduled
35 compensation to any health insurance agent until the sub-
36 scriber's application has been processed and the prepaid limited
37 health service organization has confirmed the subscriber's
38 enrollment by written notice in the form prescribed by the
39 commissioner. The confirmation notice shall be accompanied
40 by the evidence of coverage required by section eleven of this
41 article and shall confirm:

42 (1) The subscriber's transfer from his or her existing
43 coverage, such as from medicare, medicaid, another prepaid
44 limited health service organization, etc., to the new prepaid
45 limited health service organization; and

46 (2) The date enrollment begins and when benefits will be
47 available.

48 (d) The enrollment process is considered complete seven
49 days after the prepaid limited health service organization mails
50 the confirmation notice and evidence of coverage to the
51 subscriber. Each prepaid limited health service organization is
52 directly responsible for enrollment abuses.

53 (e) The commissioner may propose rules for legislative
54 approval in accordance with the provisions of article three,
55 chapter twenty-nine-a of this code, to regulate marketing of
56 prepaid limited health service organizations by persons com-
57 pensated directly or indirectly by the prepaid limited health
58 service organization. The rules may prohibit door-to-door
59 solicitations, may prohibit commission sales, and may provide
60 for other proscriptions required to effectuate the purposes of
61 this article.

**§33-25D-17. Powers of insurers, hospital service corporations,
medical service corporations, dental service
corporations, health service corporations and
health maintenance organizations.**

1 (a) An insurance company licensed in this state, a hospital,
2 medical, dental or health service corporation authorized to do
3 business in this state or a health maintenance organization
4 holding a certificate of authority under article twenty-five-a of
5 this chapter, after applying for and receiving a certificate of
6 authority as a prepaid limited health service organization, may
7 through a subsidiary or affiliate organize and operate a prepaid
8 limited health service organization under the provisions of this
9 article. Notwithstanding any other law to the contrary, any two
10 or more insurance companies, hospital, medical, dental or
11 health service corporations, health maintenance organizations
12 or subsidiaries or affiliates thereof, may jointly organize and
13 operate a prepaid limited health service organization. The
14 business of insurance is considered to include the providing of
15 health care by a prepaid limited health service organization
16 owned or operated by an insurer or a subsidiary of the insurer.

17 (b) Notwithstanding any provision of insurance, hospital,
18 medical, dental or health service corporation or health mainte-
19 nance organization laws, an insurer, a hospital, medical, dental
20 or health service corporation or a health maintenance organiza-
21 tion may contract with a prepaid limited health service organi-
22 zation to provide insurance or similar protection against the cost
23 of care provided through prepaid limited health service organi-
24 zations and to provide coverage in the event of the failure of the

25 prepaid limited health service organization to meet its obliga-
26 tions. The enrollees of a prepaid limited health service organi-
27 zation constitute a permissible group under those laws. Under
28 the contracts, the insurer or hospital, medical, dental or health
29 service corporation or health maintenance organization may
30 make benefit payments to prepaid limited health service
31 organizations for limited health services rendered by providers.

32 (c) Notwithstanding any provision of insurance, hospital,
33 medical, dental or health service corporation or health mainte-
34 nance organization laws, an insurer, a hospital, medical, dental
35 or health service corporation or a health maintenance organiza-
36 tion may exclude in any contract or policy issued to a group,
37 any coverage which would duplicate the coverage of a prepaid
38 limited health service organization, whether for services,
39 supplies or reimbursement, to the extent that the coverage or
40 service is provided in accordance with this chapter pursuant to
41 a contract or policy issued to the same group or to a part of that
42 group by a prepaid limited health service organization.

§33-25D-18. Examinations.

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

7 (b) The commissioner may contract with the department of
8 health and human resources, any entity which has been accred-
9 ited by a nationally recognized accrediting organization and has
10 been approved by the commissioner to make examinations
11 concerning the quality of health care services of any prepaid
12 limited health service organization and providers with whom
13 the organization has contracts, agreements or other arrange-
14 ments, or any such entity contracted with by the department of
15 health and human resources, as often as it considers necessary
16 for the protection of the interests of the people of this state, but
17 not less frequently than once every three years: *Provided*, That
18 in making the examination, the department of health and human

19 resources or the accredited entity shall utilize the services of
20 persons or organizations with demonstrable expertise in
21 assessing quality of health care.

22 (c) Every prepaid limited health service organization and
23 affiliated provider shall submit its books and records to the
24 examinations and in every way facilitate them. For the purpose
25 of examinations, the commissioner and the department of health
26 and human resources have all powers necessary to conduct the
27 examinations, including, but not limited to, the power to issue
28 subpoenas, the power to administer oaths to and examine the
29 officers and agents of the prepaid limited health service
30 organization and the principals of the providers concerning their
31 business.

32 (d) The prepaid limited health service organization is
33 subject to the provisions of section nine, article two of this
34 chapter in regard to the expense and conduct of examinations.

35 (e) In lieu of the examination, the commissioner may accept
36 the report of an examination made by another state.

37 (f) The expenses of an examination assessing quality of
38 health care under subsection (b) of this section and section
39 nineteen of this article shall be reimbursed pursuant to subdivi-
40 sion (5), subsection (i), section nine, article two of this chapter.

§33-25D-19. Quality assurance.

1 (a) Each prepaid limited health service organization shall
2 have in writing a quality assurance program approved by the
3 commissioner which describes the program's objectives,
4 organization and problem solving activities.

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

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

9 (2) A documented utilization management program;

10 (3) Written policies and procedures for credentialing and
11 recredentialing physicians and other licensed providers who fall

12 under the scope of authority of the prepaid limited health
13 service organization;

14 (4) A written policy that addresses enrollees' rights and
15 responsibilities;

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

18 (6) Any other criteria considered necessary by the commis-
19 sioner.

20 (c) This section becomes effective on the first day of May,
21 one thousand nine hundred ninety-nine.

§33-25D-20. Suspension or revocation of certificate of authority.

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

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

12 (2) The prepaid limited health service organization issues
13 an evidence of coverage or uses a schedule of premiums limited
14 health services which do not comply with the requirements of
15 section eleven of this article;

16 (3) The prepaid limited health service organization does not
17 provide or arrange for those limited health services which it has
18 contracted to provide to enrollees;

19 (4) The department of health and human resources or other
20 accredited entity certifies to the commissioner that:

21 (A) The prepaid limited health service organization is
22 unable to fulfill its obligations to furnish limited health services
23 as required under its contract with enrollees; or

24 (B) The prepaid limited health service organization does
25 not meet the requirements of subsection (a), section five of this
26 article;

27 (5) The prepaid limited health service organization is no
28 longer financially responsible and may reasonably be expected
29 to be unable to meet its obligations to enrollees or prospective
30 enrollees or is otherwise determined by the commissioner to be
31 in a hazardous financial condition;

32 (6) The prepaid limited health service organization has
33 failed to implement a mechanism affording the enrollees an
34 opportunity to participate in matters of policy and operation
35 under section eight of this article;

36 (7) The prepaid limited health service organization has
37 failed to implement the grievance procedure required by section
38 fourteen of this article in a manner to reasonably resolve valid
39 grievances;

40 (8) The prepaid limited health service organization, or any
41 person on its behalf, has advertised or merchandised its services
42 in an untrue, misrepresentative, misleading, deceptive or unfair
43 manner;

44 (9) The continued operation of the prepaid limited health
45 service organization would be hazardous to its enrollees;

46 (10) The prepaid limited health service organization has
47 otherwise failed to substantially comply with this article;

48 (11) The prepaid limited health service organization has
49 violated a lawful order of the commissioner; or

50 (12) The prepaid limited health service organization has
51 failed to implement or maintain a quality assurance program
52 considered satisfactory by the commissioner which meets the
53 minimum standards set forth in section nineteen of this article.

54 (b) A certificate of authority may be suspended or revoked
55 only after compliance with the requirements of section
56 twenty-three of this article.

57 (c) When the certificate of authority of a prepaid limited
58 health service organization is suspended, the prepaid limited
59 health service organization may not, during the period of the
60 suspension, enroll any additional enrollees except newborn
61 children or other newly acquired dependents of existing
62 enrollees, and may not engage in any advertising or solicitation.

63 (d) When the certificate of authority of a prepaid limited
64 health service organization is revoked, the organization shall
65 proceed, immediately following the effective date of the order
66 of revocation, to terminate its affairs, and may conduct no
67 further business except as may be essential to the orderly
68 conclusion of the affairs of the organization. It may engage in
69 no further advertising or solicitation. The commissioner may,
70 by written order, permit further operation of the organization as
71 he or she may find to be in the best interests of enrollees, to the
72 end that enrollees will be afforded the greatest practical
73 opportunity to obtain continuing limited health service cover-
74 age.

**§33-25D-21. Rehabilitation, liquidation or conservation of pre-
paid limited health service organization.**

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

§33-25D-22. Rules.

1 The commissioner may propose rules for legislative
2 approval in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code:

4 (1) To effectuate the purposes of this article and to prevent
5 circumvention and evasion thereof; and

6 (2) To define the commissioner's authority to consider the
7 operating results of a prepaid limited health service organiza-
8 tion's affiliates and subsidiaries in the rate making and solvency
9 determination of that prepaid limited health service organiza-
10 tion.

§33-25D-23. Administrative procedures.

1 (a) When the commissioner has cause to believe that
2 grounds for the denial of an application for a certificate of
3 authority exist, or that grounds for the suspension or revocation
4 of a certificate of authority exist, he or she shall notify the
5 prepaid limited health service organization in writing specifi-
6 cally stating the grounds for denial, suspension or revocation
7 and fixing a time of at least twenty days thereafter for a hearing
8 on the matter.

9 (b) After the hearing, or upon the failure of the prepaid
10 limited health service organization to appear at the hearing, the
11 commissioner shall take action as is considered advisable on
12 written findings which shall be mailed to the prepaid limited
13 health service organization. The action of the commissioner is
14 subject to review. The court may modify, affirm or reverse the
15 order of the commissioner, in whole or in part.

16 (c) Proceedings under this article are governed by the
17 provisions of section thirteen, article two of this chapter.

§33-25D-24. Fees.

1 Every prepaid limited health service organization subject to
2 this article shall pay to the commissioner the following fees:

3 (1) For filing an application for a certificate of authority or
4 amendment thereto, two hundred dollars;

5 (2) For each renewal of a certificate of authority, the annual
6 fee as provided in section thirteen, article three of this chapter;

7 (3) For each form filing and for each rate filing, the fee as
8 provided in section thirty-four, article six of this chapter; and

9 (4) For filing each annual report, twenty-five dollars.

10 Fees charged under this section are for the purposes set
11 forth in section thirteen, article three of this chapter.

§33-25D-25. Penalties and enforcement.

1 (a) The commissioner may, in lieu of suspension or
2 revocation of a certificate of authority under section twenty of
3 this article, levy an administrative penalty in an amount not less
4 than one hundred dollars nor more than five thousand dollars,
5 if reasonable notice in writing is given of the intent to levy the
6 penalty and the prepaid limited health service organization has
7 a reasonable time within which to remedy the defect in its
8 operations which gave rise to the penalty citation. The commis-
9 sioner may augment this penalty by an amount equal to the sum
10 that he or she calculates to be the damages suffered by enrollees
11 or other members of the public.

12 (b) Any person who violates any provision of this article is
13 guilty of a misdemeanor and, upon conviction thereof, shall be
14 fined not less than one thousand dollars nor more than ten
15 thousand dollars, or confined in the county jail not more than
16 one year, or both fined and confined.

17 (c)(1) If the commissioner, for any reason, has cause to
18 believe that any violation of this article or rules promulgated
19 pursuant thereto has occurred or is threatened, prior to the levy
20 of a penalty or suspension or revocation of a certificate of
21 authority, the commissioner may give notice to the prepaid
22 limited health service organization and to the representatives,
23 or other persons who appear to be involved in the suspected
24 violation, to arrange a conference with the alleged violators or
25 their authorized representatives for the purpose of attempting to
26 ascertain the facts relating to the suspected violation, and, in the
27 event it appears that any violation has occurred or is threatened,
28 to arrive at an adequate and effective means of correcting or
29 preventing the violation.

30 (2) Proceedings under this subsection are not governed by
31 any formal procedural requirements, and may be conducted in
32 a manner as the commissioner considers appropriate under the
33 circumstances. Enrollees shall be afforded notice by publication
34 of proceedings under this subsection and shall be afforded the
35 opportunity to intervene.

36 (d)(1) The commissioner may issue an order directing a
37 prepaid limited health service organization or a representative
38 of a prepaid limited health service organization to cease and
39 desist from engaging in any act or practice in violation of the
40 provisions of this article or rules promulgated pursuant to this
41 article.

42 (2) Within ten days after service of the order of cease and
43 desist, the respondent may request a hearing on the question of
44 whether acts or practices in violation of this article have
45 occurred. The hearings shall be conducted pursuant to section
46 thirteen, article two of this chapter.

47 (e) In the case of any violation of the provisions of this
48 article or rules promulgated pursuant to this article, if the
49 commissioner elects not to issue a cease and desist order, or in
50 the event of noncompliance with a cease and desist order issued
51 pursuant to subsection (d) of this section, the commissioner
52 may institute a proceeding to obtain injunctive relief, or seek
53 other appropriate relief, in the circuit court of the county of the
54 principal place of business of the prepaid limited health service
55 organization.

56 (f) Any enrollee of or resident of this state may bring an
57 action against the prepaid limited health service organization to
58 enforce any provision, standard or rule enforceable by the
59 commissioner: *Provided*, That this subsection does not autho-
60 rize a civil action against the commissioner, his or her employ-
61 ees or any other agency or instrumentality of this state. In the
62 case of any successful action to enforce this article, or accom-
63 panying standards or rules, the individual shall be awarded the
64 costs of the action together with a reasonable attorney's fee as
65 determined by the court.

§33-25D-26. Statutory construction and relationship to other laws.

1 (a) Except as otherwise provided in this article, provisions
2 of the insurance laws, provisions of hospital, medical, dental or
3 health service corporation laws and provisions of health
4 maintenance organization laws are not applicable to any prepaid
5 limited health service organization granted a certificate of
6 authority under this article. The provisions of this article do not
7 apply to an insurer, hospital, medical, dental or health service
8 corporation, or health maintenance organization licensed and
9 regulated pursuant to the insurance laws, hospital, medical,
10 dental or health service corporation laws or health maintenance
11 organization laws of this state except with respect to its prepaid
12 limited health service corporation activities authorized and
13 regulated pursuant to this article. The provisions of this article
14 do not apply to an entity properly licensed by a reciprocal state
15 to provide a limited health care service to employer groups,
16 where residents of West Virginia are members of an employer
17 group, and the employer group contract is entered into in the
18 reciprocal state. For purposes of this subsection, a "reciprocal
19 state" means a state which physically borders West Virginia
20 and which has subscriber or enrollee hold harmless require-
21 ments substantially similar to those set out in section ten of this
22 article.

23 (b) Factually accurate advertising or solicitation regarding
24 the range of services provided, the premiums and copayments
25 charged, the sites of services and hours of operation, and any
26 other quantifiable, nonprofessional aspects of its operation by
27 a prepaid limited health service organization granted a certifi-
28 cate of authority, or its representative do not violate any
29 provision of law relating to solicitation or advertising by health
30 professions: *Provided*, That nothing contained in this subsection
31 authorizes any solicitation or advertising which identifies or
32 refers to any individual provider or makes any qualitative
33 judgment concerning any provider.

34 (c) Any prepaid limited health service organization autho-
35 rized under this article is not considered to be practicing

36 medicine and is exempt from the provision of chapter thirty of
37 this code, relating to the practice of medicine.

38 (d) The provisions of section nine, article two, examina-
39 tions; section thirteen, article two, hearings; sections fifteen and
40 twenty, article four, general provisions; section twenty, article
41 five, borrowing by insurers; section seventeen, article six,
42 noncomplying forms; article six-c, guaranteed loss ratio; article
43 seven, assets and liabilities; article eight, investments; article
44 nine, administration of deposits; article ten, rehabilitation and
45 liquidation; article twelve, agents, brokers, solicitors and excess
46 line; section fourteen, article fifteen, individual accident and
47 sickness insurance; section sixteen, article fifteen, coverage of
48 children; section eighteen, article fifteen, equal treatment of
49 state agency; section nineteen, article fifteen, coordination of
50 benefits with medicaid; article fifteen-b, uniform health care
51 administration act; section three, article sixteen, required policy
52 provisions; section eleven, article sixteen, coverage of children;
53 section thirteen, article sixteen, equal treatment of state agency;
54 section fourteen, article sixteen, coordination of benefits with
55 medicaid; article sixteen-a, group health insurance conversion;
56 article sixteen-d, marketing and rate practices for small employ-
57 ers; article twenty-seven, insurance holding company systems;
58 article thirty-three, annual audited financial report; article
59 thirty-four, administrative supervision; article thirty-four-a,
60 standards and commissioner's authority for companies deemed
61 to be in hazardous financial condition; article thirty-five,
62 criminal sanctions for failure to report impairment; article
63 thirty-seven, managing general agents; article thirty-nine,
64 disclosure of material transactions; and article forty-one,
65 privileges and immunity, all of this chapter are applicable to
66 any prepaid limited health service organization granted a
67 certificate of authority under this article. In circumstances
68 where the code provisions made applicable to prepaid limited
69 health service organizations by this section refer to the
70 "insurer," the "corporation" or words of similar import, the
71 language includes prepaid limited health service organizations.

72 (e) Any long-term care insurance policy delivered or issued
73 for delivery in this state by a prepaid limited health service

74 organization shall comply with the provisions of article
75 fifteen-a of this chapter.

76 (f) A prepaid limited health service organization granted a
77 certificate of authority under this article is exempt from paying
78 municipal business and occupation taxes on gross income it
79 receives from its enrollees, or from their employers or others on
80 their behalf, for health care items or services provided directly
81 or indirectly by the prepaid limited health service organization.

§33-25D-27. Filings and reports as public documents.

1 All applications, filings and reports required under this
2 article are public documents: *Provided*, That where the provi-
3 sions of other articles in this chapter are applicable to prepaid
4 limited health service organizations, all applications, filings and
5 reports required under those articles shall be afforded the level
6 of confidentiality as provided in those articles.

§33-25D-28. Confidentiality of medical information.

1 (a) Any data or information pertaining to the diagnosis,
2 treatment or health of any enrollee or applicant obtained from
3 that person or from any provider by any prepaid limited health
4 service organization shall be held in confidence and may not be
5 disclosed to any person except:

6 (1) To the extent that it may be necessary to facilitate an
7 assessment of the quality of care delivered pursuant to section
8 eighteen of this article or to review the grievance procedure
9 pursuant to section fourteen of this article;

10 (2) Upon the express written consent of the enrollee or his
11 or her legally authorized representative;

12 (3) Pursuant to statute or court order for the production of
13 evidence or the discovery thereof;

14 (4) In the event of claim or litigation between that person
15 and the prepaid limited health service organization where the
16 data or information is pertinent;

17 (5) To a department or division of the state pursuant to the
18 terms of a group contract for the provision of health care

19 services between the prepaid limited health service organization
20 and the department or division of the state; or

21 (6) For a medicaid recipient enrolled under a group contract
22 between a prepaid limited health service organization and the
23 governmental agency responsible for administering the
24 medicaid program, in accordance with confidentiality rules
25 applicable to the medicaid program.

26 (b) A prepaid limited health service organization is entitled
27 to claim any statutory privileges against the disclosure which
28 the provider who furnished the information to the prepaid
29 limited health service organization is entitled to claim.

30 (c) Any information provided to the division of insurance
31 that is part of the division investigation or examination is
32 confidential and exempt from disclosure under subsection (a)
33 of this section or otherwise until the investigation is completed
34 or ceases to be active. For purposes of this subsection, an
35 investigation is considered "active" while the investigation is
36 being conducted by the division with a reasonable, good faith
37 belief that it may lead to the filing of administrative, civil, or
38 criminal proceedings. An investigation does not cease to be
39 active if the division is proceeding with reasonable dispatch and
40 there is a good faith belief that action may be initiated by the
41 division or other administrative or law-enforcement agency.
42 After an investigation or examination is completed or ceases to
43 be active, portions of the records relating to the investigation or
44 examination remain confidential and are exempt from disclo-
45 sure under subsection (a) of this section or otherwise if the
46 disclosure would:

47 (1) Jeopardize the integrity of another active investigation;

48 (2) Impair the safety and financial soundness of the licensee
49 or affiliated party;

50 (3) Reveal personal financial information;

51 (4) Reveal the identity of a confidential source;

52 (5) Defame or cause unwarranted damage to the good name
53 or reputation of an individual or jeopardize the safety of an
54 individual; or

55 (6) Reveal investigative techniques or procedures.

§33-25D-29. Authority to contract with prepaid limited health service organizations under medicaid.

1 The department of health and human resources is autho-
2 rized to enter into contracts with prepaid limited health service
3 organizations certified and permitted to market under the laws
4 of this state, and to furnish to recipients of medical assistance
5 under Title XIX of the Social Security Act, 42 U.S.C. § 1396,
6 et seq., limited health services offered to such recipients under
7 the medical assistance plan of West Virginia. The children's
8 health policy board, the department of health and human
9 resources, and the division of juvenile services within the
10 department of military affairs and public safety are further
11 authorized to enter into contracts with prepaid limited health
12 service organizations to furnish behavioral health services to
13 adults and children who are eligible to receive such services
14 under chapter five, chapter sixteen, chapter twenty-seven or
15 chapter forty-nine of this code.

**§33-25D-30. Authority of commissioner to propose rules regard-
ing affiliate and subsidiary operating results.**

1 The commissioner may after notice and hearing propose
2 rules for legislative approval in accordance with the provisions
3 of article three, chapter twenty-nine-a of this code to define the
4 commissioner's authority to consider the operating results of an
5 insurer's affiliates and subsidiaries in the rate making and
solvency determination of that insurer.

CHAPTER 145

(H. B. 2757 — By Delegates Johnson, Capito and Beane)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section sixteen, article twelve, chapter thirty-three
of the code of West Virginia, one thousand nine hundred thirty-

one, as amended; and to amend and reenact section sixteen-a of said article, relating to insurance excess line brokers, the fees they may charge and the taxation of insurance placed through an excess line broker.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section sixteen-a of said article be amended and reenacted to read as follows:

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

§33-12-16a. Excess line brokers; additional premium tax.

1 (a) Every excess line broker shall make an annual return,
2 under oath, on or before the first day of March to the commis-
3 sioner of the gross amount of premiums charged by the insurers
4 and of the gross amount of the fees charged by the excess line
5 broker for the insurance procured by the excess line broker
6 during the previous calendar year. Every excess line policy-
7 holder obtaining insurance from an excess line broker shall pay
8 and every excess line broker shall collect from the policyholder
9 and remit to the commissioner a sum equal to four percent of
10 the gross premiums and fees received on the excess line policies
11 procured by the excess line broker on subjects of insurance,
12 resident, located or to be performed in this state, including any
13 so-called dividends on participating policies applied in reduc-
14 tion of premiums, but less premiums returned to policyholders
15 because of cancellation of policy. This tax is imposed for the
16 purpose of providing additional revenue for municipal police-
17 men's and firemen's pension and relief funds and additional
18 revenue for volunteer and part volunteer fire companies and
19 departments. This tax is required to be paid and remitted, on a
20 calendar year basis and in quarterly estimated installments due
21 and payable on or before the twenty-fifth day of the month
22 succeeding the close of the quarter in which they accrued,
23 except for the fourth quarter, in respect of which taxes shall be
24 due and payable and final computation of actual total liability
25 for the prior calendar year shall be made, less credit for the
26 three quarterly estimated payments prior made, and filed with
27 the annual return to be made on or before the first day of March

28 of the succeeding year. Provisions of this chapter relating to the
29 levy, imposition and collection of the regular premium tax are
30 applicable to the levy, imposition and collection of this tax to
31 the extent that the provisions are not in conflict with this
32 section.

33 All such taxes remitted to the commissioner pursuant to this
34 section shall be paid by him into a special account in the state
35 treasury, designated "municipal pensions and protection fund,"
36 and after appropriation by the Legislature, shall be distributed
37 in accordance with the provisions of subsection (c), section
38 fourteen-d, article three of this chapter. The excess line broker
39 shall return to the policyholder the tax on any unearned portion
40 of the premium returned to the policyholder because of cancel-
41 lation of policy.

42 (b) The excess line broker may not:

43 (1) Pay directly or indirectly the tax or any portion thereof,
44 either as an inducement to the policyholder to purchase the
45 insurance or for any other reason; or

46 (2) Rebate all or part of the tax or the excess line broker's
47 commission, either as an inducement to the policyholder to
48 purchase the insurance or for any reason.

49 (c) The licensed excess line broker may charge the prospec-
50 tive policyholder a fee for the cost of underwriting, issuing,
51 processing, inspecting, service or auditing the policy for
52 placement with the excess line insurer if:

53 (1) The service is required by the excess line insurer;

54 (2) The service is actually provided by the excess line
55 broker or the cost of the service is actually incurred by the
56 excess line broker;

57 (3) The provision or cost of the service is reasonable,
58 documented and verifiable.

59 (d) The excess line broker shall make a clear and conspicu-
60 ous written disclosure to the policyholder of:

61 (1) The total amount of premium for the policy;

- 62 (2) Any fee charged;
63 (3) The total amount of any fee charged; and
64 (4) The total amount of tax on the premium and fee.
65 (e) The clear and conspicuous written disclosure required
66 by subsection (d) of this section is subject to the record mainte-
67 nance requirements of section fifteen of this article.

CHAPTER 146

(Com. Sub. for S. B. 653 —By Senator Bailey)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-three, relating to providing limited agent licenses for automobile rental coverage.

Be it enacted by the Legislature of West Virginia:

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

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

§33-12-33. Limited license for rental companies.

- 1 (a) *Purpose.* This section authorizes the insurance commis-
2 sioner to issue limited licenses for the sale of automobile rental
3 coverage.
4 (b) *Definitions.* The following words when used in this
5 section shall have the following meanings:
6 (1) "Authorized insurer" means an insurer that is licensed
7 by the commissioner to transact insurance in West Virginia.

8 (2) “Automobile rental coverage” or “rental coverage” is
9 insurance offered incidental to the rental of a vehicle as
10 described in this section.

11 (3) “Limited license” means the authorization by the
12 commissioner for a person to sell rental coverage as agent of an
13 authorized insurer pursuant to the provisions of this section
14 without the necessity of agent prelicensing education, examina-
15 tion, or continuing education.

16 (4) “Limited licensee” is an individual resident of this state
17 who obtains a limited license.

18 (5) “Rental agreement” means any written agreement
19 setting forth the terms and conditions governing the use of a
20 vehicle provided by the rental company for rental or lease.

21 (6) “Rental company” means any person or entity in the
22 business of providing private motor vehicles to the public under
23 a rental agreement for a period not to exceed ninety days.

24 (7) “Renter” means any person obtaining the use of a
25 vehicle from a rental company under the terms of a rental
26 agreement for a period not to exceed ninety days.

27 (8) “Vehicle” or “rental vehicle” means a motor vehicle of
28 the private passenger type including passenger vans, minivans
29 and sport utility vehicles and of the cargo type, including cargo
30 vans, pick-up trucks and trucks with a gross vehicle weight of
31 twenty-six thousand pounds or less and which do not require
32 the operator to possess a commercial driver’s license.

33 (9) “Rental period” means the term of the rental agreement.

34 (c) The commissioner may issue a limited license for the
35 sale of automobile rental coverage to an employee of a rental
36 company, who has satisfied the requirements of this section.

37 (d) As a prerequisite for issuance of a limited license under
38 this section, there shall be filed with the commissioner a written
39 application for a limited license, signed by the applicant, in
40 such form or forms and supplements thereto, and containing
41 such information, as the commissioner may prescribe. The

42 limited licensee shall pay to the insurance commissioner an
43 annual fee of twenty-five dollars.

44 (e) The limited licensee shall be appointed by the licensed
45 insurer or insurers for the sale of automobile rental coverage.
46 The employer of the limited licensee shall maintain at each
47 insurance sales location a list of the names and addresses of
48 employees which are selling insurance at the location.

49 (f) In the event that any provision of this section or applica-
50 ble provisions of the insurance code is violated by a limited
51 licensee or other employees operating under his or her direc-
52 tion, the commissioner may:

53 (1) After notice and a hearing, revoke or suspend a limited
54 license issued under this section in accordance with the
55 provisions of section thirteen, article two of this chapter, or

56 (2) After notice and hearing, impose such other penalties,
57 including suspending the transaction of insurance at specific
58 locations where applicable violations of the insurance code
59 have occurred, as the commissioner deems to be necessary or
60 convenient to carry out the purposes of this section.

61 (g) Any limited license issued under this section shall also
62 authorize any other employee working for the same employer
63 and at the same location as the limited licensee to act individu-
64 ally, on behalf, and under the supervision, of the limited
65 licensee with respect to the kinds of coverage authorized in this
66 section. In order to sell insurance products under this section at
67 least one employee who has obtained a limited license must be
68 present at each location where insurance is sold. All other
69 employees working at that location may offer or sell insurance
70 consistent with this section without obtaining a limited license.
71 However, the limited licensee shall directly supervise and be
72 responsible for the actions of all other employees at that
73 location related to the offer or sale of insurance as authorized
74 by this section. No limited licensee under this section shall
75 advertise, represent, or otherwise hold himself or herself or any
76 other employees out as licensed insurers, insurance agents or
77 insurance brokers.

78 (h) No automobile rental coverage insurance may be issued
79 by a limited license pursuant to this section unless:

80 (1) The rental period of the rental agreement does not
81 exceed ninety consecutive days; and

82 (2) At every rental location where rental agreements are
83 executed, brochures or other written material are readily
84 available to the prospective renter that:

85 (i) Summarize clearly and correctly, the material terms of
86 coverage offered to renters, including the identity of the insurer.

87 (ii) Disclose that the coverage offered by the rental com-
88 pany may provide a duplication of coverage provided by a
89 renter's personal automobile insurance policy, homeowner's
90 insurance policy, personal liability insurance policy, or other
91 source of coverage.

92 (iii) State that the purchase by the renter of the kinds of
93 coverage specified in this section is not required in order to rent
94 a vehicle.

95 (iv) Describe the process for filing a claim in the event the
96 renter elects to purchase coverage and in the event of a claim.

97 (3) An evidence of coverage on the face of the rental
98 agreement is disclosed to every renter who elects to purchase
99 such coverage.

100 (i) The limited licensee to sell automobile rental coverage
101 may offer or sell insurance only in connection with and
102 incidental to the rental of vehicles, whether at the rental office
103 or by preselection of coverage in a master, corporate, group
104 rental, or individual agreements in any of the following general
105 categories:

106 (1) Personal accident insurance covering the risks of travel,
107 including, but not limited to, accident and health insurance that
108 provides coverage, as applicable, to renters and other rental
109 vehicle occupants for accidental death or dismemberment and
110 reimbursement for medical expenses resulting from an accident
111 that occurs during the rental period;

112 (2) Liability insurance (which may include uninsured and
113 underinsured motorist coverage whether offered separately or
114 in combination with other liability insurance) that provides
115 coverage, as applicable, to renters and other authorized drivers
116 of rental vehicles for liability arising from the operation of the
117 rental vehicle;

118 (3) Personal effects insurance that provides coverage,
119 applicable to renters and other vehicle occupants of the loss of,
120 or damage to, personal effects that occurs during the rental
121 period;

122 (4) Roadside assistance and emergency sickness protection
123 programs; and

124 (5) Any other travel or auto-related coverage that a rental
125 company offers in connection with and incidental to the rental
126 of vehicles.

127 (j) Each rental company for which an employee has
128 received a limited license pursuant to this section shall conduct
129 a training program in which its employees being trained shall
130 receive basic instruction about the kinds of coverage specified
131 in this section and offered for purchase by prospective renters
132 of rental vehicles: *Provided*, That limited licensees and employ-
133 ees working hereunder are not subject to the agent prelicensing
134 education, examination or continuing education requirements
135 of this article.

136 (k) Notwithstanding any other provision of this section, or
137 any rule adopted by the commissioner neither the rental
138 company, the limited licensee, nor the other employees working
139 with the limited licensee at the rental company, shall be
140 required to treat moneys collected from renters purchasing such
141 insurance when renting vehicles as funds received in a fiduciary
142 capacity, provided that the chargers for coverage shall be
143 itemized and be ancillary to a rental transaction. The sale of
144 insurance not in conjunction with a rental transaction shall not
145 be permitted.

CHAPTER 147

(H. B. 2292 — By Delegates Jenkins, Hubbard, Campbell,
J. Smith, Williams, Hall and Harrison)

[Passed February 16, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and nine-a, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia investment management board and adding references to the deputy sheriff retirement system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-3. West Virginia investment management board created; body corporate; board created; trustees; nomination and appointment of trustees, qualifications and terms of appointment, advice and consent; annual and other meetings; designation of representatives and committees; board meetings with committees regarding investment policy statement required; open meetings, qualifications.

§12-6-9a. Trust indenture.

§12-6-3. West Virginia investment management board created; body corporate; board created; trustees; nomination and appointment of trustees, qualifications and terms of appointment, advice and consent; annual and other meetings; designation of representatives and committees; board meetings with committees regarding investment policy statement required; open meetings, qualifications.

- 1 (a) There is hereby created the West Virginia investment
- 2 management board. The board is created as a public body

3 corporate and established to provide prudent fiscal administra-
4 tion, investment and management for the pension funds,
5 workers' compensation and coal-workers' pneumoconiosis
6 funds and other state funds.

7 (b) The board shall be governed by a board of trustees,
8 consisting of thirteen members:

9 (1) Nominations made to the West Virginia trust fund board
10 and the West Virginia board of investments shall remain in
11 effect and are hereby specifically reauthorized and those
12 members shall be members of the investment management
13 board and shall serve out the remainder of their respective
14 terms subject to the advice and consent of the Senate: *Provided,*
15 That prior appointments which have been confirmed by the
16 Senate are hereby specifically reauthorized without further
17 action of the Senate.

18 (2) Any appointment is effective immediately upon
19 appointment by the governor with respect to voting, constitut-
20 ing a quorum, receiving compensation and expenses, and all
21 other rights and privileges of the trustee position. All appoint-
22 ees must have experience in pension management, institutional
23 management or financial markets, and one trustee must be an
24 attorney experienced in finance and investment matters, and
25 one trustee must be a certified public accountant.

26 (3) The governor, the state auditor and the state treasurer or
27 their designees shall serve as members of the board. They shall
28 serve by virtue of their office and are not entitled to compensa-
29 tion under the provisions of this article. The governor, the
30 auditor and the treasurer or their designees shall be subject to
31 all duties, responsibilities and requirements of the provisions of
32 this article, including, but not limited to, the provisions of
33 subsections (e) and (f), section four of this article.

34 (c) At the end of each trustee's term, the governor may
35 reappoint or appoint a successor who shall serve for six-year
36 terms. No more than six of the ten appointed trustees may
37 belong to the same political party.

38 (d) In the event of a vacancy among the trustees, an
39 appointment shall be made by the governor to fill the unexpired
40 term.

41 (e) The governor may remove any trustee, other than
42 trustees who serve by virtue of their elective office, in case of
43 gross negligence or misfeasance and may declare that position
44 vacant and may appoint a person for the vacancy as provided in
45 subsection (d) of this section.

46 (f) Each trustee, other than those enumerated in subsection
47 (b), subdivision (3) of this section, shall be entitled to receive,
48 and, at the trustee's option, the board shall pay to the trustee,
49 compensation in the amount of five thousand dollars per year
50 and additional compensation in the amount of five hundred
51 dollars per meeting attended by the trustee in excess of the four
52 quarterly meetings required by this section. In addition, all
53 trustees shall receive reasonable and necessary expenses
54 actually incurred in discharging trustee duties pursuant to this
55 article.

56 (g) The board shall meet quarterly and may include in its
57 bylaws procedures for the calling and holding of additional
58 meetings. For any quarterly or additional meeting in which the
59 board shall review or modify its securities list or its investment
60 objectives pursuant to subsection (f), section twelve of this
61 article, the board shall give ten days notice in writing to the
62 designated representative of each participant plan selected
63 pursuant to subdivision (1), subsection (i) of this section, and
64 the meeting shall be open to the members and beneficiaries of
65 the participant plans for that portion of the meeting in which the
66 board undertakes the review or modification.

67 (h) The board shall hold an annual meeting within forty-
68 five days after the issuance of the year-end financial report. The
69 annual meeting may also serve as a quarterly meeting. The
70 annual meeting shall be open to the public, and the board shall
71 receive oral and written comments from representatives,
72 members and beneficiaries of the participant plans and from
73 other citizens of the state. At the annual meeting, the board

74 shall adopt a fee schedule and a budget reflecting fee structures
75 for the year.

76 (i) Pursuant to subsection (j) of this section, the board shall
77 meet with committees representing the participant plans to
78 discuss the board's drafting, reviewing or modifying the written
79 investment policy of the trust with respect to that committee's
80 participant plan pursuant to section twelve of this article.
81 Representatives and committees shall be designated as follows:

82 (1) The West Virginia consolidated public retirement board
83 shall promulgate procedural rules by which each pension
84 system named in paragraphs (1) through (6), inclusive, subsec-
85 tion (c), section nine-a of this article, shall designate an
86 individual representative of each said pension system, and the
87 West Virginia workers' compensation commission shall
88 promulgate procedural rules by which the pneumoconiosis fund
89 and the workers' compensation fund shall designate an individ-
90 ual representative of each said fund.

91 (2) On or before the first day of June of each year, the
92 consolidated public retirement board shall submit in writing to
93 the board the names of the six designated representatives, and
94 the workers' compensation commission shall so submit the
95 names of the two representatives.

96 (3) Each designated representative shall provide to the
97 board his or her current address, updated each year on or before
98 the first day of July, to which address the board shall provide
99 notice of meetings of the board pursuant to subsection (g) of
100 this section.

101 (4) Each designated representative shall submit in writing
102 to the board on or before the first day of July of each year, the
103 names of no more than three persons comprising a committee
104 representing the beneficiaries of that representative's partici-
105 pant plan.

106 (j) At its annual meeting, the board shall meet with each of
107 the seven committees, formed pursuant to subdivision (1),
108 subsection (i) of this section, for the purpose of receiving input

109 from the committees regarding the board's drafting, reviewing
110 or modifying its written investment policy statement for
111 investment of the consolidated pension plan funds. In develop-
112 ing the investment policy statement, the trustees shall receive
113 each committee's stated objectives and policies regarding the
114 risk tolerances and return expectations of each participant plan,
115 with attention to the factors enumerated in subsection (g),
116 section twelve of this article, in order to provide for the
117 continuing financial security of the trust and its participant
118 plans. The board may meet with the committees or any of them
119 at its quarterly and additional meetings for the same purpose.

120 (k) All meetings of the board shall be open to the represen-
121 tatives of the participant plans as appointed pursuant to subdivi-
122 sion (1), subsection (i) of this section. The representatives shall
123 be subject to any rules, bylaws, guidelines, requirements and
124 standards promulgated by the board. The representatives shall
125 observe standards of decorum established by the board. The
126 representatives shall be subject to the same code of conduct
127 applicable to the trustees and shall be subject to all board rules
128 and bylaws. The representatives shall also be subject to any
129 requirements of confidentiality applicable to the trustees. Each
130 representative shall be liable for any act which he or she
131 undertakes which violates any rule, bylaw or statute governing
132 ethical standards, confidentiality or other standard of conduct
133 imposed upon the trustees or the representatives. Any meeting
134 of the board may be closed, upon adoption of a motion by any
135 trustee, when necessary to preserve the attorney-client privi-
136 lege, to protect the privacy interests of individuals, to review
137 personnel matters or to maintain confidentiality when confiden-
138 tiality is in the best interest of the beneficiaries of the trust.

§12-6-9a. Trust indenture.

1 On the effective date of this section, all assets of the
2 irrevocable trust entered into by the governor on the first day of
3 July, one thousand nine hundred ninety-six, with the West
4 Virginia trust fund, inc., acting as the trustee shall constitute the
5 corpus of an irrevocable trust with the board as its trustee:
6 *Provided*, That the trust shall continue to be subject to the
7 following provisions:

8 (a) The Legislature hereby reserves the following rights and
9 powers:

10 (1) The right by supplemental agreement to amend, modify
11 or alter the terms of this trust without consent of the trustee, or
12 any beneficiary; and

13 (2) The right to request and receive additional information
14 from the trustee at any time.

15 (b) The trustee shall establish a trust for the participant
16 plans specified by this article with the earnings and losses
17 accounted for and charged individually to each participant plan,
18 including, but not limited to, the following:

19 (1) The public employees retirement system;

20 (2) The teachers retirement system;

21 (3) The West Virginia state police retirement system;

22 (4) The death, disability and retirement fund of the depart-
23 ment of public safety;

24 (5) The judges' retirement system;

25 (6) The deputy sheriff retirement system;

26 (7) The pneumoconiosis fund; and

27 (8) The workers' compensation fund.

28 (c) In the administration of the trust created by the trust
29 indenture, the trustee has the following powers:

30 (1) To purchase, retain, hold, transfer and exchange, and to
31 sell, at public or private sale, the whole or any part of the trust
32 estate upon such terms and conditions as it considers advisable;

33 (2) To invest and reinvest the trust estate or any part
34 thereof, in any kind of property, real or personal, including, but
35 not limited to, mortgage or mortgage participations, common
36 stocks, preferred stocks, common trust funds, bonds, notes or
37 other securities, notwithstanding the provisions of articles five
38 and six, chapter forty-four of this code: *Provided*, That notwith-
39 standing the provisions of this article to the contrary, the board

40 shall not become a stockholder or owner of any company or
41 association for any purpose whatsoever unless and until the
42 provisions of section six, article X of the constitution of West
43 Virginia are amended to permit those investments;

44 (3) To carry the securities and other property held under the
45 trust indenture either in the name of the trustee or in the name
46 of its nominee;

47 (4) To vote, in person or by proxy, all securities held under
48 the trust indenture, to join in or to dissent from and oppose the
49 reorganization, recapitalization, consolidation, merger, liquida-
50 tion or sale of corporations or property; to exchange securities
51 for other securities issued in connection with or resulting from
52 any transaction; to pay any assessment or expense which the
53 trustee considers advisable for the protection of its interest as
54 holder of any such securities; to deposit securities in any voting
55 trust or with any protective or like committee, or with a trustee
56 depository; to exercise any option appurtenant to any securities
57 for the conversion of any securities into other securities; and to
58 exercise or sell any rights issued upon or with respect to the
59 securities of any corporation, all upon terms the trustee consid-
60 ers advisable;

61 (5) To prosecute, defend, compromise, arbitrate or other-
62 wise adjust or settle claims in favor of or against the trustee or
63 other trust estate;

64 (6) To employ and pay from the trust estate legal and
65 investment counsel, brokers and such other assistants and
66 agents as the trustee considers advisable; and

67 (7) To develop, implement and modify an asset allocation
68 plan for each participant plan. The asset allocation plans shall
69 be implemented within the management and investment of the
70 trust fund.

71 (d) All trust income shall be free from anticipation,
72 alienation, assignment or pledge by, and free from attachment,
73 execution, appropriation or control by or on behalf of, any and
74 all creditors of any beneficiary by any proceeding at law, in
75 equity, in bankruptcy or insolvency.

76 (e) The trustee may receive any other property, real or
77 personal, tangible or intangible, of any kind whatsoever, that
78 may be granted, conveyed, assigned, transferred, devised,
79 bequeathed or made payable to it by the state, or by any other
80 person or entity, for the purposes of the trust created by the trust
81 indenture, and all such properties shall be held, managed,
82 invested and administered by the trustee as provided in the trust
83 indenture and in the "West Virginia Investment Management
84 Act".

85 (f) The trustee shall promptly cause to be paid to the state
86 the amounts certified by the governor as necessary for the
87 monthly payment of benefits to the beneficiaries of the trust.

88 (g) The trustee shall render an annual accounting to the
89 governor not more than one hundred twenty days following the
90 close of the fiscal year of the trust.

91 (h) The trust will not be invalid by reason of any existing
92 law or rule against perpetuities or against accumulations or
93 against restraints upon the power of alienation, but the trust
94 may continue for such time as necessary to accomplish the
95 purposes for which it is established.

96 (i) If any provision of the trust indenture is void, invalid or
97 unenforceable, the remaining provisions are nevertheless valid
98 and shall be carried into effect.

CHAPTER 148

(S. B. 564 — By Senator Tomblin, Mr. President)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing the West Virginia investment management board to use a nationally recognized account-

ing firm or investment consulting firm to audit the performance returns of the retirement plans that are part of the consolidated pension fund.

Be it enacted by the Legislature of West Virginia:

That section six, 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.

§12-6-6. Annual audits; reports and information to constitutional and legislative officers, council of finance and administration, consolidated public retirement board, workers' compensation fund and coal-workers' pneumoconiosis fund; statements and reports open for inspection.

1 (a) The board shall cause an annual financial and compli-
2 ance audit of the consolidated pension fund to be made by a
3 certified public accounting firm having a minimum staff of ten
4 certified public accountants and being a member of the Ameri-
5 can institute of certified public accountants, and, if doing
6 business in West Virginia, being a member of the West Virginia
7 society of certified public accountants. The financial and
8 compliance audit shall be made of the board's books, accounts
9 and records, with respect to its receipts, disbursements, invest-
10 ments, contracts and all other matters relating to its financial
11 operations. Copies of the audit report shall be furnished to the
12 governor, state treasurer, state auditor, president of the Senate,
13 speaker of the House of Delegates, council of finance and
14 administration and consolidated public retirement board.

15 (b) The board shall produce monthly financial statements
16 for the consolidated pension fund and the consolidated fund and
17 cause them to be delivered to each member of the board and the
18 executive secretary of the consolidated public retirement board
19 as established in sections one and two, article ten-d, chapter five
20 of this code and to the commissioner of the bureau of employ-
21 ment programs as administrator of the workers' compensation
22 fund and coal-workers' pneumoconiosis fund, as established in

23 section one, article one, chapter twenty-three of this code, and
24 section one, article three of said chapter and section seven,
25 article four-b of said chapter.

26 (c) The board shall deliver in each quarter to the council of
27 finance and administration and the consolidated public retire-
28 ment board a report detailing the investment performance of the
29 retirement plans.

30 (d) The board shall cause an annual audit of the reported
31 returns of the consolidated pension fund to be made by an
32 investment consulting or a certified public accounting firm
33 meeting the criteria set out in subsection (a) of this section. The
34 board shall furnish copies of the audit report to the governor,
35 state treasurer, state auditor, president of the Senate, speaker of
36 the House of Delegates, council of finance and administration
37 and consolidated public retirement board.

38 (e) The board shall provide any other information requested
39 in writing by the council of finance and administration.

40 (f) All statements and reports with respect to participant
41 plans required in this section shall be available for inspection
42 by the members and beneficiaries and designated representa-
43 tives of the participant plans.

CHAPTER 149

(H. B. 2841 — By Mr. Speaker, Mr. Kliss, and Delegates Martin,
Michael, Mezzatesta and Jenkins)

[Passed March 13, 1999; in effect July 1, 1999. 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 a new article, designated article five-q, relating to public health; establishing the "James 'Tiger' Morton" catastrophic illness fund; creating the "James 'Tiger' Morton" catastrophic illness commis-

sion; composition of the commission; terms of office; fund to receive gifts as well as amounts appropriated by the Legislature; expenses of the commission; reports to the Legislature.

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 a new article, designated article five-q, to read as follows:

ARTICLE 5Q. THE JAMES "TIGER" MORTON CATASTROPHIC ILLNESS FUND.

§16-5Q-1. Creation of the James "Tiger" Morton catastrophic illness fund.

§16-5Q-2. Catastrophic illness commission; composition; meetings.

§16-5Q-1. Creation of the James "Tiger" Morton catastrophic illness fund.

1 There is hereby created in the state treasury a fund, desig-
 2 nated the "James 'Tiger' Morton Catastrophic Illness Fund".
 3 Moneys in this fund shall be distributed in accordance with the
 4 provisions of this article. The purpose of this fund is to provide
 5 a source of economic assistance to the citizens of this state
 6 facing catastrophic illness. In addition to any funds appropri-
 7 ated by the Legislature, the Tiger Morton Fund may receive
 8 donations of cash or property from other sources, including
 9 gifts, grants, or donations from any source whatsoever: *Pro-*
 10 *vided*, That expenditures may be made from this fund only upon
 11 appropriation by the Legislature.

**§16-5Q-2. Catastrophic illness commission; composition; meet-
 ings.**

1 There is hereby created the catastrophic illness commission.
 2 The catastrophic illness commission shall be composed of the
 3 ombudsman from the department of health and human re-
 4 sources, a medical doctor licensed to practice medicine in this
 5 state, an attorney licensed to practice law in this state, two
 6 members from the public at large who are active in community
 7 affairs, a nurse licensed to practice in this state, and a social
 8 worker licensed in this state. The governor shall appoint the
 9 members to the catastrophic illness commission no later than

10 the thirty-first day of August, one thousand nine hundred
11 ninety-nine, and the commission shall hold its first meeting no
12 later than the last day of September, one thousand nine hundred
13 ninety-nine. The term of office for each member of the cata-
14 strophic illness commission is five years, except for the first
15 appointments to the catastrophic illness commission shall be as
16 follows: The medical doctor and attorney shall be appointed for
17 an initial term of three years; the initial term of the nurse
18 appointee and the licensed social worker appointee shall be four
19 years; the initial term of the remaining members of the commis-
20 sion shall be five years. No more than five of the members may
21 be from the same political party. Members of the catastrophic
22 illness commission may receive expenses only up to one
23 hundred twenty-five dollars per day, not to exceed fifteen
24 thousand dollars in the aggregate per year, and shall meet at
25 least quarterly. Special meetings may be called. The purpose of
26 the catastrophic illness commission is to make an annual
27 recommendation to the Legislature regarding appropriations
28 from the catastrophic illness fund. This recommendation shall
29 be made in writing to the Legislature no later than the second
30 Wednesday of January, two thousand, and the second Wednes-
31 day of each year thereafter.

CHAPTER 150

(Com. Sub. for H. B. 2985 — By Delegates Fleischauer,
Staton, Doyle and Linch)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty, relating to limiting the use of electronic surveillance devices by employers; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SAFETY AND WELFARE OF EMPLOYEES.

§21-3-20. Use of video and other electronic surveillance devices by employers prohibited.

1 (a) It is unlawful for any employer or the agent or represen-
2 tative of an employer, whether public or private, to operate any
3 electronic surveillance device or system, including, but not
4 limited to, the use of a closed circuit television system, a video-
5 recording device, or any combination of those or other elec-
6 tronic devices for the purpose of recording or monitoring the
7 activities of the employees in areas designed for the health or
8 personal comfort of the employees or for safeguarding of their
9 possessions, such as rest rooms, shower rooms, locker rooms,
10 dressing rooms and employee lounges.

11 (b) Any employer or agent thereof who violates any
12 provision of this section is guilty of a misdemeanor and, if
13 convicted, shall be fined five hundred dollars for the first
14 offense. An employer or agent thereof convicted a second time
15 under this provision shall be fined one thousand dollars. For the
16 third and any subsequent offense, the penalty shall be two
17 thousand dollars.

CHAPTER 151

(Com. Sub. for S. B. 166 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 9, 1999; in effect July 1, 1999. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, five, six, seven, eight, nine, eleven, twelve and fourteen, article ten, chapter

twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to amusement rides and amusement attractions safety; inspection thereof; defining terms; providing for inspections and fees; waiver of inspection fees for nonprofit business; authorizing the division of labor to charge additional costs for additional inspections and inspections required as a result of violations of permitting requirements; creating a special revenue account; requiring moneys in special revenue account to be appropriated by the Legislature; authorizing the use of fees collected to be used for enforcement of the article; requiring a permit before operation of an amusement ride or amusement attraction; making technical corrections; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six, seven, eight, nine, eleven, twelve and fourteen, article ten, chapter twenty-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 10. AMUSEMENT RIDES AND AMUSEMENT ATTRACTIONS SAFETY ACT.

- §21-10-2. Definitions.
- §21-10-3. Rules.
- §21-10-4. Inspection and permit fees.
- §21-10-5. Inspectors.
- §21-10-6. Permits; application; annual inspection.
- §21-10-7. Issuance of permit; certificate of inspection; availability to public.
- §21-10-8. Notice of intention to erect new ride or attraction or add to or alter existing ride or attraction.
- §21-10-9. Notice of serious physical injury or fatality; investigations; records available to public.
- §21-10-11. Temporary cessation of operation of ride or attraction determined to be unsafe.
- §21-10-12. Insurance; bond.
- §21-10-14. Criminal penalty for violation.

§21-10-2. Definitions.

1 As used in this article:

- 2 (a) "Amusement ride" means a mechanical device which
- 3 carries or conveys passengers along, around or over a fixed or

4 restricted route or course for the purpose of giving its passen-
5 gers amusement, pleasure, thrills or excitement. The term
6 includes carnival rides and fair rides of a temporary or portable
7 nature which are assembled and reassembled or rides which are
8 relocated from place to place. "Amusement ride" may not be
9 construed to mean any mechanical device which is coin
10 operated and does not include the operation of a ski lift, the
11 operation of tramways at state parks, the operation of vehicles
12 of husbandry incidental to any agricultural operations or the
13 operation of amusement devices of a permanent nature which
14 are subject to building regulations issued by cities or counties
15 and existing applicable safety orders;

16 (b) "Amusement attraction" means any building or structure
17 around, over or through which people may move or walk
18 without the aid of any moving device integral to the building or
19 structure that provides amusement, pleasure, thrills or excite-
20 ment, including those of a temporary or portable nature which
21 are assembled and reassembled or which are relocated from
22 place to place. The term does not include any enterprise
23 principally devoted to the exhibition of products of agriculture,
24 industry, education, science, religion or the arts and shall not be
25 construed to include any concession stand or booth for the
26 selling of food or drink or souvenirs;

27 (c) "Mobile amusement ride or mobile amusement attrac-
28 tion" means an amusement ride or amusement attraction which
29 is erected in a single physical location for a period of less than
30 twelve consecutive months;

31 (d) "Stationary amusement ride or stationary amusement
32 attraction" means an amusement ride or amusement attraction
33 which is erected in a single physical location for a period of
34 more than twelve consecutive months.

§21-10-3. Rules.

1 The division of labor shall propose legislative rules for
2 promulgation for the safe installation, repair, maintenance, use,
3 operation and inspection of all amusement rides and amusement
4 attractions as the division finds necessary for the protection of

5 the general public using amusement rides and amusement
6 attractions. The rules shall be in addition to the existing
7 applicable safety orders and shall be concerned with engineer-
8 ing force stresses, safety devices and preventative maintenance.
9 All such rules shall be promulgated in accordance with the
10 provisions of article three, chapter twenty-nine-a of this code.

§21-10-4. Inspection and permit fees.

1 (a) The division shall charge inspection and permit fees.
2 The annual permit fee is twenty-five dollars for each ride or
3 attraction. The annual inspection fee is one hundred dollars for
4 each ride or attraction. The annual inspection fee is due at the
5 time of application for the annual permit. The division shall
6 waive the inspection fee for any ride or attraction whose owner
7 provides proof of nonprofit business status.

8 (b) The division may charge additional inspection fees
9 equal to the annual inspection fee for additional inspections
10 required as the result of the condemnation of a device for safety
11 standards violations and for inspections required as a result of
12 accidents involving serious or fatal injury. If any owner or
13 operator requires an inspection as the result of a violation of the
14 permitting requirements of section six of this article, the
15 division shall charge the owner or operator seventy-five dollars
16 per hour in addition to the established inspection fee, including
17 travel time.

18 (c) All fees received shall be deposited in a special revenue
19 account in the state treasury known as the "Amusement Rides
20 and Amusement Attractions Safety Fund". The division may
21 use moneys from the fund for the purpose of enforcement of the
22 provisions of this article. Expenditures are not authorized from
23 collections, but are to be made only in accordance with appro-
24 priation by the Legislature and in accordance with the provi-
25 sions of article three, chapter twelve of this code and upon
26 fulfillment of the provisions of article two, chapter five-a of this
27 code.

28 (d) No inspection fee may be charged public agencies.

29 (e) The division shall issue, and the owner, operator or both

30 of the amusement rides and amusement attractions shall visibly
31 display to the public, inspection stickers denoting and signify-
32 ing that the inspection and permit fee authorized by this section
33 has been paid.

§21-10-5. Inspectors.

1 The division may hire or contract with inspectors to inspect
2 amusement rides and amusement attractions.

§21-10-6. Permits; application; annual inspection.

1 No operator or owner may knowingly permit the operation
2 of an amusement ride or amusement attraction without a permit
3 issued by the division. Each year and at least fifteen days
4 before the first time the amusement ride or amusement attrac-
5 tion is made available in this state for public use, an operator or
6 owner shall apply for a permit to the division on a form
7 furnished by the division and containing any information the
8 division may require. The division shall, upon application and
9 within ten days of the first time the ride or attraction is made
10 available in this state for public use, inspect all amusement
11 rides and amusement attractions. The division shall inspect all
12 stationary rides and attractions at least once every year. The
13 division may inspect all mobile amusement rides and amuse-
14 ment attractions each time they are disassembled and reassem-
15 bled for use in this state. The division may conduct inspections
16 at any reasonable time without prior notice.

**§21-10-7. Issuance of permit; certificate of inspection; availability
to public.**

1 If, after inspection, an amusement ride or amusement
2 attraction is found to comply with the rules of the division, the
3 division shall issue a permit to operate. The permit shall be in
4 the form of a certificate of inspection and shall be kept in the
5 records of any operator or owner for a three-year period and
6 shall be readily accessible to the public for inspection at any
7 reasonable time at the carnival, fair or event where the amuse-
8 ment ride or attraction is located. A copy of the certificate,
9 showing the last date of inspection, shall be affixed to the
10 amusement ride or amusement attraction upon issuance.

§21-10-8. Notice of intention to erect new ride or attraction or add to or alter existing ride or attraction.

1 Before a new amusement ride or amusement attraction is
2 erected, or whenever any additions or alterations are made
3 which change the structure, mechanism, classification or
4 capacity of any amusement ride or amusement attraction, the
5 operator shall file with the division a notice of his or her
6 intention and any plans or diagrams requested by the division
7 for purposes of determining the applicability of section six of
8 this article.

§21-10-9. Notice of serious physical injury or fatality; investigations; records available to public.

1 An owner or operator of an amusement ride or amusement
2 attraction shall notify the division not later than twenty-four
3 hours after any fatality or accident occurring as a result of the
4 operation of the amusement ride or amusement attraction that
5 results in a serious physical injury to any person requiring
6 medical treatment or results in a loss of consciousness to any
7 person. The notice may be oral or written. The division shall
8 investigate each fatality or accident and any safety-related
9 complaint involving an amusement ride or amusement attrac-
10 tion in this state about which the division receives notice. Every
11 owner or operator of an amusement ride or amusement attrac-
12 tion shall keep a record of each accident or fatality and the
13 record shall be kept with the certificate of inspection required
14 by this article and shall be readily accessible to the public for
15 inspection at any reasonable time at the carnival, fair or event
16 where the amusement ride or amusement attraction is located.

§21-10-11. Temporary cessation of operation of ride or attraction determined to be unsafe.

1 The division may order, in writing, a temporary cessation
2 of operation of an amusement ride or amusement attraction if
3 it has been determined after inspection to be hazardous or
4 unsafe. Operation of the amusement ride or amusement
5 attraction shall not resume until the conditions are corrected to
6 the satisfaction of the division.

§21-10-12. Insurance; bond.

1 No person may operate an amusement ride or amusement
2 attraction unless at the time there is in existence: (a) A policy
3 of insurance approved by the division and obtained from an
4 insurer authorized to do business in this state in an amount of
5 not less than three hundred thousand dollars per person and one
6 million dollars in the aggregate for each amusement ride or
7 attraction location insuring the owner or operator against
8 liability for injury suffered by persons riding the amusement
9 ride or by persons in, on, under or near the amusement attrac-
10 tion; or (b) a bond in a like amount, as approved by the divi-
11 sion: *Provided*, That the aggregate liability of the surety under
12 any bond shall not exceed the face amount of the bond; or (c)
13 cash or other security acceptable to the division. Satisfactory
14 evidence of the insurance, bond or other security shall accom-
15 pany the permit application.

§21-10-14. Criminal penalty for violation.

1 Any operator or owner who knowingly permits the opera-
2 tion of an amusement ride or amusement attraction in violation
3 of the provisions of this article is guilty of a misdemeanor and,
4 upon conviction thereof, shall be fined not less than two
5 hundred fifty dollars nor more than one thousand dollars,
6 imprisoned in the county jail not more than twelve months, or
7 both fined and imprisoned. Each day that a violation continues
8 shall be considered a separate violation.

CHAPTER 152

(H. B. 2774 —By Delegates Martin, Sparks,
Butcher, Willis, Prunty, H. White and Willison)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article eleven, chapter
twenty-one of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to clarifying that certain licensed pest control operators are not contractors subject to contractor licensure.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-3. Definitions.

1 (a) "Commissioner" means the commissioner of the
2 division of labor.

3 (b) "Board" means the West Virginia contractor licensing
4 board.

5 (c) "Contractor" means a person who in any capacity for
6 compensation, other than as an employee of another, under-
7 takes, offers to undertake, purports to have the capacity to
8 undertake, or submits a bid to construct, alter, repair, add to,
9 subtract from, improve, move, wreck or demolish any building,
10 highway, road, railroad, structure or excavation associated with
11 a project, development or improvement, or to do any part
12 thereof, including the erection of scaffolding or other structures
13 or works in connection therewith, where the cost of the under-
14 taking is one thousand dollars or more.

15 Contractor includes a construction manager who performs
16 management and counseling services for a construction project
17 for a professional fee.

18 Contractor does not include:

19 (1) One who merely furnishes materials or supplies without
20 fabricating or consuming them in the construction project;

21 (2) A person who personally performs construction work on
22 the site of real property which the person owns or leases
23 whether for commercial or residential purposes;

24 (3) A person who is licensed or registered as a professional
25 and who functions under the control of any other licensing or

26 regulatory board, whose primary business is real estate sales,
27 appraisal, development, management and maintenance, who
28 acting in his or her respective professional capacity and any
29 employee of such professional, acting in the course of his or her
30 employment, performs any work which may be considered to
31 be performing contracting work;

32 (4) A pest control operator licensed under the provisions of
33 section seven, article sixteen-a, chapter nineteen of this code to
34 engage in the application of pesticides for hire, unless the
35 operator also performs structural repairs exceeding one thou-
36 sand dollars on property treated for insect pests; or

37 (5) A corporation, partnership or sole proprietorship whose
38 primary purpose is to prepare construction plans and specifica-
39 tions used by the contractors defined in subsection (c) of this
40 section and who employs full time a registered architect
41 licensed to practice in this state or a registered professional
42 engineer licensed to practice in this state. Employees of such
43 corporation, partnership or sole proprietorship shall also be
44 exempt from the requirements of this article.

45 (d) "Electrical contractor" means a person who engages in
46 the business of contracting to install, erect, repair or alter
47 electrical equipment for the generation, transmission or
48 utilization of electrical energy.

49 (e) "General building contractor" means a person whose
50 principal business is in connection with any structures built,
51 being built or to be built for the support, shelter and enclosure
52 of persons, animals, chattels or movable property of any kind,
53 requiring in the construction the use of more than two contrac-
54 tor classifications, or a person who supervises the whole or any
55 part of such construction.

56 (f) "General engineering contractor" means a person whose
57 principal business is in connection with public or private works
58 projects, including, but not limited to, one or more of the
59 following: Irrigation, drainage and water supply projects;
60 electrical generation projects; swimming pools; flood control;
61 harbors; railroads; highways; tunnels; airports and airways;
62 sewers and sewage disposal systems; bridges; inland water-

63 ways; pipelines for transmission of petroleum and other liquid
64 or gaseous substances; refineries; chemical plants and other
65 industrial plants requiring a specialized engineering knowledge
66 and skill; piers and foundations; and structures or work inciden-
67 tal thereto.

68 (g) "Heating, ventilating and cooling contractor" means a
69 person who engages in the business of contracting to install,
70 erect, repair, service or alter heating, ventilating and air
71 conditioning equipment or systems to heat, cool or ventilate
72 residential and commercial structures.

73 (h) "License" means a license to engage in business in this
74 state as a contractor in one of the classifications set out in this
75 article.

76 (i) "Multifamily contractor" means a person who is
77 engaged in construction, repair or improvement of a multifam-
78 ily residential structure.

79 (j) "Person" includes an individual, firm, sole proprietor-
80 ship, partnership, corporation, association or other entity
81 engaged in the undertaking of construction projects or any
82 combination thereof.

83 (k) "Piping contractor" means a person whose principal
84 business is the installation of process, power plant, air, oil,
85 gasoline, chemical or other kinds of piping; and boilers and
86 pressure vessels using joining methods of thread, weld, solvent
87 weld or mechanical methods.

88 (l) "Plumbing contractor" means a person whose principal
89 business is the installation, maintenance, extension and alter-
90 ation of piping, plumbing fixtures, plumbing appliances and
91 plumbing appurtenances, venting systems and public or private
92 water supply systems within or adjacent to any building or
93 structure; included in this definition is installation of gas piping,
94 chilled water piping in connection with refrigeration processes
95 and comfort cooling, hot water piping in connection with
96 building heating, and piping for stand pipes.

97 (m) "Residential contractor" means a person whose
98 principal business is in connection with construction, repair or

99 improvement of real property used as, or intended to be used
100 for, residential occupancy.

101 (n) "Specialty contractor" means a person who engages in
102 specialty contracting services which do not substantially fall
103 within the scope of any contractor classification as set out
104 herein.

105 (o) "Residential occupancy" means occupancy of a struc-
106 ture for residential purposes for periods greater than thirty
107 consecutive calendar days.

108 (p) "Residential structure" means a building or structure
109 used or intended to be used for residential occupancy, together
110 with related facilities appurtenant to the premises as an adjunct
111 of residential occupancy, which contains not more than three
112 distinct floors which are above grade in any structural unit
113 regardless of whether the building or structure is designed and
114 constructed for one or more living units. Dormitories, hotels,
115 motels or other transient lodging units are not residential
116 structures.

117 (q) "Subcontractor" means a person who performs a portion
118 of a project undertaken by a principal or general contractor or
119 another subcontractor.

120 (r) "Division" means the division of labor.

121 (s) "Cease and desist order" means an order issued by the
122 commissioner pursuant to the provisions of this article.

CHAPTER 153

(S. B. 406 — By Senators Love, Ball, Hunter, Fanning,
Schoonover, Mitchell, Deem and Sharpe)

[Passed March 9, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty,

relating to authorizing the contractor licensing board to provide public education services through vocational schools to assist applicants in obtaining a contractor's license.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-20. Board authorized to provide training.

1 (a) The West Virginia contractor licensing board may enter
2 into work-sharing agreements with state vocational and
3 technical training schools to provide classroom training to
4 students who desire to obtain a West Virginia contractor
5 license. The purpose of the training is limited to instruction
6 applicable to the contractor license examinations required by
7 the board. The terms of the work-sharing agreements shall be
8 determined by the West Virginia contractor licensing board and
9 county boards of education.

10 (b) For the purposes of this section, the board is authorized
11 to expend funds from its special revenue account, known as the
12 contractor licensing fund, to support this activity. Funding is to
13 be limited to the availability of funds and may not exceed fifty
14 thousand dollars annually.

CHAPTER 154

(Com. Sub. for S. B. 198 — By Senators Fanning, Ball, Kessler, Ross,
Schoonover, Wooton, Deem, Snyder, Sharpe, Love, Hunter, Mitchell,
McCabe, Sprouse, Anderson, Helmick and Plymale)

[Passed March 21, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article six, chapter thirty-seven of the code of West Virginia, one thousand nine hundred

thirty-one, as amended; and to amend and reenact section three, article three-a, chapter fifty-five of said code, all relating to tenants' personal property left on leased property; allowing for entry and repossession of leased property by landlord or housing authority; allowing the landlord or housing authority to dispose of abandoned personal property upon repossession; requiring notice to the tenant of the disposal of personal property; allowing holders of security interests and tenants to claim valuable abandoned personal property under certain circumstances; proceedings in court for wrongful occupation of residential rental property; allowing for the disposal of abandoned personal property after an order of possession; and requiring landlord to store personal property left on property for thirty days after order of possession under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That section six, article six, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section three, article three-a, chapter fifty-five of said code be amended and reenacted, all to read as follows:

Chapter

37. Real Property.

55. Actions, Suits and Arbitration; Judicial Sale.

CHAPTER 37. REAL PROPERTY.

ARTICLE 6. LANDLORD AND TENANT.

§37-6-6. Desertion of leased property; entry; recovery of rent, disposition of abandoned personal property; notice.

- 1 (a) If any tenant from whom rent is in arrears and unpaid
- 2 abandons the leased property, the landlord or his or her agent
- 3 shall post a notice in writing in a conspicuous part of the
- 4 property, requiring the tenant to pay the rent within one month.
- 5 If the rent is not paid within that time, the landlord shall be
- 6 entitled to possession of the property, and may enter thereon,
- 7 and the right of the tenant to the leased property shall end. The
- 8 landlord may recover the rent owed up to the time when he or
- 9 she became entitled to possession.

10 (b) If any tenant of a housing development operated by a
11 housing authority abandons the leased property when rent is not
12 a condition of the lease agreement, the housing authority shall
13 post a notice in writing in a conspicuous part of the property,
14 requiring the tenant to respond in writing within one month
15 stating that he or she has not abandoned the leased property. If
16 the tenant does not respond in writing within one month, stating
17 that he or she has not abandoned the leased property, the
18 housing authority shall be entitled to possession of the property,
19 and may enter thereon, and the right of the tenant to the leased
20 property shall end.

21 (c) Upon regaining possession of the property, the landlord
22 or his or her agent or housing authority may take, dispose of or
23 otherwise remove the tenant's personal property without
24 incurring any liability to the tenant or any other person. To
25 dispose of the tenant's property under this section, the landlord
26 or housing authority shall give a written notice to the tenant that
27 shall be:

28 (1) Posted in a conspicuous place on the property; and

29 (2) Sent by first-class mail with a certificate of mailing,
30 which provides a receipt of the date of mailing, in an envelope
31 endorsed "Please Forward", addressed and mailed to the tenant
32 at:

33 (A) The leased property;

34 (B) Any post office box held by the tenant and known to the
35 landlord or housing authority; and

36 (C) The most recent forwarding address if provided by the
37 tenant or known to the landlord or housing authority.

38 (d) The written notice required under subsection (c) of this
39 section shall state that:

40 (1) The leased property is considered abandoned;

41 (2) Any personal property left by the tenant must be
42 removed from the property or from the place of safekeeping, if
43 the landlord or housing authority has stored the property, by a
44 date specified in the written notice that is:

45 (A) Not less than thirty days after the date the written notice
46 was mailed; or

47 (B) Not less than sixty days after the date the written notice
48 was mailed if the tenant has notified the landlord or housing
49 authority that he or she is on active duty in the armed forces of
50 the United States.

51 (3) If the personal property is not removed within the time
52 provided for in this section, then the tenant forfeits his or her
53 ownership rights to the personal property, and the personal
54 property becomes the property of the landlord or housing
55 authority.

56 (e) Notwithstanding the provisions of subsection (c) of this
57 section, if the abandoned personal property is worth more than
58 three hundred dollars and was not removed from the property
59 or from the place of safekeeping within the time period stated
60 in the notice required in subsection (d) of this section, the
61 landlord shall store the personal property for up to thirty
62 additional days if the tenant or any person holding a security
63 interest in the abandoned personal property informs the landlord
64 of their intent to remove the property: *Provided*, That the tenant
65 or person holding a security interest in the abandoned personal
66 property pays the landlord the reasonable costs of storage and
67 removal.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 3A. REMEDIES FOR WRONGFUL OCCUPATION OF RESIDEN- TIAL RENTAL PROPERTY.

§55-3A-3. Proceedings in court; final order; disposition of aban- doned personal property.

1 (a) If at the time of the hearing there has been no appear-
2 ance, answer or other responsive pleading filed by the tenant,
3 the court shall make and enter an order granting immediate
4 possession of the property to the landlord.

5 (b) In the case of a petition alleging arrearage in rent, if the
6 tenant files an answer raising the defense of breach by the
7 landlord of a material covenant upon which the duty to pay rent
8 depends, the court shall proceed to a hearing on such issues.

9 (c) In the case of a petition alleging a breach by the tenant
10 or damage to the property, if the tenant files an answer raising
11 defenses to the claim or claims set forth in the petition, the
12 court shall proceed to a hearing on such issues.

13 (d) Continuances of the hearing provided for in this section
14 shall be for cause only and the judge or magistrate shall not
15 grant a continuance to either party as a matter of right. If a
16 continuance is granted upon request by a tenant, the tenant shall
17 be required to pay into court any periodic rent becoming due
18 during the period of such continuance.

19 (e) At the conclusion of a hearing held under the provisions
20 of subsection (b) or (c) of this section, if the court finds that the
21 tenant is in wrongful occupation of the rental property, the court
22 shall make and enter an order granting immediate possession of
23 the property to the landlord. In the case of a proceeding under
24 subsection (a) of this section, the court may also make a written
25 finding and include in its order such relief on the issue of
26 arrearage in the payment of rent as the evidence may require.
27 The court may disburse any moneys paid into court by the
28 tenant in accordance with the provisions of this section.

29 (f) The court order shall specify the time when the tenant
30 shall vacate the property, taking into consideration such factors
31 as the nature of the property (i.e., furnished or unfurnished), the
32 possibility of relative harm to the parties, and other material
33 facts deemed relevant by the court in considering when the
34 tenant might reasonably be expected to vacate the property. The
35 order shall further provide that if the tenant continues to
36 wrongfully occupy the property beyond such time, the sheriff
37 shall forthwith remove the tenant, taking precautions to guard
38 against damage to the property of the landlord and the tenant.

39 (g) In the event an appeal is taken and the tenant prevails
40 upon appeal, the relief ordered by the appellate court shall be
41 for monetary damages only and shall not restore the tenant to
42 possession if the term of the lease has expired, absent an issue
43 of title, retaliatory eviction, or breach of warranty. During the
44 pendency of any such appeal, the tenant is not entitled to remain
45 in possession of the property if the period of the tenancy has
46 otherwise expired.

47 (h) When an order is issued pursuant to this section
48 granting possession of the property to the landlord, and the
49 tenant fails to remove all personal property by the date and time
50 specified by the order issued pursuant to subsection (f) of this
51 section, the landlord may:

52 (1) Dispose of the tenant's personal property without
53 incurring any liability or responsibility to the tenant or any
54 other person if the tenant informs the landlord in writing that
55 the personal property is abandoned or if the property is garbage;

56 (2) Remove and store the personal property after the date
57 and time by which the court ordered the tenant to vacate the
58 property. The landlord may dispose of the stored personal
59 property after thirty days without incurring any liability or
60 responsibility to the tenant or any other person if: (i) The tenant
61 has not paid the reasonable costs of storage and removal to the
62 landlord and has not taken possession of the stored personal
63 property; or (ii) the costs of storage equal the value of the
64 personal property being stored; or

65 (3) Leave the personal property on the property. The
66 landlord may dispose of personal property left on the property
67 after thirty days without incurring any liability or responsibility
68 to the tenant or any other person if the tenant has not paid the
69 landlord the reasonable costs of leaving the personal property
70 on the landlord's property and has not taken possession of the
71 personal property.

72 (i) Notwithstanding the provisions of subsection (h) of this
73 section, if the personal property is worth more than three
74 hundred dollars and was not removed from the property or
75 place of storage within thirty days with the required fees paid
76 as provided in subsection (h) of this section, the landlord shall
77 store the personal property for up to thirty additional days if the
78 tenant or any person holding a security interest in the aban-
79 doned personal property informs the landlord of their intent to
80 remove the property: *Provided*, That the tenant or person
81 holding a security interest in the personal property pays the
82 landlord the reasonable costs of storage and removal.

CHAPTER 155

(H. B. 2170 — By Delegate Smirl)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter seven 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 awarding a deputy his or her service pistol upon retirement subject to certain conditions.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.;
COMPENSATION OF ELECTED COUNTY OFFICIALS;
COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES,
THEIR NUMBER AND COMPENSATION.**

§7-7-23. Awarding service pistol upon retirement.

1 (a) Upon the retirement of a deputy from the sheriff's
2 department, the county commission shall authorize the sheriff
3 to award to the retiring deputy his or her service pistol upon
4 determining:

5 (1) That the retiring deputy is retiring honorably with at
6 least twenty years of service; or

7 (2) The retiring deputy is retiring with less than twenty
8 years of service based upon a determination that the deputy is
9 totally physically disabled.

10 (b) Notwithstanding the provisions of subsection (a) of this
11 section, a sheriff shall not award his or her service pistol to any
12 retiring deputy medically determined to be mentally incapacitated
13 or to constitute a danger to self or others.

CHAPTER 156

(H. B. 2854 — By Delegates Douglas, Collins,
Varner, Everson, J. Smith and Stalnaker)

[Passed March 12, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the appointments of commissioned, noncommissioned officers, other members; temporary and permanent positions of the state police.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-4. Appointment of commissioned officers, noncommissioned officers, other members; temporary and permanent positions.

1 (a) The superintendent shall appoint, from the enlisted
2 membership of the state police, a deputy superintendent who
3 shall hold the rank of lieutenant colonel and be next in authority
4 to the superintendent. The superintendent shall appoint, from
5 the enlisted membership of the state police, the number of other
6 officers and members he or she considers necessary to operate
7 and maintain the executive offices, training school, and forensic
8 laboratory; and to keep records relating to crimes and criminals,
9 coordinate traffic safety activities, maintain a system of
10 supplies and accounting and perform other necessary services.

11 (b) The ranks within the membership of the state police
12 shall be colonel, lieutenant colonel, major, captain, first
13 lieutenant, second lieutenant, first sergeant, sergeant, corporal,

14 trooper first class, senior trooper, trooper or cadet trooper. Each
15 member while in uniform shall wear the insignia of rank as
16 provided by law and written state police policies. Members
17 assigned to the forensic laboratory shall hold the title of trooper,
18 be classified as criminalists and wear the insignia of classifica-
19 tion as provided by written state police policies.

20 The superintendent may appoint from the membership of
21 the state police seventeen principal supervisors who shall
22 receive the compensation and hold the temporary rank of
23 lieutenant colonel, major or captain at the will and pleasure of
24 the superintendent. Appointments are exempt from any eligibil-
25 ity requirements established by the career progression system.
26 Any person appointed to a temporary rank under the provisions
27 of this article remains eligible for promotion or reclassification
28 under the provisions of the career progression system if his or
29 her permanent rank is below that of first lieutenant. Upon the
30 termination of a temporary appointment by the superintendent,
31 the member may not be reduced to a rank or classification
32 below his or her permanent rank or classification, unless the
33 reduction results from disciplinary action, and remains eligible
34 for subsequent appointment to a temporary rank.

CHAPTER 157

(S. B. 704 — By Senators Hunter, Ollverio, Wooton, Ball, Dittmar, McCabe,
Minard, Mitchell, Redd, Ross, Snyder, Deem and McKenzie)

[Passed March 10, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring the state police and other state law-enforcement agencies to immediately investigate and search for missing persons who have a significant mental impairment.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-12. Mission of the state police; powers of superintendent, officers and members; patrol of turnpike.

1 (a) The West Virginia state police shall have the mission of
2 statewide enforcement of criminal and traffic laws with
3 emphasis on providing basic enforcement and citizen protection
4 from criminal depredation throughout the state and maintaining
5 the safety of the state's public streets, roads and highways.

6 (b) The superintendent and each of the officers and mem-
7 bers of the division are hereby empowered:

8 (1) To make arrests anywhere within the state of any
9 persons charged with the violation of any law of this state, or of
10 the United States, and when a witness to the perpetration of any
11 offense or crime, or to the violation of any law of this state, or
12 of the United States, to make arrests without warrant; to arrest
13 and detain any persons suspected of the commission of any
14 felony or misdemeanor whenever a complaint is made and a
15 warrant is issued thereon for the arrest, and the person arrested
16 shall be immediately brought before the proper tribunal for
17 examination and trial in the county where the offense for which
18 the arrest has been made was committed;

19 (2) To serve criminal process issued by any court or
20 magistrate anywhere within this state: *Provided*, That they may
21 not serve civil process; and

22 (3) To cooperate with local authorities in detecting crime
23 and in apprehending any person or persons engaged in or
24 suspected of the commission of any crime, misdemeanor or
25 offense against the law of this state, or of the United States, or
26 of any ordinance of any municipality in this state; and to take
27 affidavits in connection with any application to the division of
28 highways, division of motor vehicles and of West Virginia state
29 police for any license, permit or certificate that may be lawfully
30 issued by these divisions of state government.

31 (c) Members of the West Virginia state police are hereby
32 designated as forest patrolmen and game and fish wardens
33 throughout the state to do and perform any duties and exercise
34 any powers of forest patrolmen and game and fish wardens, and
35 may apprehend and bring before any court or magistrate having
36 jurisdiction of these matters, anyone violating any of the
37 provisions of chapters twenty, sixty and sixty-one of this code.
38 The West Virginia state police is at any time subject to the call
39 of the West Virginia alcohol beverage control commissioner to
40 aid in apprehending any person violating any of the provisions
41 of chapter sixty of this code. They shall serve and execute
42 warrants for the arrest of any person and warrants for the search
43 of any premises issued by any properly constituted authority,
44 and shall exercise all of the powers conferred by law upon a
45 sheriff. They may not serve any civil process or exercise any of
46 the powers of such officer in civil matters.

47 (d) Any member of the West Virginia state police knowing
48 or having reason to believe that any person has violated the law
49 may make complaint in writing before any court or officer
50 having jurisdiction and procure a warrant for the offender,
51 execute the warrant and bring the person before the proper
52 tribunal having jurisdiction. The member shall make return on
53 all warrants to the tribunals and his or her official title shall be
54 "member of the West Virginia state police". Members of the
55 West Virginia state police may execute any summons or
56 process issued by any tribunal having jurisdiction requiring the
57 attendance of any person as a witness before the tribunal and
58 make return thereon as provided by law. Any return by a
59 member of the West Virginia state police showing the manner
60 of executing the warrant or process has the same force and
61 effect as if made by a sheriff.

62 (e) Each member of the West Virginia state police, when
63 called by the sheriff of any county, or when directed by the
64 governor by proclamation, has full power and authority within
65 the county, or within the territory defined by the governor, to
66 direct and command absolutely the assistance of any sheriff,
67 deputy sheriff, chief of police, policeman, game and fish
68 warden and peace officer of the state, or of any county or

69 municipality therein, or of any able-bodied citizen of the United
70 States, to assist and aid in accomplishing the purposes ex-
71 pressed in this article. When called, any officer or person is,
72 during the time his or her assistance is required, for all purposes
73 a member of the West Virginia state police and subject to all
74 the provisions of this article.

75 (f) The superintendent may also assign members of the
76 division to perform police duties on any turnpike or toll road,
77 or any section of any turnpike or toll road, operated by the West
78 Virginia parkways, economic development and tourism
79 authority: *Provided*, That the authority shall reimburse the West
80 Virginia state police for salaries paid to the members and shall
81 either pay directly or reimburse the division for all other
82 expenses of the group of members in accordance with actual or
83 estimated costs determined by the superintendent.

84 (g) The West Virginia state police may develop proposals
85 for a comprehensive county or multicounty plan on the imple-
86 mentation of an enhanced emergency service telephone system
87 and may cause a public meeting on the proposals, all as set
88 forth in section six-a, article six, chapter twenty-four of this
89 code.

90 (h) The superintendent may also assign members of the
91 division to administer tests for the issuance of commercial
92 drivers' licenses, operator and junior operator licenses as
93 provided for in section seven, article two, chapter seventeen-b
94 of this code: *Provided*, That the division of motor vehicles shall
95 reimburse the West Virginia state police for salaries and
96 employee benefits paid to the members, and shall either pay
97 directly or reimburse the division for all other expenses of the
98 group of members in accordance with actual costs determined
99 by the superintendent.

100 (i) The superintendent shall be reimbursed by the division
101 of motor vehicles for salaries and employee benefits paid to
102 members of the West Virginia state police and shall either be
103 paid directly or reimbursed by the division of motor vehicles
104 for all other expenses of the group of members in accordance
105 with actual costs determined by the superintendent, for services

106 performed by the members relating to the duties and obligations
107 of the division of motor vehicles set forth in chapters seventeen,
108 seventeen-a, seventeen-b, seventeen-c and seventeen-d of this
109 code.

110 (j) By the first day of July, one thousand nine hundred
111 ninety-three, the superintendent shall establish a network to
112 implement reports of the disappearance of children by local
113 law-enforcement agencies to local school division superinten-
114 dents and the state registrar of vital statistics. The network shall
115 be designed to establish cooperative arrangements between
116 local law-enforcement agencies and local school divisions
117 concerning reports of missing children and notices to
118 law-enforcement agencies of requests for copies of the cumula-
119 tive records and birth certificates of missing children. The
120 network shall also establish a mechanism for reporting the
121 identities of all missing children to the state registrar of vital
122 statistics.

123 (k) The superintendent may at his or her discretion and
124 upon the written request of the West Virginia alcohol beverage
125 control commissioner assist the commissioner in the coordina-
126 tion and enforcement of article sixteen, chapter eleven of this
127 code and chapter sixty of this code.

128 (l) Notwithstanding the provisions of article one-a, chapter
129 twenty of this code, the superintendent of the West Virginia
130 state police may sell any surplus real property to which the
131 West Virginia state police or its predecessors retain title, and
132 deposit the net proceeds into a special revenue account to be
133 utilized for the purchase of additional real property and for
134 repairs to or construction of detachment offices or other
135 facilities required by the West Virginia state police. There is
136 hereby created a special revolving fund in the state treasury
137 which shall be designated as the "surplus real property proceeds
138 fund". The fund shall consist of all money received from the
139 sale of surplus real property owned by the West Virginia state
140 police. Moneys deposited in the fund shall only be available for
141 expenditure upon appropriation by the Legislature: *Provided,*
142 That amounts collected which are found from time to time to

143 exceed the funds needed for the purposes set forth in this
144 subsection may be transferred to other accounts or funds and
145 redesignated for other purposes by appropriation of the Legisla-
146 ture.

147 (m) Notwithstanding any other provision of this code, the
148 agency for surplus property is hereby empowered to transfer
149 funds generated from the sale of vehicles, other equipment and
150 commodities belonging to the West Virginia state police to a
151 special revenue account within the West Virginia state police
152 entitled the West Virginia state police surplus transfer account.
153 Moneys deposited in the fund shall only be available for
154 expenditure upon appropriation by the Legislature: *Provided,*
155 That amounts collected which are found from time to time to
156 exceed the funds needed for the purposes set forth in this
157 subsection may be transferred to other accounts or funds and
158 redesignated for other purposes by appropriation of the Legisla-
159 ture. Any funds transferred to this account may be utilized by
160 the superintendent to defray the cost of normal operating needs
161 of the division.

162 (n) If the state police or any other law-enforcement agency
163 in this state receives a report that a person who has Alzheimer's
164 disease and related dementia is missing, the state police or any
165 other law-enforcement agency shall immediately open an
166 investigation for the purpose of determining the whereabouts of
167 that missing person. Any policy of the state police or any other
168 law-enforcement agency relating to a waiting period prior to
169 initiation of an investigation of a missing person shall not apply
170 in the case of a person who has Alzheimer's disease or other
171 related dementia of the type referred to in this subsection.

CHAPTER 158

(Com. Sub. for H. B. 2392 — By Mr. Speaker, Mr. Kiss, and Delegates Martin,
Stemple, Michael, Hunt, Mezzatesta and Varner)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven, relating to payment of funeral expenses of certain law-enforcement, safety and emergency workers killed while performing their duties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. PAYMENT OF FUNERAL EXPENSES.

§15-11-1. Law-enforcement, safety and emergency worker funeral expense fund created.

§15-11-2. Payment of funeral expenses of law-enforcement, safety and emergency workers killed in the line of duty.

§15-11-1. Law-enforcement, safety and emergency worker funeral expense fund created.

1 There is created within the state treasury a special fund
2 known as the "law-enforcement, safety and emergency worker
3 funeral expense payment fund", into which there shall be
4 deposited such moneys as from time to time may be appropri-
5 ated by the Legislature or received from other sources as may
6 be donated or otherwise provided for the fund. The fund shall
7 be administered by the secretary of military affairs and public
8 safety for the sole purpose of effecting the provisions of this
9 article.

§15-11-2. Payment of funeral expenses of law-enforcement, safety and emergency workers killed in the line of duty.

1 (a) The secretary of military affairs and public safety shall,
2 upon written request, direct payment from the fund in the form
3 of a draft as provided in this article up to and including an
4 amount not exceeding eight thousand dollars for the reasonable
5 funeral expenses, including burial expenses, of a law-enforce-
6 ment, safety or emergency worker killed on or after the first day
7 of January, one thousand nine hundred ninety-nine, while
8 carrying out official duties: *Provided*, That no such funds shall

9 be expended for any funeral expense that is otherwise payable
10 pursuant to the provisions of article four, chapter twenty-three
11 of this code, as amended, or other benefit programs established
12 by a provision of this code which does not involve employee
13 participation: *Provided, however,* That where other funds for
14 funeral expenses are provided pursuant to the laws of this state,
15 from whatever source, which amount to less than eight thou-
16 sand dollars, funds provided by the provisions of this section
17 shall be expended so as to assure that at least eight thousand
18 dollars is available for reasonable funeral expenses. The
19 secretary shall direct payment of such funeral expenses upon
20 written request of an employer or head of a volunteer organiza-
21 tion, as is appropriate pursuant to this article, certifying that the
22 individual for whom funeral expenses are requested was killed
23 while performing official duties.

24 (b) The secretary shall supply the draft in the name of the
25 person contracting for the funeral services and, if known, the
26 service provider to the employer or agency head making the
27 request who shall tender the draft to the person who contracted
28 for the services.

29 (c) For the purposes of this section, "law-enforcement,
30 safety or emergency worker" means:

31 (1) Any duly authorized member of a law-enforcement
32 agency who is authorized to maintain public peace and order,
33 prevent and detect crime, make arrests and enforce the laws of
34 the state or any county or municipality thereof, other than
35 parking ordinances, and including those persons employed as
36 security officers at municipal, county, regional or state offices,
37 authorities or institutions, although their employers may not be
38 public law-enforcement agencies, employed by the Hatfield-
39 McCoy regional recreation authority and members of the West
40 Virginia national guard while engaged in active duty service:
41 *Provided,* That this section does not apply to those persons
42 employed by private security firms or agencies.

43 (2) Any state, regional, county or municipal correctional
44 officer.

45 (3) Any firefighter employed by the state or any political
46 subdivision of the state and any volunteer firefighter perform-
47 ing as a member of a volunteer fire department.

48 (4) Any "emergency medical services personnel", as
49 defined in section three, article four-c, chapter sixteen of this
50 code, employed by or volunteering for any state agency or
51 institution or political subdivision of the state.

CHAPTER 159

(H. B. 2759 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty-six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twelve, article four, chapter twelve of said code; to amend and reenact section three, article five of said chapter; to amend and reenact section nineteen, article twenty-two, chapter twenty-nine of said code; and to amend and reenact section twenty-one, article two, chapter sixty of said code, all relating to the legislative auditor; and specifying the frequency with which the legislative auditor is to conduct certain audits.

Be it enacted by the Legislature of West Virginia:

That section six, article twenty-six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section twelve, article four, chapter twelve of said code be amended and reenacted; that section three, article five of said chapter be amended and reenacted; that section nineteen, article twenty-two, chapter twenty-nine of said code be amended and reenacted; and that section twenty-one, article two, chapter sixty of said code be amended and reenacted, all to read as follows:

Chapter

- 5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.**
- 12. Public Moneys and Securities.**
- 29. Miscellaneous Boards and Officers.**
- 60. State Control of Alcoholic Liquors.**

**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 26. GOVERNOR'S CABINET ON CHILDREN AND FAMILIES.

§5-26-6. Children's fund created; purpose.

1 (a) The cabinet shall establish a children's fund for the sole
2 purpose of awarding grants, loans and loan guaranties for child
3 abuse and neglect prevention activities. Gifts, bequests or
4 donations for this purpose, in addition to appropriations to the
5 fund, shall be deposited in the state treasury in a special revenue
6 account that is independent from any executive or other
7 department of government, other than the office of the gover-
8 nor.

9 (b) Each state taxpayer may voluntarily contribute a portion
10 of the taxpayer's state income tax refund to the children's fund
11 by so designating the contribution on the state personal income
12 tax return form. The cabinet shall approve the wording of the
13 designation on the income tax return form, which designation
14 shall appear on tax forms. The tax commissioner shall deter-
15 mine by the first day of July of each year the total amount
16 designated pursuant to this subsection and shall report that
17 amount to the state treasurer, who shall credit that amount to
18 the children's fund.

19 (c) All interest accruing from investment of moneys in the
20 children's fund shall be credited to the fund. The legislative

21 auditor shall conduct an audit of the fund before the first day of
22 July, two thousand three and at least every three fiscal years
23 thereafter.

24 (d) Grants, loans and loan guaranties may be awarded from
25 the children's fund by the cabinet for child abuse and neglect
26 prevention activities.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

Article

4. Accounts, Reports and General Provisions.

5. Public Securities.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-12. Treasurer authorized to provide check-cashing service; establishment and audit of cash funds.

1 The treasurer may provide a check-cashing service at his or
2 her office in the capitol building and may charge fees for the
3 service for each check cashed and for each check returned for
4 insufficient funds. For this purpose, he or she may establish
5 from receipts in the treasury not more than two cash funds each
6 in an initial amount not to exceed one hundred thousand dollars.
7 The treasurer shall designate certain employees in his or her
8 office who are to provide the service and have charge of the
9 funds, and may require the employees to be bonded either
10 individually or by blanket bonds. The cost of the bond or bonds
11 shall be paid out of the treasurer's current expense appropria-
12 tion.

13 The fees received for the service shall be deposited in the
14 cash funds and itemized accounts of the receipts shall be
15 maintained. Any check determined by the treasurer to be
16 uncollectible shall be charged against the fund from which it
17 was cashed. Before the first day of July, two thousand one, and
18 at least every three fiscal years thereafter, the legislative auditor
19 shall audit the cash funds and all accounts and records relating
20 to the service provided pursuant to this section. If the amount
21 of either cash fund, after charges for uncollectible checks,
22 exceeds one hundred thousand dollars at the conclusion of any

23 audit, the treasurer shall transfer the excess to the general
24 revenue fund.

ARTICLE 5. PUBLIC SECURITIES.

§12-5-3. Legislative auditor to examine and list securities.

1 Before the first day of July, two thousand one, and at least
2 every two fiscal years thereafter, the legislative auditor shall
3 examine and list all of the securities in the custody of the state
4 treasurer. A copy of the list so examined and certified shall be
5 transmitted to the state treasurer and the department of adminis-
6 tration.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-19. Post audit of accounts and transactions of office.

1 Before the first day of July, two thousand one, and at least
2 every two fiscal years thereafter, the legislative auditor shall
3 conduct a post audit of all accounts and transactions of the state
4 lottery office. The cost of the audit shall be paid out of the state
5 lottery fund moneys designated for payment of operating
6 expenses. The commission shall have an annual audit per-
7 formed by an independent certified public accountant, and the
8 audits may be accepted by the legislative auditor in lieu of
9 performance of its post audit.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER.

§60-2-21. Audit.

1 Before the first day of July, two thousand one, and at least
2 every two fiscal years thereafter, the legislative auditor shall
3 audit the affairs of the West Virginia alcohol beverage control
4 commissioner and report the results of the audit to the governor.
5 The cost of the audit shall be paid from the operating fund.

CHAPTER 160

(H. B. 3033 — By Delegates Mezzatesta, Manuel,
Williams, Stemple, Davis, Ennis and Stalnaker)

[Passed March 13, 1999; in effect July 1, 1999. Approved by the Governor.]

AN ACT to amend and reenact section thirteen-b, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to creating a special revenue fund, designated the legislative reserve fund; and requiring moneys from decreases in net and adjusted enrollment be deposited into the fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-13b. Allowance for legislative reserve fund, current expense and substitute costs.

1 Commencing with the school year beginning on the first
2 day of July, two thousand, funds which accrue from allocations
3 due to decreases in net and adjusted enrollment from the
4 preceding school year shall be deposited in a special revenue
5 fund which is hereby created in the state treasury, designated
6 the "legislative reserve fund". The fund shall be an interest
7 bearing account and shall be appropriated by the Legislature.

CHAPTER 161

(H. B. 2637 — By Delegates Staton, Amores,
Hunt, Linch, Stemple, Schadler and Faircloth)

[Passed March 9, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen, relating to establishing a severability clause for legislative rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. RULE MAKING.

§29A-3-18. Severability of legislative rules.

1 Unless there is a provision in a legislative rule specifying
2 that the provisions thereof shall not be severable, the provisions
3 of every legislative rule, whether enacted before or subsequent
4 to the effective date of this section, shall be severable so that if
5 any provision of any rule section or amendment thereto is held
6 to be unconstitutional or void, the remaining provisions of the
7 rule shall remain valid, unless the court finds the valid provi-
8 sions are so essentially and inseparably connected with, and so
9 dependent upon, the unconstitutional or void provision that the
10 court cannot presume the Legislature would have enacted the
11 remaining valid provisions without the unconstitutional or void
12 one, or unless the court finds the remaining valid provisions,
13 standing alone, are incomplete and are incapable of being
14 executed in accordance with the legislative intent: *Provided,*
15 That if any legislative rule has its own severability clause, then
16 that severability clause shall govern and control with respect to

17 that section, in lieu of the provisions of this section. The
18 provisions of this section shall be fully applicable to all future
19 amendments to legislative rules, with like effect as if the
20 provisions of this section were set forth in extenso and every
21 such amendment were reenacted as a part thereof, unless such
22 amendment to the legislative rule contains its own severability
23 clause.

CHAPTER 162

(Com. Sub. for S. B. 272 — By Senators Ross, Anderson, Bowman and Boley)

[Passed March 11, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article two of said chapter, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; continuing rules previously promulgated by state agencies; legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain agencies to promulgate legislative rules as amended by the Legislature; authorizing certain legislative rules as filed with the secretary of state; with authorizing department of administration and the auditor to promulgate legislative rules relating to purchasing card program; and authorizing the department of administration to promulgate legislative rules relating to purchasing.

Be it enacted by the Legislature of West Virginia:

That section one, article one, chapter sixty-four 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, all to read as follows:

ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.**Article**

1. **General Legislative Authorization.**
2. **Authorization for Department of Administration to Promulgate Legislative Rules.**

§64-1-1. Legislative authorization.

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

17 All proposed legislative rules for which bills of authoriza-
18 tion have been introduced in the Legislature not specifically
19 authorized under articles two through eleven of this chapter are
20 disapproved by the Legislature.

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.**§64-2-1. Department of administration and the auditor.**

1 (a) The legislative rule filed in the state register on the third
2 day of August, one thousand nine hundred ninety-eight, under
3 the authority of section ten-a, article three, chapter twelve of
4 this code, modified by the department of administration and the
5 auditor to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the twenty-
7 ninth day of October, one thousand nine hundred ninety-eight,
8 relating to the department of administration and the auditor

9 (state purchasing card program, 148 CSR 7), is authorized, with
10 the amendments set forth below:

11 On page two after subsection 2.15 by adding a new subsec-
12 tion 2.16 to read as follows:

13 2.16. "Statewide Contract" means a legally binding
14 instrument competitively bid, awarded and maintained by the
15 Purchasing Division to provide services or tangible goods to all
16 state spending units at a specified price. Statewide contract
17 usage is mandatory for all agencies under the jurisdiction of the
18 Purchasing Division and available (upon mutual consent) to
19 agencies not under the jurisdiction of the Purchasing Division.;

20 On page three, subsection 2.17 by striking out the words
21 "except for maintenance which cannot" and inserting in lieu
22 thereof the words "except for purchases including maintenance
23 foreseen to";

24 On page seven, subsection 6.3 by striking out the words
25 "blanket orders and price agreements" and inserting in lieu
26 thereof the words "in accordance with the transaction limit as
27 set forth in subsection 2.18 of this rule, excluding those
28 requiring advance approval of the Purchasing Division. There
29 is no annual limit for payments against state-wide contracts.";

30 And,

31 On page seven, after subsection 6.3 by adding a new
32 subsection 6.4 to read as follows:

33 6.4 With the exception of orders against statewide con-
34 tracts, the card cannot be used as a payment method for
35 purchases foreseen to exceed \$15,000 annually for all colleges
36 and universities and \$10,000 annually for all other spending
37 units in accordance with state purchasing guidelines.

38 (b) The legislative rule filed in the office of the secretary of
39 state on the sixteenth day of February, one thousand nine
40 hundred ninety-nine, authorized under the authority of section
41 four, article three, chapter five-a of this code, relating to the
42 department of administration (purchasing, 148 CSR 1), is
43 authorized.

CHAPTER 163

(Com. Sub. for H. B. 2533 — By Delegates Hunt, Compton,
Jenkins, Linch, Faircloth and Riggs)

[Passed March 21, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and two, article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies; authorizing various executive or administrative agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing the various executive or administrative agencies to promulgate legislative rules as amended by the Legislature; authorizing various executive or administrative agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing the division of environmental protection to promulgate a legislative rule relating to carbon monoxide and ozone; authorizing the division of environmental protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of emissions from hospital, medical, and infectious waste incinerators; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of air pollution from hazardous waste treatment, storage or disposal facilities; authorizing the division of environmental protection to promulgate a legislative rule relating to acid rain provisions and permits; authorizing the division of environmental protection to promulgate a legislative rule relating to ambient air

quality standards for sulfur oxides and particulate matter; authorizing the division of environmental protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants pursuant to 40 CFR Part 63; authorizing the division of environmental protection to promulgate a legislative rule relating to the awarding of West Virginia stream partners program grants; authorizing the division of environmental protection to promulgate a legislative rule relating to West Virginia surface mining and reclamation; authorizing the division of environmental protection to promulgate a legislative rule relating to solid waste management; authorizing the division of environmental protection to promulgate a legislative rule relating to sewage sludge management; authorizing the division of environmental protection to promulgate a legislative rule relating to hazardous waste management; authorizing the division of environmental protection to promulgate a legislative rule relating to the state construction grants program; authorizing the division of environmental protection to promulgate a legislative rule relating to the pollution prevention and compliance assistance rule; authorizing the division of environmental protection to promulgate a legislative rule relating to the state water pollution control revolving fund program; and authorizing the environmental quality board to promulgate a legislative rule relating to the requirements governing water quality standards.

Be it enacted by the Legislature of West Virginia:

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

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

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

§64-3-2. Environmental quality board.

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

- 1 (a) The legislative rule filed in the state register on the
- 2 thirty-first day of July, one thousand nine hundred ninety-eight,
- 3 authorized under the authority of section four, article five,
- 4 chapter twenty-two of this code, modified by the division of

5 environmental protection to meet the objections of the legisla-
6 tive rule-making review committee and refiled in the state
7 register on the fifth day of January, one thousand nine hundred
8 ninety-nine, relating to the division of environmental protection
9 (ambient air quality standards for carbon monoxide and ozone,
10 45 CSR 9), is authorized.

11 (b) The legislative rule filed in the state register on the
12 thirty-first day of July, one thousand nine hundred ninety-eight,
13 authorized under the authority of section four, article five,
14 chapter twenty-two of this code, modified by the division of
15 environmental protection to meet the objections of the legisla-
16 tive rule-making review committee and refiled in the state
17 register on the fifth day of January, one thousand nine hundred
18 ninety-nine, relating to the division of environmental protection
19 (standards of performance for new stationary sources, 45 CSR
20 16), is authorized.

21 (c) The legislative rule filed in the state register on the
22 third day of August, one thousand nine hundred ninety-eight,
23 authorized under the authority of section four, article five,
24 chapter twenty-two of this code, modified by the division of
25 environmental protection to meet the objections of the legisla-
26 tive rule-making review committee and refiled in the state
27 register on the fifth day of January, one thousand nine hundred
28 ninety-nine, relating to the division of environmental protection
29 (to prevent and control emissions from hospital, medical, and
30 infectious waste incinerators, 45 CSR 24), is authorized.

31 (d) The legislative rule filed in the state register on the third
32 day of August, one thousand nine hundred ninety-eight,
33 authorized under the authority of section four, article five,
34 chapter twenty-two of this code, modified by the division of
35 environmental protection to meet the objections of the legisla-
36 tive rule-making review committee and refiled in the state
37 register on the fifth day of January, one thousand nine hundred
38 ninety-nine, relating to the division of environmental protection
39 (to prevent and control air pollution from hazardous waste
40 treatment, storage or disposal facilities, 45 CSR 25), is autho-
41 rized.

42 (e) The legislative rule filed in the state register on the
43 thirty-first day of July, one thousand nine hundred ninety-eight,
44 authorized under the authority of section four, article five,
45 chapter twenty-two of this code, relating to the division of
46 environmental protection (acid rain provisions and permits, 45
47 CSR 33), is authorized.

48 (f) The legislative rule filed in the state register on the
49 thirty-first day of July, one thousand nine hundred ninety-eight,
50 authorized under the authority of section four, article five,
51 chapter twenty-two of this code, modified by the division of
52 environmental protection to meet the objections of the legisla-
53 tive rule-making review committee and refiled in the state
54 register on the twenty-second day of January, one thousand nine
55 hundred ninety-nine, relating to the division of environmental
56 protection (ambient air quality standards for sulfur oxides and
57 particulate matter, 45 CSR 8), is authorized.

58 (g) The legislative rule filed in the state register on the
59 thirty-first day of July, one thousand nine hundred ninety-eight,
60 authorized under the authority of section four, article five,
61 chapter twenty-two of this code, modified by the division of
62 environmental protection to meet the objections of the legisla-
63 tive rule-making review committee and refiled in the state
64 register on the fifth day of January, one thousand nine hundred
65 ninety-nine, relating to the division of environmental protection
66 (emission standards for hazardous air pollutants pursuant to 40
67 CFR Part 63, 45 CSR 34), is authorized.

68 (h) The legislative rule filed in the state register on the
69 thirty-first day of July, one thousand nine hundred ninety-eight,
70 authorized under the authority of section fourteen, article
71 thirteen, chapter twenty of this code, modified by the division
72 of environmental protection to meet the objections of the
73 legislative rule-making review committee and refiled in the
74 state register on the second day of November, one thousand
75 nine hundred ninety-eight, relating to the division of environ-
76 mental protection (awarding of West Virginia stream partners
77 program grants, 60 CSR 4) is authorized.

78 (i) The legislative rule filed in the state register on the
79 thirtieth day of July, one thousand nine hundred ninety-eight,
80 authorized under the authority of section three, article one,
81 chapter twenty-two of this code, modified by the division of
82 environmental protection to meet the objections of the legisla-
83 tive rule-making review committee and refiled in the state
84 register on the twenty-second day of January, one thousand nine
85 hundred ninety-nine, relating to the division of environmental
86 protection (surface mining and reclamation regulations, 38 CSR
87 2), is authorized.

88 (j) The legislative rule filed in the state register on the
89 thirty-first day of July, one thousand nine hundred ninety-eight,
90 authorized under the authority of section five, article fifteen,
91 chapter twenty-two of this code modified by the division of
92 environmental protection to meet the objections of the legisla-
93 tive rule-making review committee and refiled in the state
94 register on the seventh day of October, one thousand nine
95 hundred ninety-eight, relating to the division of environmental
96 protection (solid waste management, 33 CSR 1), is authorized.

97 (k) The legislative rule filed in the state register on the
98 thirty-first day of July, one thousand nine hundred ninety-eight,
99 authorized under the authority of section twenty, article fifteen,
100 chapter twenty-two of this code, modified by the division of
101 environmental protection to meet the objections of the legisla-
102 tive rule-making review committee and refiled in the state
103 register on the twentieth day of November, one thousand nine
104 hundred ninety-eight, relating to the division of environmental
105 protection (sewage sludge management, 33 CSR 2), is autho-
106 rized.

107 (l) The legislative rule filed in the state register on the third
108 day of August, one thousand nine hundred ninety-eight,
109 authorized under the authority of section six, article eighteen,
110 chapter twenty-two of this code, modified by the division of
111 environmental protection to meet the objections of the legisla-
112 tive rule-making review committee and refiled in the state
113 register on the second day of October, one thousand nine
114 hundred ninety-eight, relating to the division of environmental

115 protection (hazardous waste management, 33 CSR 20), is
116 authorized.

117 (m) The legislative rule filed in the state register on the
118 thirtieth day of July, one thousand nine hundred ninety-eight,
119 authorized under the authority of section six, article two,
120 chapter twenty-two-c of this code, relating to the division of
121 environmental protection (state construction grants program, 47
122 CSR 33), is authorized.

123 (n) The legislative rule filed in the state register on the
124 thirty-first day of July, one thousand nine hundred ninety-eight,
125 authorized under the authority of section six, article one,
126 chapter twenty-two of this code, modified by the division of
127 environmental protection to meet the objections of the legisla-
128 tive rule-making review committee and refiled in the state
129 register on the twenty-second day of January, one thousand nine
130 hundred ninety-nine, relating to the division of environmental
131 protection (pollution prevention and compliance assistance rule,
132 47 CSR 3), is authorized.

133 (o) The legislative rule filed in the state register on the
134 thirty-first day of July, one thousand nine hundred ninety-eight,
135 authorized under the authority of section three, article two,
136 chapter twenty-two-c of this code, modified by the division of
137 environmental protection to meet the objections of the legisla-
138 tive rule-making review committee and refiled in the state
139 register on the second day of November, one thousand nine
140 hundred ninety-eight, relating to the division of environmental
141 protection (state water pollution control revolving fund pro-
142 gram, 47 CSR 31), is authorized.

143 (p) The legislative rules filed in the state register on the
144 seventh day of October, one thousand nine hundred ninety-
145 eight, relating to the division of environmental protection
146 (underground storage tank insurance trust fund, 33 CSR 32), are
147 authorized.

§64-3-2. Environmental quality board.

1 The legislative rule filed in the state register on the third
2 day of August, one thousand nine hundred ninety-eight,

3 authorized under the authority of section four, article three,
4 chapter twenty-two-b of this code, relating to the environmental
5 quality board (requirements governing water quality standards,
6 46 CSR 1), is authorized until the thirtieth day of October,
7 1999: *Provided*, That the environmental quality board shall
8 review, revise and propose, within this statutory deadline, and
9 in accordance with the provisions of chapter twenty-nine-a of
10 this code, emergency and legislative rules to address the
11 interpretive differences regarding the designation of category A
12 waters and analyze the need for distance prohibitors for the
13 policies of public drinking water intake, with the amendments
14 set forth below:

15 On page fourteen, subsection 7.2.b., by following the words
16 “contrary provision,” by striking the word “numeric”;

17 And, on page twenty, by striking out all of subsection 8.5.

18 On page 14, at the end of paragraph 7.2.a.2 after the word
19 “headwaters.)” by inserting the following:

20 “Until June 30, 2003, the one-half mile zone described in
21 this section shall not apply to the Ohio River main channel
22 (between Brown’s Island and the left descending bank) between
23 river mile points 61.0 and 63.5.”

CHAPTER 164

(Com. Sub. for S. B. 284 — By Senators Ross, Anderson, Bowman and Boley)

[Passed March 11, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article four, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by

various executive and administrative agencies of the state; authorizing certain agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain agencies to promulgate legislative rules as amended by the Legislature; authorizing certain agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing the department of education and the arts, division of culture and history to promulgate a legislative rule relating to the certified local government program; and authorizing the department of education and the arts, division of culture and history to promulgate a legislative rule relating to standards and procedures for administering state historic preservation programs.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 4. AUTHORIZATION FOR DEPARTMENT OF EDUCATION
AND THE ARTS TO PROMULGATE LEGISLATIVE
RULES.**

§64-4-1. Division of culture and history.

1 (a) The legislative rule filed in the state register on the
2 twenty-eighth day of October, one thousand nine hundred
3 ninety-seven, under the authority of section eight-d, article one,
4 chapter twenty-nine of this code, modified by the division of
5 culture and history to meet the objections of the legislative rule-
6 making review committee and refiled in the state register on the
7 eighteenth day of December, one thousand nine hundred ninety-
8 eight, relating to the division of culture and history (certified
9 local government program, 82 CSR 1), is authorized.

10 (b) The legislative rule filed in the state register on the
11 twenty-eighth day of October, one thousand nine hundred
12 ninety-seven, under the authority of section eight-d, article one,
13 chapter twenty-nine of this code, modified by the division of
14 culture and history to meet the objections of the legislative rule-

15 making review committee and refiled in the state register on the
16 eighteenth day of December, one thousand nine hundred ninety-
17 eight, relating to the division of culture and history (standards
18 and procedures for administering state historic preservation
19 programs, 82 CSR 2), is authorized.

CHAPTER 165

(Com. Sub. for S. B. 305 — By Senators Ross, Anderson, Bowman and Boley)

[Passed March 10, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article five, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section four, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; directing certain of the agencies to propose and promulgate certain legislative rules; authorizing the department of health and human resources health care authority to promulgate a legislative rule relating to bench-marking and discount contracts; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to public water systems; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to reportable diseases, events and conditions; authorizing the

department of health and human resources division of health to promulgate a legislative rule relating to sanitation; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to lead abatement licensing; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to legally unlicensed health care homes; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to infectious medical waste; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to medication administration by unlicensed personnel; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to public water systems capacity development; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to the interstate compact on mental health; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to licensed behavioral health service responsibilities and consumer rights; directing the department of health and human resources division of health to promulgate an emergency and legislative rule relating to residential care communities; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to tuberculosis control; and authorizing the department of health and human resources division of health to promulgate a legislative rule relating to radon licensure.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. Health care authority.

§64-5-4. State board of health; division of health.

§64-5-1. Health care authority.

1 The legislative rule filed in the state register on the eighth-
2 teenth day of December, one thousand nine hundred ninety-
3 eight, under the authority of sections eight and twenty, article
4 twenty-nine-b, chapter sixteen of this code, modified by the
5 health care authority to meet the objections of the legislative
6 rule-making review committee and refiled in the state register
7 on the twenty-second day of January, one thousand nine
8 hundred ninety-nine, relating to the health care authority
9 (bench-marking and discount contracts, 65 CSR 26), is autho-
10 rized, with the amendment set forth below:

11 On page 11, subsection 23.4.c after the word “Authority”
12 by striking out the comma and the words “minus depreciation
13 and interest”.

§64-5-4. State board of health; division of health.

1 (a) The legislative rule filed in the state register on the
2 thirty-first day of July, one thousand nine hundred ninety-eight,
3 authorized under the authority of section nine-a, article one,
4 chapter sixteen of this code, modified by the division of health
5 to meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the twenty-eighth
7 day of December, one thousand nine hundred ninety-eight,
8 relating to the division of health (public water systems, 64 CSR
9 3), is authorized.

10 (b) The legislative rule filed in the state register on the third
11 day of August, one thousand nine hundred ninety-eight,
12 authorized under the authority of section one, article three,
13 chapter sixteen of this code, modified by the division of health
14 to meet the objections of the legislative rule-making review
15 committee and refiled in the state register on the twentieth day
16 of January, one thousand nine hundred ninety-nine, relating to
17 the division of health (reportable diseases, events and condi-
18 tions, 64 CSR 7), is authorized with the amendments set forth
19 below:

20 On page four, section 3.3.b., by striking out everything after
21 the words “Category I.A diseases and conditions reportable by

- 22 health care providers and health care facilities are:" and
23 inserting in lieu thereof the following:
- 24 3.3.b.1. Anthrax;
 - 25 3.3.b.2. Botulism;
 - 26 3.3.b.3. Brucellosis;
 - 27 3.3.b.4. Cholera;
 - 28 3.3.b.5. Dengue Fever;
 - 29 3.3.b.6. Diphtheria;
 - 30 3.3.b.7. E. Coli O157:H7 Disease;
 - 31 3.3.b.8. Foodborne Disease;
 - 32 3.3.b.9. Haemophilus influenzae, Invasive Disease;
 - 33 3.3.b.10. Hemolytic Uremic Syndrome, postdiarrheal;
 - 34 3.3.b.11. Hepatitis A, Acute;
 - 35 3.3.b.12. Hepatitis B, Acute or perinatal;
 - 36 3.3.b.13. Hepatitis D;
 - 37 3.3.b.14. Meningococcal Disease, Invasive;
 - 38 3.3.b.15. An outbreak or cluster of any illness or condition -
39 suspect or confirmed;
 - 40 3.3.b.16. Pertussis (Whooping Cough);
 - 41 3.3.b.17. Plague;
 - 42 3.3.b.18. Poliomyelitis;
 - 43 3.3.b.19. Rabies in Animals or in Humans;
 - 44 3.3.b.20. Rubella (German Measles);
 - 45 3.3.b.21. Rubeola (Measles);
 - 46 3.3.b.22. Tuberculosis (All Forms, include antibiotic
47 susceptibility patterns)*;
 - 48 3.3.b.23. Tularemia;

49 3.3.b.24. Typhoid Fever;

50 3.3.b.25. Waterborne Disease; and

51 3.3.b.26. Yellow Fever.

52 On page five, section 3.3.d., by striking out everything after
53 the words "Category I.B diseases and conditions reportable by
54 laboratories are:" and inserting in lieu thereof the following:

55 3.3.d.1. Bacillus anthracis;

56 3.3.d.2. Bordatella pertussis, microbiologic evidence;

57 3.3.d.3. Brucellosis, microbiologic or serologic evidence;

58 3.3.d.4. Clostridium botulinum, microbiologic or
59 toxicologic evidence;

60 3.3.d.5. Corynebacterium diphtheriae, microbiologic or
61 histopathologic evidence;

62 3.3.d.6. Dengue Fever, serologic evidence;

63 3.3.d.7. E. Coli O157:H7 from any site;

64 3.3.d.8. E. Coli O157:NM, Shiga-like toxin-producing,
65 from any clinical specimen;

66 3.3.d.9. Haemophilus influenzae from any normally sterile
67 body site;

68 3.3.d.10. Hepatitis A, positive IgM;

69 3.3.d.11. Hepatitis B, positive anti-HBc IgM or HBsAg;

70 3.3.d.12. Hepatitis D, positive serology;

71 3.3.d.13. Neisseria meningitidis from a normally sterile
72 site;

73 3.3.d.14. Outbreak or cluster of any illness or condition -
74 suspect or confirmed;

75 3.3.d.15. Poliomyelitis, virologic or serologic evidence;

76 3.3.d.16. Rabies, animal or human;

77 3.3.d.17. Rubella, virologic or serologic evidence;

- 78 3.3.d.18. Rubeola, virologic or serologic evidence;
79 3.3.d.19. Salmonella typhi from any site;
80 3.3.d.20. Tularemia, culture, antigen or serologic evidence;
81 3.3.d.21. Vibrio cholerae, microbiologic or serologic
82 evidence;
83 3.3.d.22. Yellow Fever, virologic or serologic evidence;
84 3.3.d.23. Yersinia pestis, microbiologic or serologic
85 evidence; and
86 3.3.d.24 Other laboratory evidence suggestive of current
87 infection with any of the diseases or conditions listed in
88 Category I.A.

89 On page 6, section 3.4.b., by striking out everything after
90 the words "Category II.A diseases reportable by health care
91 providers and health care facilities are:" and inserting in lieu
92 thereof the following:

- 93 3.4.b.1. Amebiasis;
94 3.4.b.2. Campylobacteriosis;
95 3.4.b.3. Chickenpox (numerical totals only);
96 3.4.b.4. Cryptosporidiosis;
97 3.4.b.5. Cyclospora;
98 3.4.b.6. Encephalitis, Arboviral;
99 3.4.b.7. Encephalitis, Other primary and unspecified;
100 3.4.b.8. Giardiasis;
101 3.4.b.9. Hantavirus Disease;
102 3.4.b.10. Hepatitis C / Other non-A or non-B, acute;
103 3.4.b.11. Influenza-like Illness (numerical totals only);
104 3.4.b.12. Leptospirosis;
105 3.4.b.13. Listeria;

- 106 3.4.b.14. Lyme Disease;
- 107 3.4.b.15. Malaria;
- 108 3.4.b.16. Meningitis, Other Bacterial (cases not reported as
109 other specific disease types);
- 110 3.4.b.17. Meningitis, Viral or Aseptic;
- 111 3.4.b.18. Mumps;
- 112 3.4.b.19. Psittacosis;
- 113 3.4.b.20. Rheumatic Fever;
- 114 3.4.b.21. Rocky Mountain Spotted Fever;
- 115 3.4.b.22. Rubella, Congenital Syndrome;
- 116 3.4.b.23. Salmonellosis (except Typhoid Fever);
- 117 3.4.b.24. Shigellosis;
- 118 3.4.b.25. Streptococcal Disease, Invasive Group A, (Strep-
119 tocococcus pyogenes);
- 120 3.4.b.26. Streptococcal Toxic Shock Syndrome;
- 121 3.4.b.27. Streptococcus pneumoniae, drug resistant invasive
122 disease, (include antibiotic susceptibility patterns);
- 123 3.4.b.28. Tetanus;
- 124 3.4.b.29. Trichinosis; and
- 125 3.4.b.30. Unexplained or ill-defined illness, condition, or
126 health occurrence of potential public health significance.
- 127 On page 7, section 3.4.d., by striking everything after the
128 words "Category II.B condition reportable by laboratories are:"
129 and inserting in lieu thereof the following:
- 130 3.4.d.1. *Borrelia burgdorferi* from culture, or diagnostic
131 levels of IgG or IgM, (preferably followed by a western blot);
- 132 3.4.d.2. *Campylobacter*;
- 133 3.4.d.3. *Cryptosporidium*;

- 134 3.4.d.4. Cyclospora;
- 135 3.4.d.5. Encephalitis, virologic, serologic, or other evidence
136 of arboviral or other encephalitides;
- 137 3.4.d.6. Entamoeba histolytica;
- 138 3.4.d.7. Giardia lamblia, microscopic or immunodiagnostic
139 evidence;
- 140 3.4.d.8. Hantavirus infection, serologic, PCR,
141 immunohistochemistry, or other evidence;
- 142 3.4.d.9. Hepatitis C, positive HCV antibody confirmed with
143 approved supplemental test (e.g. RIBA);
- 144 3.4.d.10. Leptospirosis, virologic or serologic evidence;
- 145 3.4.d.11. Listeria monocytogenes;
- 146 3.4.d.12. Malaria organisms on smear of blood;
- 147 3.4.d.13. Meningitis, as indicated by bacterium in spinal
148 fluid;
- 149 3.4.d.14. Meningitis, Viral, virologic or serologic evidence;
- 150 3.4.d.15. Mumps, virologic or serologic evidence;
- 151 3.4.d.16. Psittacosis, microbiologic or serologic evidence;
- 152 3.4.d.17. Rocky Mountain Spotted Fever, serologic evi-
153 dence;
- 154 3.4.d.18. Salmonella (any species, excluding Salmonella
155 typhi);
- 156 3.4.d.19. Shigella (any species);
- 157 3.4.d.20. Streptococcus pyogenes (Group A Streptococcus)
158 from a normally sterile site;
- 159 3.4.d.21. Streptococcus pneumoniae, from a normally
160 sterile site (include antibiotic susceptibility patterns on all
161 isolates);
- 162 3.4.d.22. Trichinosis, demonstration of cysts or serologic
163 evidence;

164 3.4.d.23. Tularemia, culture, antigen or serologic evidence;

165 3.4.d.24. Unexplained or ill-defined illness, condition, or
166 health occurrence of potential public health significance; and

167 3.4.d.25. Other laboratory evidence suggestive of current
168 infection with any of the diseases or conditions listed in
169 Category II.A.

170 And,

171 On page 15, section 9.1, by adding the following after the
172 first sentence: "Local health departments may copy and
173 distribute this rule to local health care providers at no cost."

174 (c) The legislative rule filed in the state register on the
175 thirty-first day of July, one thousand nine hundred ninety-eight,
176 authorized under the authority of section seven, article one,
177 chapter sixteen of this code, modified by the division of health
178 to meet the objections of the legislative rule-making review
179 committee and refiled in the state register on the twentieth day
180 of November, one thousand nine hundred ninety-eight, relating
181 to the division of health (general sanitation, 64 CSR 18), is
182 authorized.

183 (d) The legislative rule filed in the state register on the
184 thirtieth day of July, one thousand nine hundred ninety-eight,
185 authorized under the authority of section four, article thirty-
186 five, chapter sixteen of this code, modified by the division of
187 health to meet the objections of the legislative rule-making
188 review committee and refiled in the state register on the
189 twentieth day of November, one thousand nine hundred ninety-
190 eight, relating to the division of health (lead abatement licens-
191 ing, 64 CSR 45), is authorized.

192 (e) The legislative rule filed in the state register on the third
193 day of August, one thousand nine hundred ninety-eight,
194 authorized under the authority of section seven, article one,
195 chapter sixteen of this code, modified by the division of health
196 to meet the objections of the legislative rule-making review
197 committee and refiled in the state register on the twenty-eighth
198 day of December, one thousand nine hundred ninety-eight,

199 relating to the division of health (legally unlicensed health care
200 homes, 64 CSR 50), is authorized.

201 (f) The legislative rule filed in the state register on the tenth
202 day of September, one thousand nine hundred ninety-eight,
203 authorized under the authority of section six-a, article five-j,
204 chapter twenty of this code, modified by the division of health
205 to meet the objections of the legislative rule-making review
206 committee and refiled in the state register on the twenty-fifth
207 day of January, one thousand nine hundred ninety-nine, relating
208 to the division of health (infectious medical waste, 64 CSR 56),
209 is authorized.

210 (g) The legislative rule filed in the state register on the third
211 day of August, one thousand nine hundred ninety-eight,
212 authorized under the authority of section eleven, article five-o,
213 chapter sixteen of this code, modified by the division of health
214 to meet the objections of the legislative rule-making review
215 committee and refiled in the state register on the twentieth day
216 of January, one thousand nine hundred ninety-nine, relating to
217 the division of health (medication administration by unlicensed
218 personnel, 64 CSR 60), is authorized.

219 (h) The legislative rule filed in the state register on the third
220 day of August, one thousand nine hundred ninety-eight,
221 authorized under the authority of section two, article thirteen-c,
222 chapter sixteen of this code, modified by the division of health
223 to meet the objections of the legislative rule-making review
224 committee and refiled in the state register on the nineteenth day
225 of January, one thousand nine hundred ninety-nine, relating to
226 the division of health (public water systems capacity develop-
227 ment, 64 CSR 61), is authorized.

228 (i) The legislative rule filed in the state register on the
229 thirty-first day of July, one thousand nine hundred ninety-eight,
230 authorized under the authority of section two, article fourteen,
231 chapter twenty-seven of this code, modified by the division of
232 health to meet the objections of the legislative rule-making
233 review committee and refiled in the state register on the twenty-
234 third day of November, one thousand nine hundred ninety-
235 eight, relating to the division of health (interstate compact on
236 mental health, 64 CSR 72), is authorized.

237 (j) The legislative rule filed in the state register on the third
238 day of August, one thousand nine hundred ninety-eight,
239 authorized under the authority of section nine, article five,
240 chapter twenty-seven of this code, modified by the division of
241 health to meet the objections of the legislative rule-making
242 review committee, refiled in the state register on the twenty-
243 fifth day of January, one thousand nine hundred ninety-nine,
244 and withdrawn by the division on the eleventh day of February,
245 one thousand nine hundred ninety-nine, relating to the division
246 of health (licensed behavioral health service responsibilities and
247 consumer rights, 64 CSR 74), is not authorized. The division of
248 health is directed to refile the rule, with necessary modifications
249 and in accordance with the memorandum of understanding
250 between the division and various affected parties, as an emer-
251 gency rule by the first day of July, one thousand nine hundred
252 ninety-nine, and propose said rule for legislative promulgation
253 pursuant to the provisions of article three, chapter twenty-nine-a
254 of this code.

255 (k) The legislative rule filed in the state register on the third
256 day of August, one thousand nine hundred ninety-eight,
257 authorized under the authority of sections three and five, article
258 five-n, chapter sixteen of this code, modified by the division of
259 health to meet the objections of the legislative rule-making
260 review committee and refiled in the state register on the sixth
261 day of January, one thousand nine hundred ninety-nine, relating
262 to the division of health (residential care communities, 64 CSR
263 75), is authorized.

264 (l) The legislative rule filed in the state register on the third
265 day of August, one thousand nine hundred ninety-eight,
266 authorized under the authority of section seven, article five-a,
267 chapter twenty-six of this code, modified by the division of
268 health to meet the objections of the legislative rule-making
269 review committee and refiled in the state register on the
270 twentieth day of November, one thousand nine hundred ninety-
271 eight, relating to the division of health (tuberculosis control, 64
272 CSR 76), is authorized.

273 (m) The legislative rule filed in the state register on the
274 third day of August, one thousand nine hundred ninety-eight,

275 authorized under the authority of section six, article thirty-four,
276 chapter sixteen of this code, modified by the division of health
277 to meet the objections of the legislative rule-making review
278 committee and refiled in the state register on the twentieth day
279 of November, one thousand nine hundred ninety-eight, relating
280 to the division of health (radon licensure, 64 CSR 78), is
281 authorized.

CHAPTER 166

(Com. Sub. for H. B. 2565 — By Delegates Hunt,
Linch, Compton, Jenkins, Faircloth and Riggs)

[Passed March 10, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article six, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing the state police to promulgate a legislative rule relating to supplemental pay; and authorizing the state police to promulgate a legislative rule relating to a written directive system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES.

§64-6-2. State police.

1 (a) The legislative rule filed in the state register on the third
2 day of August, one thousand nine hundred ninety-eight,
3 authorized under the authority of section five, article two,
4 chapter fifteen of this code, modified by the state police to meet
5 the objections of the legislative rule-making review committee
6 and refiled in the state register on the thirtieth day of Septem-
7 ber, one thousand nine hundred ninety-eight, relating to the
8 state police (supplemental pay, 81 CSR 1), is authorized.

9 (b) The legislative rule filed in the state register on the third
10 day of August, one thousand nine hundred ninety-eight,
11 authorized under the authority of section twenty-five, article
12 two, chapter fifteen of this code, modified by the state police to
13 meet the objections of the legislative rule-making review
14 committee and refiled in the state register on the thirtieth day of
15 September, one thousand nine hundred ninety-eight, relating to
16 the state police (written directive system, 81 CSR 12), is
17 authorized.

CHAPTER 167

(Com. Sub. for H. B. 2570 — By Delegates Hunt,
Compton, Jenkins, Linch, Faircloth and Riggs)

[Passed March 10, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and three, article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that

the rules were filed in the state register; authorizing certain of the agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing the division of banking to promulgate a legislative rule relating to permissible additional charges in connection with a consumer credit sale; authorizing the division of banking to promulgate a legislative rule relating to the sale of insurance products by state-chartered banks; authorizing the insurance commissioner to promulgate a legislative rule relating to individual accident and sickness insurance minimum standards; authorizing insurance commissioner to promulgate a legislative rule relating to AIDS; authorizing the insurance commissioner to promulgate a legislative rule relating to individual and employer group minimum benefits accident and sickness insurance policies; insurance commissioner to promulgate a legislative rule relating to group accident and sickness insurance minimum policy coverage standards; authorizing insurance commissioner to promulgate a legislative rule relating to recognizing annuity mortality tables for use in determining reserve liabilities for annuities; authorizing the insurance commissioner to promulgate a legislative rule relating to group accident and sickness insurance issuance, portability and marketing requirements; insurance commissioner to promulgate a legislative rule relating to the guaranteed issue of individual accident and sickness insurance; authorizing the insurance commissioner to promulgate a legislative rule relating to quality assurance; authorizing the state tax commissioner to promulgate a legislative rule relating to the valuation of active and reserve coal property for ad valorem property tax purposes; authorizing the state tax commissioner to promulgate a legislative rule relating to the valuation of producing and reserve oil and natural gas for ad valorem property tax purposes; authorizing the state tax commissioner to promulgate a legislative rule relating to the valuation of natural resources property other than coal, oil or natural gas for ad valorem property tax purposes; authorizing the tax commissioner to promulgate a legislative rule relating to the electronic data processing system network for property tax administration;

authorizing the state tax commissioner to promulgate a legislative rule relating to the property tax valuation of certain manufacturing property; authorizing the state tax commission to promulgate a legislative rule relating to tax credits for new value-added wood manufacturing facilities; authorizing the state tax commissioner to promulgate a legislative rule relating to tax credits for new steel, aluminum or polymer manufacturing operations; authorizing the state tax commissioner to promulgate a legislative rule relating to the value of timberland and managed timberland; authorizing the state tax commissioner to promulgate a legislative rule relating to the valuation of public utility property for ad valorem property tax purposes; and authorizing the department of tax and revenue to promulgate a legislative rule relating to the registration of telemarketers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. Division of banking.

§64-7-2. Department of tax and revenue; and state tax commissioner.

§64-7-3. Insurance commissioner.

§64-7-1. Division of banking.

1 (a) The legislative rule filed in the state register on the
2 thirty-first day of July, one thousand nine hundred ninety-eight,
3 authorized under the authority of section four, article two,
4 chapter thirty-one-a of this code, relating to the division of
5 banking (permissible additional charges in connection with a
6 consumer credit sale, 106 CSR 11), is authorized.

7 (b) The legislative rule filed in the state register on the
8 thirty-first day of July, one thousand nine hundred ninety-eight,
9 authorized under the authority of section thirteen, article four,
10 chapter thirty-one-a of this code, modified by the division of
11 banking to meet the objections of the legislative rule-making
12 review committee and refiled in the state register on the seventh
13 day of October, one thousand nine hundred ninety-eight,

14 relating to the division of banking (sale of insurance products
15 by state-chartered banks, 106 CSR 2), is authorized.

**§64-7-2. Department of tax and revenue; and state tax commis-
sioner.**

1 (a) The legislative rule filed in the state register on the
2 thirtieth day of July, one thousand nine hundred ninety-eight,
3 authorized under the authority of section five, article one-c,
4 chapter eleven of this code, modified by the state tax commis-
5 sioner to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the seventh
7 day of January, one thousand nine hundred ninety-nine, relating
8 to the state tax commissioner (valuation of active and reserve
9 coal property for ad valorem property tax purposes, 110 CSR
10 1I), is authorized with the amendment set forth below:

11 "On page twelve, section 4.1.7.1.e, line seven, following the
12 words "Tax Commissioner" and the period, by inserting the
13 following words: "Beginning in Tax Year 2003, the inflation
14 rate shall be estimated through analysis of the most recent three
15 calendar years of an appropriate United States Department of
16 Labor, Bureau of Labor Statistics price index, as determined by
17 the Tax Commissioner."

18 (b) The legislative rule filed in the state register on the
19 thirtieth day of July, one thousand nine hundred ninety-eight,
20 authorized under the authority of section five, article one-c,
21 chapter eleven of this code, modified by the state tax commis-
22 sioner to meet the objections of the legislative rule-making
23 review committee and refiled in the state register on the
24 thirtieth day of October, one thousand nine hundred ninety-
25 eight, relating to the state tax commissioner (valuation of
26 producing and reserve oil and natural gas for ad valorem
27 property tax purposes, 110 CSR 1J), is authorized.

28 (c) The legislative rule filed in the state register on the
29 twenty-ninth day of July, one thousand nine hundred ninety-
30 eight, authorized under the authority of sections five and five-a,
31 article one-c, chapter eleven of this code, modified by the state
32 tax commissioner to meet the objections of the legislative rule-

33 making review committee and refiled in the state register on the
34 thirtieth day of October, one thousand nine hundred ninety-
35 eight, relating to the state tax commissioner (valuation of
36 natural resources property other than coal, oil or natural gas for
37 ad valorem property tax purposes, 110 CSR 1K), is authorized.

38 (d) The legislative rule filed in the state register on the
39 twenty-ninth day of July, one thousand nine hundred ninety-
40 eight, authorized under the authority of section twenty-one,
41 article one-a, and section four, article one-c, chapter eleven of
42 this code, modified by the state tax commissioner to meet the
43 objections of the legislative rule-making review committee and
44 refiled in the state register on the seventeenth day of November,
45 one thousand nine hundred ninety-eight, relating to the state tax
46 commissioner (electronic data processing system network for
47 property tax administration, 110 CSR 2), is authorized.

48 (e) The legislative rule filed in the state register on the
49 twenty-first day of July, one thousand nine hundred ninety-
50 eight, authorized under the authority of section five, article six-
51 f, chapter eleven of this code, modified by the state tax commis-
52 sioner to meet the objections of the legislative rule-making
53 review committee and refiled in the state register on the seventh
54 day of January, one thousand nine hundred ninety-nine, relating
55 to the state tax commissioner (property tax valuation of certain
56 manufacturing property, 110 CSR 6F), is authorized.

57 (f) The legislative rule filed in the state register on the
58 twenty-first day of July, one thousand nine hundred ninety-
59 eight, authorized under the authority of sections seven, eight
60 and ten, article thirteen-m, chapter eleven of this code, modified
61 by the state tax commissioner to meet the objections of the
62 legislative rule-making review committee and refiled in the
63 state register on the seventeenth day of November, one thou-
64 sand nine hundred ninety-eight, relating to the state tax com-
65 missioner (tax credits for new value-added wood manufacturing
66 facilities, 110 CSR 13M), is authorized.

67 (g) The legislative rule filed in the state register on the
68 twenty-first day of July, one thousand nine hundred ninety-
69 eight, authorized under the authority of sections seven, eight

70 and ten, article thirteen-n, and sections seven, eight and ten,
71 article thirteen-o, chapter eleven of this code, modified by the
72 state tax commissioner to meet the objections of the legislative
73 rule-making review committee and refiled in the state register
74 on the seventeenth day of November, one thousand nine
75 hundred ninety-eight, relating to the state tax commissioner (tax
76 credits for new steel, aluminum or polymer manufacturing
77 operations, 110 CSR 13N), is authorized with the amendment
78 set forth below:

79 "On page 2, section 2.3 by striking out the entire section
80 and inserting in lieu thereof the words "2.3 "Full-time em-
81 ployee" means a permanent hourly employee of an eligible
82 taxpayer, who is a West Virginia domiciled resident, and works
83 in a new value-added steel product manufacturing facility in
84 this state, or in a new value-added steel product line of an
85 existing manufacturing facility in this state, more than eighteen
86 hundred hours during the entire twelve-month period ending on
87 the last day of the taxable year of the eligible employer,
88 whether these hours are hours worked at the manufacturing
89 facility, or include hours of employer paid vacation leave or
90 other employer paid leave. Full-time employee does not include
91 an employee who is a part-time, seasonal or temporary em-
92 ployee.",

93 And,

94 On page four, section 5.1, following the word "Code" by
95 striking out "§11-13M-7" and inserting in lieu thereof "§11-
96 13N-7"."

97 (h) The legislative rule filed in the state register on the
98 twenty-ninth day of July, one thousand nine hundred ninety-
99 eight, authorized under the authority of section eleven-b, article
100 one-c, chapter eleven of this code, modified by the state tax
101 commissioner to meet the objections of the legislative rule-
102 making review committee and refiled in the state register on the
103 seventeenth day of November, one thousand nine hundred
104 ninety-eight, relating to the state tax commissioner (value of
105 timberland and managed timberland, 110 CSR 1H), is autho-
106 rized with the amendment set forth below:

107 “on page 7, section 10, by inserting the following sentence
108 at the end of the section:

109 ‘In no case may managed timberland values for Class III
110 and IV property be lower than \$225 per acre for Grade 1; \$150
111 per acre for Grade 2; \$75 per acre for Grade 3, and Class II
112 properties may not be lower than \$200 per acre for Grade 1;
113 \$140 per acre for Grade 2; and \$50 per acre for Grade 3.’”

114 (i) The legislative rule filed in the state register on the
115 twenty-ninth day of July, one thousand nine hundred ninety-
116 eight, authorized under the authority of section seven-b, article
117 six, section one, article six-g, and section five, article one-c,
118 chapter eleven of this code, modified by the state tax commis-
119 sioner to meet the objections of the legislative rule-making
120 review committee and refiled in the state register on the
121 fifteenth day of January, one thousand nine hundred ninety-
122 nine, relating to the state tax commissioner (valuation of public
123 utility property for ad valorem property tax purposes, 110 CSR
124 1M), is authorized with the amendment set forth below:

125 On page two, by striking-out all of subsection 2.5;

126 On page two, by striking-out all of subsection 2.7 and
127 inserting in lieu thereof a new subsection 2.7 to read as follows:

128 “§2.7 **“Fair market value”** means the highest price in
129 terms of money that a property will bring in a competitive and
130 open market, assuming that the buyer and seller are acting
131 prudently and knowledgeably, allowing sufficient time for the
132 sale and assuming that the price is not affected by undue
133 stimulations.”;

134 On page four, subsection 3.1, after the word “generally,” by
135 inserting the words “when the cost approach is used,”;

136 On page four, subsection 3.1, after the word “purposes,” by
137 striking-out the period and inserting in lieu thereof a colon and
138 the word “however,”;

139 On page four, by striking-out all of subdivision 3.1.1, and
140 inserting in lieu thereof new subdivision 3.1.1 to read as
141 follows:

142 “3.1.1 When the income approach is used, the unit of value
143 shall be allocated to the state of West Virginia using operating
144 plant data after which;”

145 On page five, subdivision 3.1.2, by striking-out the word
146 “property” and inserting in lieu thereof the words “physical
147 plant”;

148 On page five, by striking-out all of subdivision 4.2.1 and
149 inserting in lieu thereof a new subdivision 4.2.1 to read as
150 follows:

151 “4.2.1 **Cost approach.** — Recognizing that public service
152 corporations are predominantly cost regulated, when the cost
153 approach is used in the valuation process, original cost less
154 applicable depreciation shall be employed. In applying the cost
155 approach, the tax commissioner shall consider three (3) types
156 of depreciation; (a) physical deterioration, (b) functional
157 obsolescence, and (c) economic obsolescence.”;

158 On page five, subdivision 4.2.2 after the word “interest” by
159 striking-out the word “expense” and inserting in lieu thereof
160 “on long-term debt”;

161 On page six, by striking-out all of subdivision 4.2.4;

162 On page six, subdivision 4.2.5 after the word “process” by
163 changing the colon to a period and by striking-out the remain-
164 der of the subdivision;

165 On page eight, by striking-out all of subdivision 4.3.13;

166 And,

167 On page ten, by adding the new subsection 6.5 to read as
168 follows:

169 “The tax commissioner, for good cause shown, may grant
170 an extension of filing deadlines.”

171 (j) The legislative rule filed in the state register on the
172 thirty-first day of July, one thousand nine hundred ninety-eight,
173 authorized under the authority of sections three hundred one
174 and three hundred three, article six-f, chapter forty-six-a of this

175 code, modified by the department of tax and revenue to meet
176 the objections of the legislative rule-making review committee
177 and refiled in the state register on the twelfth day of January,
178 one thousand nine hundred ninety-nine, relating to the depart-
179 ment of tax and revenue (registration of telemarketers, 119 CSR
180 301), is authorized.

§64-7-3. Insurance commissioner.

1 (a) The legislative rule filed in the state register on the
2 thirtieth day of July, one thousand nine hundred ninety-eight,
3 authorized under the authority of section ten, article two,
4 chapter thirty-three of this code, relating to the insurance
5 commissioner (individual accident and sickness insurance
6 minimum standards, 114 CSR 12), is authorized.

7 (b) The legislative rule filed in the state register on the
8 thirtieth day of July, one thousand nine hundred ninety-eight,
9 authorized under the authority of section ten, article two,
10 chapter thirty-three of this code, relating to the insurance
11 commissioner (AIDS, 114 CSR 27), is authorized.

12 (c) The legislative rule filed in the state register on the
13 thirtieth day of July, one thousand nine hundred ninety-eight,
14 authorized under the authority of section ten, article two,
15 chapter thirty-three of this code, relating to the insurance
16 commissioner (individual and employer group minimum
17 benefits accident and sickness insurance policies, 114 CSR 33),
18 is authorized.

19 (d) The legislative rule filed in the state register on the
20 thirtieth day of July, one thousand nine hundred ninety-eight,
21 authorized under the authority of section seventeen, article
22 sixteen, chapter thirty-three of this code, relating to the insur-
23 ance commissioner (group accident and sickness insurance
24 minimum policy coverage standards, 114 CSR 39), is autho-
25 rized.

26 (e) The legislative rule filed in the state register on the
27 thirtieth day of July, one thousand nine hundred ninety-eight,
28 authorized under the authority of section nine-a, article seven,
29 chapter thirty-three of this code, relating to the insurance

30 commissioner (recognizing annuity mortality tables for use in
31 determining reserve liabilities for annuities, 114 CSR 45), is
32 authorized.

33 (f) The legislative rule filed in the state register on the
34 thirtieth day of July, one thousand nine hundred ninety-eight,
35 authorized under the authority of section ten, article two,
36 chapter thirty-three of this code, relating to the insurance
37 commissioner (group accident and sickness insurance issuance,
38 portability and marketing requirements, 114 CSR 54), is
39 authorized.

40 (g) The legislative rule filed in the state register on the
41 thirtieth day of July, one thousand nine hundred ninety-eight,
42 authorized under the authority of section ten, article two,
43 chapter thirty-three of this code, relating to the insurance
44 commissioner (guaranteed issue of individual accident and
45 sickness insurance, 114 CSR 55), is authorized.

46 (h) The legislative rule filed in the state register on the
47 thirtieth day of July, one thousand nine hundred ninety-eight,
48 authorized under the authority of section ten, article two,
49 chapter thirty-three of this code, modified by the insurance
50 commissioner to meet the objections of the legislative rule-
51 making review committee and refiled in the state register on the
52 eighteenth day of December, one thousand nine hundred ninety-
53 eight, relating to the insurance commissioner (quality assur-
54 ance, 114 CSR 53), is authorized.

CHAPTER 168

(Com. Sub. for S. B. 269 — By Senators Ross, Anderson, Bowman and Boley)

[Passed March 12, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative

rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing the commissioner of agriculture to promulgate a legislative rule relating to animal disease control; authorizing the commissioner of agriculture to promulgate a legislative rule relating to the marketing of eggs; authorizing the commissioner of agriculture to promulgate a legislative rule relating to the West Virginia seed law; authorizing the commissioner of agriculture to promulgate a legislative rule relating to the fee structure for the pesticide control act of 1990; authorizing the secretary of state to promulgate a legislative rule relating to agencies designated to provide voter registration services; authorizing the secretary of state to promulgate a legislative rule relating to electronic records; authorizing the secretary of state to promulgate a legislative rule relating to the use of electronic signatures by state agencies; authorizing the secretary of state to promulgate a legislative rule relating to the use of digital signatures, the state certification authority and the state repository; authorizing the governor's committee on crime, delinquency and correction to promulgate a legislative rule relating to law-enforcement training standards; authorizing the governor's committee on crime, delinquency and correction to promulgate a legislative rule relating to the protocol for law-enforcement response to domestic violence; authorizing the board of acupuncture to promulgate a legislative rule relating to applications for licensure to practice acupuncture; authorizing the board of acupuncture to promulgate a legislative rule relating to fees of the board; authorizing the board of acupuncture to promulgate a legislative rule relating to advertising by licensed acupuncturists; authorizing the board of acupuncture to promulgate a legislative rule relating to the standards of practice of acupuncture by licensed acupuncturists; authorizing the board of

acupuncture to promulgate a legislative rule relating to disciplinary and complaint procedures for acupuncturists; authorizing the board of acupuncture to promulgate a legislative rule relating to continuing education requirements; authorizing the board of acupuncture to promulgate a legislative rule relating to a code of ethics for licensed acupuncturists; authorizing the board of acupuncture to promulgate a legislative rule relating to education requirements; authorizing the board of acupuncture to promulgate a legislative rule relating to tutorial education requirements; authorizing the board of acupuncture to promulgate a legislative rule relating to the formation and approval of professional limited liability companies; authorizing the board of chiropractic examiners to promulgate a legislative rule relating to regulation of the board; authorizing the board of chiropractic examiners to promulgate a legislative rule relating to the formation and approval of professional limited liability companies; authorizing the contractor licensing board to promulgate a legislative rule relating to the West Virginia contractor licensing act; authorizing the board of dieticians to promulgate a legislative rule relating to a code of professional ethics, continuing education and examination, licensure and renewal requirements; authorizing the massage therapy licensure board to promulgate a legislative rule relating to massage therapy licensure; authorizing the board of medicine to promulgate a legislative rule relating to licensing, disciplinary and complaint procedures, continuing education and physician assistants; authorizing the board of osteopathy to promulgate a legislative rule relating to the formation and approval of professional limited liability companies; authorizing the board of osteopathy to promulgate a legislative rule relating to fees for services rendered by the board; authorizing the board of pharmacy to promulgate a legislative rule relating to the board; authorizing the board of accountancy to promulgate a legislative rule relating to the board and rules of professional conduct; authorizing the board of barbers and cosmetologists to promulgate a legislative rule relating to procedures, criteria and curricula for examination and licensure of barbers, cosmetologists, manicurists and aestheticians; authorizing the board of barbers and cosmetologists to promulgate a legislative rule relating to a schedule of fines; authorizing the family protection services board to promulgate a

legislative rule relating to the licensure of domestic violence perpetrator intervention programs; authorizing the board of examiners in counseling to promulgate a legislative rule relating to licensing; authorizing the board of veterinary medicine to promulgate a legislative rule relating to certified euthanasia technicians; authorizing the board of veterinary medicine to promulgate a legislative rule relating to a schedule of fees; authorizing the office of the treasurer to promulgate a legislative rule relating to the enforcement of the uniform unclaimed property act; and authorizing the West Virginia infrastructure and jobs development council to promulgate a legislative rule relating to the infrastructure and jobs development council funding rules.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND
BOARDS TO PROMULGATE LEGISLATIVE RULES.**

- §64-9-1. Commissioner of agriculture.
- §64-9-2. Secretary of state.
- §64-9-3. Governor's committee on crime, delinquency and correction.
- §64-9-4. Board of acupuncture.
- §64-9-5. Board of chiropractic examiners.
- §64-9-6. Contractor licensing board.
- §64-9-7. Board of dietitians.
- §64-9-8. Massage therapy licensure board.
- §64-9-9. Board of medicine.
- §64-9-10. Board of osteopathy.
- §64-9-11. Board of pharmacy.
- §64-9-12. Board of accountancy.
- §64-9-13. Board of barbers and cosmetologists.
- §64-9-14. Board of veterinary medicine.
- §64-9-15. Board of examiners in counseling.
- §64-9-16. Office of the treasurer.
- §64-9-17. West Virginia infrastructure and jobs development council.
- §64-9-18. Technology-related assistance revolving loan fund for individuals with disabilities board.

§64-9-1. Commissioner of agriculture.

1 (a) The legislative rule filed in the state register on the
2 eighteenth day of June, one thousand nine hundred ninety-eight,
3 authorized under the authority of section two, article nine,
4 chapter nineteen of this code, modified by the commissioner of
5 agriculture to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the
7 sixteenth day of July, one thousand nine hundred ninety-eight,
8 relating to the commissioner of agriculture (animal disease
9 control, 61 CSR 1), is authorized.

10 (b) The legislative rule filed in the state register on the
11 fourteenth day of July, one thousand nine hundred ninety-eight,
12 authorized under the authority of section ten, article ten-a,
13 chapter nineteen of this code, modified by the commissioner of
14 agriculture to meet the objections of the legislative rule-making
15 review committee and refiled in the state register on the
16 thirtieth day of September, one thousand nine hundred ninety-
17 eight, relating to the commissioner of agriculture (remarketing
18 of eggs, 61 CSR 7A), is authorized.

19 (c) The legislative rule filed in the state register on the
20 fourteenth day of July, one thousand nine hundred ninety-eight,
21 authorized under the authority of section six, article sixteen,
22 chapter nineteen of this code, modified by the commissioner of
23 agriculture to meet the objections of the legislative rule-making
24 review committee and refiled in the state register on the
25 thirtieth day of September, one thousand nine hundred ninety-
26 eight, relating to the commissioner of agriculture (West
27 Virginia seed law, 61 CSR 9), is authorized.

28 (d) The legislative rule filed in the state register on the
29 thirtieth day of July, one thousand nine hundred ninety-eight,
30 authorized under the authority of section four, article sixteen-a,
31 chapter nineteen of this code, modified by the commissioner of
32 agriculture to meet the objections of the legislative rule-making
33 review committee and refiled in the state register on the
34 thirtieth day of September, one thousand nine hundred ninety-
35 eight, relating to the commissioner of agriculture (fee structure
36 for the pesticide control act of 1990, 61 CSR 12), is authorized.

§64-9-2. Secretary of state.

1 (a) The legislative rule filed in the state register on the
2 fourteenth day of July, one thousand nine hundred ninety-eight,
3 authorized under the authority of section six, article one-a,
4 chapter three, and section thirteen, article two, chapter three of
5 this code, relating to the secretary of state (agencies designated
6 to provide voter registration services, 153 CSR 28), is autho-
7 rized.

8 (b) The legislative rule filed in the state register on the third
9 day of August, one thousand nine hundred ninety-eight,
10 authorized under the authority of section two, article one,
11 chapter fifty-nine of this code, modified by the secretary of
12 state to meet the objections of the legislative rule-making
13 review committee and refiled in the state register on the twenty-
14 third day of September, one thousand nine hundred ninety-
15 eight, relating to the secretary of state (fees relating to elec-
16 tronic records, 153 CSR 2), is authorized.

17 (c) The legislative rule filed in the state register on the third
18 day of August, one thousand nine hundred ninety-eight,
19 authorized under the authority of section four, article five,
20 chapter thirty-nine of this code, modified by the secretary of
21 state to meet the objections of the legislative rule-making
22 review committee and refiled in the state register on the twenty-
23 third day of September, one thousand nine hundred ninety-
24 eight, relating to the secretary of state (use of electronic
25 signatures by state agencies, 153 CSR 30), is authorized.

26 (d) The legislative rule filed in the state register on the third
27 day of August, one thousand nine hundred ninety-eight,
28 authorized under the authority of section four, article five,
29 chapter thirty-nine of this code, modified by the secretary of
30 state to meet the objections of the legislative rule-making
31 review committee and refiled in the state register on the twenty-
32 third day of September, one thousand nine hundred ninety-
33 eight, relating to the secretary of state (use of digital signatures,
34 state certification authority and state repository, 153 CSR 31),
35 is authorized.

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

1 (a) The legislative rule filed in the state register on the third
2 day of August, one thousand nine hundred ninety-eight,
3 authorized under the authority of section three, article twenty-
4 nine, chapter thirty of this code, modified by the governor's
5 committee on crime, delinquency and correction to meet the
6 objections of the legislative rule-making review committee and
7 refiled in the state register on the twenty-fourth day of Novem-
8 ber, one thousand nine hundred ninety-eight, relating to the
9 governor's committee on crime, delinquency and correction
10 (law enforcement training standards, 149 CSR 2), is authorized.

11 (b) The legislative rule filed in the state register on the
12 twenty-eighth day of July, one thousand nine hundred ninety-
13 eight, authorized under the authority of section nine, article
14 two-a, chapter forty-eight of this code, modified by the gover-
15 nor's committee on crime, delinquency and correction to meet
16 the objections of the legislative rule-making review committee
17 and refiled in the state register on the ninth day of November,
18 one thousand nine hundred ninety-eight, relating to the gover-
19 nor's committee on crime, delinquency and correction (protocol
20 for law enforcement response to domestic violence, 149 CSR
21 3), is authorized with the amendments set forth below:

22 On page six, by adding a new subsection 5.2 to read as
23 follows:

24 "5.2 A dispatcher, who receives a domestic call for an
25 incident which occurred or is occurring outside the jurisdiction
26 of the police department or police departments which supervise
27 the dispatcher, shall immediately notify a police department in
28 the appropriate jurisdiction.";

29 And,

30 On pages six and seven, by renumbering the remaining
31 subsections.

§64-9-4. Board of acupuncture.

1 (a) The legislative rule filed in the state register on the third
2 day of August, one thousand nine hundred ninety-eight, under
3 the authority of section seven, article thirty-six, chapter thirty
4 of this code, modified by the board of acupuncture to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the eighth day of January, one
7 thousand nine hundred ninety-nine, relating to the board of
8 acupuncture (applications for licensure to practice acupuncture,
9 32 CSR 3), is authorized.

10 (b) The legislative rule filed in the state register on the third
11 day of August, one thousand nine hundred ninety-eight, under
12 the authority of section seven, article thirty-six, chapter thirty
13 of this code, modified by the board of acupuncture to meet the
14 objections of the legislative rule-making review committee and
15 refiled in the state register on the eighth day of January, one
16 thousand nine hundred ninety-nine, relating to the board of
17 acupuncture (fees of the board of acupuncture, 32 CSR 4), is
18 authorized with the following amendments:

19 On page 1, section 3 by striking out subsection 3.2 and
20 inserting in lieu thereof the following:

21 "3.2. License fee. — The biennial license fee is four
22 hundred and twenty-five dollars (\$425.00).";

23 And,

24 On page 1, section 3 by striking out subsection 3.3 and
25 inserting in lieu thereof the following:

26 "3.3. Renewal fee. — The renewal fee is four hundred and
27 twenty-five dollars (\$425.00)."

28 (c) The legislative rule filed in the state register on the third
29 day of August, one thousand nine hundred ninety-eight, under
30 the authority of section seven, article thirty-six, chapter thirty
31 of this code, modified by the board of acupuncture to meet the
32 objections of the legislative rule-making review committee and
33 refiled in the state register on the eighth day of January, one
34 thousand nine hundred ninety-nine, relating to the board of
35 acupuncture (advertising by licensed acupuncturists, 32 CSR 5),
36 is authorized.

37 (d) The legislative rule filed in the state register on the third
38 day of August, one thousand nine hundred ninety-eight, under
39 the authority of section seven, article thirty-six, chapter thirty
40 of this code, modified by the board of acupuncture to meet the
41 objections of the legislative rule-making review committee and
42 refiled in the state register on the eighth day of January, one
43 thousand nine hundred ninety-nine, relating to the board of
44 acupuncture (standards of practice of acupuncture by licensed
45 acupuncturists, 32 CSR 6), is authorized.

46 (e) The legislative rule filed in the state register on the third
47 day of August, one thousand nine hundred ninety-eight, under
48 the authority of section seven, article thirty-six, chapter thirty
49 of this code, modified by the board of acupuncture to meet the
50 objections of the legislative rule-making review committee and
51 refiled in the state register on the eighth day of January, one
52 thousand nine hundred ninety-nine, relating to the board of
53 acupuncture (disciplinary and complaint procedures for
54 acupuncturists, 32 CSR 7), is authorized with the following
55 amendment:

56 On page four, subsection 4.1.18, after the word "activity"
57 by inserting the following:

58 "*Provided*, That upon termination of a patient-practitioner
59 relationship nothing in this rule shall be construed to prohibit a
60 personal relationship between a former patient and a practitio-
61 ner."

62 (f) The legislative rule filed in the state register on the third
63 day of August, one thousand nine hundred ninety-eight, under
64 the authority of section seven, article thirty-six, chapter thirty
65 of this code, modified by the board of acupuncture to meet the
66 objections of the legislative rule-making review committee and
67 refiled in the state register on the sixteenth day of December,
68 one thousand nine hundred ninety-eight, relating to the board of
69 acupuncture (continuing education requirements, 32 CSR 9), is
70 authorized.

71 (g) The legislative rule filed in the state register on the third
72 day of August, one thousand nine hundred ninety-eight, under
73 the authority of section seven, article thirty-six, chapter thirty

74 of this code, modified by the board of acupuncture to meet the
75 objections of the legislative rule-making review committee and
76 refiled in the state register on the eighth day of January, one
77 thousand nine hundred ninety-nine, relating to the board of
78 acupuncture (code of ethics for licensed acupuncturists, 32 CSR
79 10), is authorized.

80 (h) The legislative rule filed in the state register on the third
81 day of August, one thousand nine hundred ninety-eight, under
82 the authority of section seven, article thirty-six, chapter thirty
83 of this code, modified by the board of acupuncture to meet the
84 objections of the legislative rule-making review committee and
85 refiled in the state register on the eighth day of January, one
86 thousand nine hundred ninety-nine, relating to the board of
87 acupuncture (education requirements, 32 CSR 11), is autho-
88 rized.

89 (i) The legislative rule filed in the state register on the third
90 day of August, one thousand nine hundred ninety-eight, under
91 the authority of section seven, article thirty-six, chapter thirty
92 of this code, modified by the board of acupuncture to meet the
93 objections of the legislative rule-making review committee and
94 refiled in the state register on the eighth day of January, one
95 thousand nine hundred ninety-nine, relating to the board of
96 acupuncture (tutorial education requirements, 32 CSR 12), is
97 authorized.

98 (j) The legislative rule filed in the state register on the third
99 day of August, one thousand nine hundred ninety-eight, under
100 the authority of section one thousand three hundred four, article
101 thirteen, chapter thirty-one-b of this code, modified by the
102 board of acupuncture to meet the objections of the legislative
103 rule-making review committee and refiled in the state register
104 on the eighth day of January, one thousand nine hundred ninety-
105 nine, relating to the board of acupuncture (formation and
106 approval of professional limited liability companies, 32 CSR
107 13), is authorized.

§64-9-5. Board of chiropractic examiners.

1 (a) The legislative rule filed in the state register on the sixth
2 day of August, one thousand nine hundred ninety-seven, under

3 the authority of sections five and fifteen, article sixteen, chapter
4 thirty of this code, modified by the board of chiropractic
5 examiners to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the twenty-
7 fourth day of November, one thousand nine hundred ninety-
8 eight, relating to the board of chiropractic examiners (regulation
9 of the West Virginia board of chiropractic examiners, 4 CSR 1),
10 is authorized.

11 (b) The legislative rule filed in the state register on the sixth
12 day of August, one thousand nine hundred ninety-seven, under
13 the authority of section one thousand three hundred four,
14 modified by the board of chiropractic examiners to meet the
15 objections of the legislative rule-making review committee and
16 refiled in the state register on the twentieth day of July, one
17 thousand nine hundred ninety-eight, relating to the board of
18 chiropractic examiners (formation and approval of professional
19 limited liability companies, 4 CSR 4), is authorized.

§64-9-6. Contractor licensing board.

1 The legislative rule filed in the state register on the thirtieth
2 day of July, one thousand nine hundred ninety-eight, under the
3 authority of section sixteen, article eleven, chapter twenty-one
4 of this code, modified by the contractor licensing board to meet
5 the objections of the legislative rule-making review committee
6 and refiled in the state register on the second day of October,
7 one thousand nine hundred ninety-eight, relating to the contrac-
8 tor licensing board (West Virginia contractor licensing act, 28
9 CSR 2), is authorized.

§64-9-7. Board of dietitians.

1 The legislative rule filed in the state register on the twenty-
2 ninth day of July, one thousand nine hundred ninety-eight,
3 under the authority of section four, article thirty-five, chapter
4 thirty of this code, modified by the board of dietitians to meet
5 the objections of the legislative rule-making review committee
6 and refiled in the state register on the second day of October,
7 one thousand nine hundred ninety-eight, relating to the board of
8 dietitians (code of professional ethics; continuing education;

9 and examination, licensure and renewal requirements, 31 CSR
10 1), is authorized.

§64-9-8. Massage therapy licensure board.

1 The legislative rule filed in the state register on the seventh
2 day of May, one thousand nine hundred ninety-eight, under the
3 authority of section six, article thirty-seven, chapter thirty of
4 this code, modified by the massage therapy licensure board to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the twenty-second
7 day of July, one thousand nine hundred ninety-eight, relating to
8 the massage therapy licensure board (massage therapy
9 licensure, 194 CSR 1), is authorized, with the following
10 amendment:

11 'On page two, subdivision 3.2(b), after the word "Board,"
12 by inserting the word "and",

13 And,

14 By striking out subdivision 3.2(c) in its entirety and
15 relettering the remaining subdivision.'

§64-9-9. Board of medicine.

1 The legislative rule filed in the state register on the fifteenth
2 day of April, one thousand nine hundred ninety-eight, autho-
3 rized under the authority of section sixteen, article three,
4 chapter thirty of this code relating to the board of medicine
5 (licensing, disciplinary and complaint procedures, continuing
6 education and physician assistants, 11 CSR 1B), is reauthorized
7 with the following amendments:

8 On page three, subsection 2.6.1, after the words 'more than'
9 by striking the words 'two (2) physicians assistants' and
10 inserting in lieu thereof the words 'three (3) physicians assis-
11 tants or their equivalent'; and

12 On page eight, subsection 2.12.13, after the words 'more
13 than' by striking out the words 'two (2) physicians assistants'
14 and inserting in lieu thereof the words 'three (3) physicians
15 assistants or their equivalent'.

§64-9-10. Board of osteopathy.

1 (a) The legislative rule filed in the state register on the
2 eleventh day of September, one thousand nine hundred ninety-
3 seven, under the authority of section one thousand three
4 hundred and four, article thirteen, chapter thirty-one-b of this
5 code, modified by the board of osteopathy to meet the objec-
6 tions of the legislative rule-making review committee and
7 refiled in the state register on the twenty-second day of July,
8 one thousand nine hundred ninety-eight, relating to the board of
9 osteopathy (formation and approval of professional limited
10 liability companies, 24 CSR 4), is authorized.

11 (b) The legislative rule filed in the state register on the
12 ninth day of July, one thousand nine hundred ninety-eight,
13 under the authority of sections four and six, article one, chapter
14 thirty of this code, modified by the board of osteopathy to meet
15 the objections of the legislative rule-making review committee
16 and refiled in the state register on the thirtieth day of Septem-
17 ber, one thousand nine hundred ninety-eight, relating to the
18 board of osteopathy (fees for services rendered by the board of
19 osteopathy, 24 CSR 5), is authorized.

§64-9-11. Board of pharmacy.

1 The legislative rule filed in the state register on the thirty-
2 first day of July, one thousand nine hundred ninety-eight,
3 authorized under the authority of sections three and nineteen,
4 article five, chapter thirty of this code, modified by the board of
5 pharmacy to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the twenty-
7 first day of January, one thousand nine hundred ninety-nine,
8 relating to the board of pharmacy (rules and regulations of the
9 board of pharmacy, 15 CSR 1), is authorized.

§64-9-12. Board of accountancy.

1 The legislative rule filed in the state register on the fifth day
2 of August, one thousand nine hundred ninety-eight, under the
3 authority of section three, article nine, chapter thirty of this
4 code, modified by the board of accountancy to meet the
5 objections of the legislative rule-making review committee and

6 refiled in the state register on the fifteenth day of January, one
7 thousand nine hundred ninety-nine, relating to the board of
8 accountancy (board rules and rules of professional conduct, 1
9 CSR 1), is authorized.

§64-9-13. Board of barbers and cosmetologists.

1 (a) The legislative rule filed in the state register on the
2 twenty-ninth day of July, one thousand nine hundred ninety-
3 eight, under the authority of section one, article twenty-seven,
4 chapter thirty of this code, modified by the board of barbers and
5 cosmetologists to meet the objections of the legislative rule-
6 making review committee and refiled in the state register on the
7 twenty-third day of October, one thousand nine hundred ninety-
8 eight, relating to the board of barbers and cosmetologists
9 (procedures, criteria and curricula for examination and
10 licensure of barbers, cosmetologists, manicurists and aestheti-
11 cians, 3 CSR 1), is authorized.

12 (b) The legislative rule filed in the state register on the
13 seventeenth day of July, one thousand nine hundred ninety-
14 eight, under the authority of section eight, article one, chapter
15 thirty of this code, modified by the board of barbers and
16 cosmetologists to meet the objections of the legislative rule-
17 making review committee and refiled in the state register on the
18 twenty-first day of December, one thousand nine hundred
19 ninety-eight, relating to the board of barbers and cosmetologists
20 (schedule of fines, 3 CSR 7), is authorized, with the following
21 amendment:

22 'On page eight, subsection 2.49, after the words "other
23 than" by inserting the words "tropical birds as allowed by law,
24 animals employed to assist individuals with disabilities, or'.

§64-9-14. Board of veterinary medicine.

1 (a) The legislative rule filed in the state register on the third
2 day of August, one thousand nine hundred ninety-eight, under
3 the authority of section nine, article ten-a, chapter thirty of this
4 code, modified by the board of veterinary medicine to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the twenty-seventh day of

7 October, one thousand nine hundred ninety-eight, relating to the
8 board of veterinary medicine (certified euthanasia technicians,
9 26 CSR 5), is authorized.

10 (b) The legislative rule filed in the state register on the third
11 day of August, one thousand nine hundred ninety-eight, under
12 the authority of section four, article ten, chapter thirty of this
13 code, modified by the board of veterinary medicine to meet the
14 objections of the legislative rule-making review committee and
15 refiled in the state register on the twenty-seventh day of
16 October, one thousand nine hundred ninety-eight, relating to the
17 board of veterinary medicine (schedule of fees, 26 CSR 6), is
18 authorized.

§64-9-15. Board of examiners in counseling.

1 The legislative rule filed in the state register on the thirty-
2 first day of July, one thousand nine hundred ninety-eight,
3 authorized under the authority of section five, article thirty-one,
4 chapter thirty of this code, relating to the board of examiners in
5 counseling (licensing, 27 CSR 1), is authorized.

§64-9-16. Office of the treasurer.

1 The legislative rule filed in the state register on the first day
2 of July, one thousand nine hundred ninety-eight, authorized
3 under the authority of section twenty-eight, article eight,
4 chapter thirty-six of this code, modified by the office of the
5 treasurer to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the
7 nineteenth day of November, one thousand nine hundred
8 ninety-eight, relating to the office of the treasurer (the enforce-
9 ment of the uniform unclaimed property act, 112 CSR 5), is
10 authorized.

§64-9-17. West Virginia infrastructure and jobs development council.

1 The legislative rule filed in the state register on the ninth
2 day of September, one thousand nine hundred ninety-eight,
3 authorized under the authority of section four, article fifteen,
4 chapter thirty-one of this code relating to the West Virginia
5 infrastructure and jobs development council (infrastructure and

6 jobs development council funding rules, 167 CSR 1), is
7 authorized.

**§64-9-18. Technology-related assistance revolving loan fund for
individuals with disabilities board.**

1 The legislative rule filed in the state register on the ninth
2 day of February, one thousand nine hundred ninety-eight, under
3 the authority of section five, article twenty-four, chapter
4 twenty-nine of this code, modified by the technology-related
5 assistance revolving loan fund for individuals with disabilities
6 board to meet the objections of the legislative rule-making
7 review committee and refiled in the state register on the twenty-
8 ninth day of July, one thousand nine hundred ninety-eight
9 (relating to the technology-related assistance revolving loan
10 fund for individuals with disabilities board technology-related
11 assistance revolving loan fund for individuals with disabilities,
12 193 CSR 1), is authorized.

CHAPTER 169

(Com. Sub. for H. B. 2535 — By Delegates Hunt, Linch,
Compton, Faircloth, Jenkins and Riggs)

[Passed March 10, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three and four, article ten, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; disapproving certain agency legislative rules as proposed by the agency; authorizing division of natural resources to promulgate a legislative rule relating to the

recycling assistance fund grant program; authorizing division of natural resources to promulgate a legislative rule relating to general trapping regulations; authorizing the manufactured housing construction and safety standards board to promulgate a legislative rule relating to the board; authorizing the division of labor to promulgate a legislative rule relating to the crane operator certification act; and authorizing the economic development authority to promulgate a legislative rule relating to the general administration of the application procedures of the West Virginia capital company act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO PROMULGATE LEGISLATIVE RULES.

§64-10-1. Division of natural resources.

§64-10-2. Manufactured housing construction and safety standards board.

§64-10-3. Division of labor.

§64-10-4. Economic development authority.

§64-10-1. Division of natural resources.

1 (a) The legislative rule filed in the state register on the
2 thirty-first day of July, one thousand nine hundred ninety-eight,
3 authorized by section five, article eleven, chapter twenty of this
4 code, modified by the division of natural resources to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the twentieth of November, one
7 thousand nine hundred ninety-eight, relating to the division of
8 natural resources (recycling assistance fund grant program, 58
9 CSR 5) is authorized.

10 (b) The legislative rule filed in the state register on the
11 second day of July, one thousand nine hundred ninety-eight,
12 authorized by section seven, article one, chapter twenty of this
13 code, modified by the division of natural resources to meet the
14 objections of the legislative rule-making review committee and
15 refiled in the state register on the twenty-third day of July, one
16 thousand nine hundred ninety-eight, relating to the division of

17 natural resources (general trapping regulations, 58 CSR 53), is
18 authorized.

§64-10-2. Manufactured housing construction and safety standards board.

1 The legislative rule filed in the state register on the thirtieth
2 day of July, one thousand nine hundred ninety-eight, under the
3 authority of section four, article nine, chapter twenty-one of this
4 code, modified by the manufactured housing construction and
5 safety standards board to meet the objections of the legislative
6 rule-making review committee and refiled in the state register
7 on the second day of October, one thousand nine hundred
8 ninety-eight, relating to the manufactured housing construction
9 and safety standards board (manufactured housing construction
10 and safety standards board, 42 CSR 19), is disapproved and not
11 authorized.

§64-10-3. Division of labor.

1 The legislative rule filed in the state register on the thirtieth
2 day of July, one thousand nine hundred ninety-eight, authorized
3 under the authority of section three, article three-d, chapter
4 twenty-one of this code, modified by the division of labor to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the second day of
7 October, one thousand nine hundred ninety-eight, relating to the
8 division of labor (crane operator certification act, 42 CSR 24),
9 is authorized.

§64-10-4. Economic development authority.

1 The legislative rule filed in the state register on the twentieth
2 day of July, one thousand nine hundred ninety-eight, under
3 the authority of section five, article one, chapter five-e of this
4 code, modified by the economic development authority to meet
5 the objections of the legislative rule-making review committee
6 and refiled in the state register on the fifth day of November,
7 one thousand nine hundred ninety-eight, relating to the eco-
8 nomic development authority (general administration of the
9 West Virginia capital company act; establishment of the
10 application procedures to implement the act, 117 CSR 1), is
11 authorized.